

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

MAHNAZ SADANIAN,

Plaintiff and Appellant,

v.

TARGET CORPORATION,

Defendant and Respondent.

B268653

(Los Angeles County
Super. Ct. No. EC059403)

APPEAL from a judgment of the Superior Court of the Los Angeles County, Donna F. Goldstein, Judge. Affirmed.

Isaac Toveg for Plaintiff and Appellant.

Manning & Kass, Ellrod, Ramirez, Trester, Martin D. Holly,
and Robert P. Wargo for Defendant and Respondent.

* * * * *

Plaintiff Mahnaz Sadanian sued defendant Target Corporation for personal injury due to defendant's negligence and premises liability. Plaintiff claimed she was cut by a plastic price tag holder that was sticking out into the aisle. The jury returned a verdict in defendant's favor, finding there was no dangerous condition.

Plaintiff makes a number of claims of error on appeal, including that the trial court improperly: denied plaintiff's request for a trial continuance; denied plaintiff's peremptory challenge to Judge Donna F. Goldstein; placed time limitations on voir dire; allowed defendant to submit a witness list which included more than 50 witnesses; chose defendant's jury instructions, statement of case, and special verdict form; testified and made objections on behalf of defendant; allowed defendant to rebut plaintiff's rebuttal closing argument; excused plaintiff's witness; and denied plaintiff's motion to tax costs.

Plaintiff also claims that many documents were missing from the court file, and that the court reporter, at the trial court's behest, "... appeared to intentionally delete and incorrectly add statements in the transcript for [defendant's] benefit to reflect and show that [plaintiff] has no appealable issue that can be reversed by the appellate court."

Finding that the appellate record and plaintiff's briefs are inadequate for appellate review, we affirm.

BACKGROUND

Plaintiff's counsel, who represented her in the trial court and also on appeal, is her husband, Isaac Toveg.

This case was filed in September 2012, and was reassigned to Judge Goldstein in June 2014. Plaintiff filed a "motion for peremptory challenge" to Judge Goldstein on March 26, 2015, arguing that plaintiff's counsel was involved in "litigation with my

next door neighbor . . . whose name is Goldstein.” The trial court denied the challenge as untimely.

It appears that the trial was continued a number of times. However, plaintiff’s final request to continue trial was denied. It seems that the final request for a continuance was based on plaintiff’s inability to sit for long periods of time, and the “unavailability” of plaintiff’s expert witness (who plaintiff had neglected to subpoena to testify at trial). Defendant tells us that on the first day of trial, after 35 jurors had been summoned, plaintiff’s lawyer for the first time told the court her doctor recommended she not testify because it would cause her too much pain to sit in court. The trial court stated that it would accommodate plaintiff by allowing her to get up and move as often as she needed, but that plaintiff did not need to be present at trial if her health prevented her from being there, and that the court would instruct the jury to not hold her absence against her. Plaintiff ultimately did not appear at trial. Plaintiff’s husband was with her when she was allegedly injured at the Target store, and he testified about the incident. Plaintiff has not articulated in what way she was prejudiced by this.

Mr. Toveg testified that he and his wife were shopping at the Burbank Target in September 2010. As plaintiff was pushing her cart through the shoe department, she cut her pinky finger on a price tag sign that was extending horizontally into the aisle. Plaintiff attempted to complete an incident report, but was told by defendant’s staff that there were no blank forms for her to complete. Mr. Toveg later called the store to report the incident and left a message, but his call was never returned.

Defendant’s employees testified that a guest would not be denied a guest incident report, and that a report would have been completed by defendant’s staff if an incident was reported and the

guest did not wish to complete a form. There was no report completed by anyone for the alleged incident. They also testified to their procedures to sweep for hazards in the store, and that it was impossible for a price tag sign to extend horizontally into an aisle.

Defendant also produced a mechanical engineering expert who testified that it was impossible for plastic signs to extend horizontally into the aisle, and that they were not sharp enough to cause a laceration. A medical expert also testified that plaintiff's injuries were not consistent with her claims in this case.

The jury, in a special verdict form, found that "the price tag holder [was not] a dangerous condition at the time of the incident." Judgment for defendant was entered on August 28, 2015. After plaintiff's motion for a new trial was denied, plaintiff filed a notice of appeal.

DISCUSSION

This appeal suffers from a number of deficiencies preventing appellate review. First, plaintiff's briefs do not include a statement of appealability, do not include sufficient citations to the record on appeal,¹ do not summarize the procedural history of the case and facts adduced at trial, do not set forth the standards of review for the claimed errors, and contain almost no legal analysis. (See *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246 [we may disregard any claims when no appropriate reference to the record is furnished]; see also Cal. Rules of Court, rule 8.204(a)(1)(C) [a brief must contain citations to the record]; rule 8.204(a)(1)(B) [a brief

¹ A few citations to the record appear in plaintiff's opening brief. However, the citations provide scant guidance to this court in light of plaintiff's failure to articulate the standard of review, provide meaningful legal analysis, summarize the facts supporting her claims of error on appeal, or explain how the claimed errors prejudiced her.

must contain reasoned argument and legal authority to support its contentions]; rule 8.204(a)(2) [statement of appealability]; rule 8.204(a)(2)(C) [an appellant must recite in the opening brief all “significant facts”].)

A judgment is presumed to be correct, and it is the appellant’s burden to establish prejudice. (*State Farm Fire & Casualty Co. v. Pietak* (2001) 90 Cal.App.4th 600, 610.) Plaintiff’s briefs have failed to do so, and therefore plaintiff has necessarily waived any claim of error on appeal. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881; *Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852.)

Moreover, plaintiff’s briefs make repeated references to matters outside the record on appeal, and include as exhibits a July 13, 2015 letter from plaintiff’s treating neurologist; a proposed special verdict form; a declaration from appellate counsel, purporting to substantiate many of the claims made on appeal, such as the claim that the court reporter deleted things from the record at the court’s request; and a declaration from a “legal researcher,” purporting to establish that Judge Goldstein is related to a party plaintiff’s counsel was suing in another matter (for which plaintiff claims Judge Goldstein was required to recuse herself). Plaintiff has also separately requested that we take judicial notice of several documents, such as the proposed special verdict form, a joint witness list, the doctor’s note, and a discovery filing from an unrelated case.

We will not consider new evidence outside of the appellate record, and deny plaintiff’s request that we judicially notice these documents, which are plainly not the proper subject of judicial notice, and which bear no file stamp or other notation indicating that any of them was filed or even lodged with the court. (See *People v. Pearson* (1969) 70 Cal.2d 218, 221, fn. 1; *Vons Companies*,

Inc. v. Seabest Foods, Inc. (1996) 14 Cal.4th 434, 444, fn. 3; *In re James V.* (1979) 90 Cal.App.3d 300, 304.)

As mentioned previously, the record is incomplete. Plaintiff claims error in voir dire but only a portion of voir dire appears in the record provided to us. Only some of the argument concerning plaintiff's request for a continuance appears in the transcript provided. Trial was held on July 13, 14, 15, 16, and 17, but transcripts were only provided for July 14, 16, and 17. Plaintiff's notice designating the record on appeal makes clear that the designated proceedings "do not include all of the testimony in the superior court." However, the notice does not specify "the points to be raised on appeal." (Cal. Rules of Court, rule 8.130(a)(2).) "If the appellant designates less than all the testimony, the notice must state the points to be raised on appeal; the appeal is then limited to those points unless, on motion, the reviewing court permits otherwise." (*Ibid.*)

Moreover, the clerk's transcript is missing many key documents, such as documents relating to plaintiff's July 2015 request for a continuance, defendant's witness list, and the trial court's ruling on plaintiff's motion to tax costs. Plaintiff implies that documents are "missing" through no fault of plaintiff based on the declaration of the clerk attesting that various documents identified in plaintiff's designation of the record could not be located. However, it is clear that plaintiff's notice designating the record on appeal did not designate documents necessary for appellate review (such as plaintiff's July 2015 ex parte request for a continuance and defendant's witness list), and did not adequately identify the documents plaintiff sought to have included in the

record (such as plaintiff's and defendant's special verdict forms).² In some cases, the missing documents were never actually *filed*, as the case summary does not reflect their filing (such as plaintiff's doctor's note which is appended to her appellate brief). Plaintiff has not cogently articulated which documents were omitted from the record, putting the burden on this court to determine which documents, if any, were properly designated by plaintiff and are actually missing from the court's file.

It was plaintiff's duty to "present a complete record for appellate review" (*Stasz v. Eisenberg* (2010) 190 Cal.App.4th 1032, 1039; *Foust v. San Jose Construction Co., Inc.*, *supra*, 198 Cal.App.4th at pp. 186-187.) "[I]f the record is inadequate for meaningful review, the appellant defaults and the decision of the trial court should be affirmed." (*Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043, 1051, fn. 9.)

DISPOSITION

The judgment is affirmed. Defendant is awarded its costs on appeal.

GRIMES, J.

WE CONCUR:

RUBIN, Acting P. J.

FLIER, J.

² Plaintiff did not include a specific filing date in the notice designating the record on appeal.