Filed 2/20/19 Godley v. Carter CA2/3

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

MICHAEL ANTHONY GODLEY, Plaintiff and Appellant, v. DWAYNE MICHAEL CARTER, JR., Defendant and Respondent.	B286325 Los Angeles County Super. Ct. No. BC645825

APPEAL from an order of the Superior Court of Los Angeles County, Randolph M. Hammock, Judge. Affirmed.

Michael Anthony Godley, in pro. per., for Plaintiff and Appellant.

No Appearance for Defendant and Respondent.

INTRODUCTION

Plaintiff and appellant Michael Anthony Godley appeals from an order dismissing his case against defendant Dwayne Michael Carter, Jr.[1] for failure to serve the summons and complaint. Plaintiff, who represented himself below and on appeal, asserts no argument demonstrating error. We affirm.

BACKGROUND

Plaintiff filed a complaint against defendant in January 2017. The operative complaint is plaintiff's fifth amended complaint (FAC), filed more than five months later on June 22, 2017.[2] The FAC is a form complaint for breach of contract and includes "other" handwritten causes of action for "fraud, defamation, IIED, unjust enrichment, malice, civil conspiracy tort, grand theft larceny, trespassing, conversion, invasion of privacy, replevin, [and] R[I]CO." (Initial capitals omitted.) Defendant is named in the caption of the FAC and body of the FAC. An attachment to the FAC purports to name over a dozen additional parties as defendants.

Plaintiff also filed on June 22, 2017, a summons directed to defendant and the parties identified in its attachment. The summons attachment lists the same additional parties as the FAC. According to the court's case summary, plaintiff filed summonses in March, April, and May 2017 with his earlier amended complaints. No proofs of service for any summons are listed in the case summary.

Based on the case summary, the court set an "OSC re Dismissal" for August 7, 2017, continued to November 3, 2017. Plaintiff filed declarations on September 20, September 21,

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1 Defendant is a rapper known professionally as Lil Wayne.

2 Only the FAC is included in the appellate record.

September 26, and October 16, 2017. We do not know the content of those declarations, as they are not part of the appellate record.

Plaintiff represented himself at the November 3 hearing. The court heard oral argument and ruled: "The Court finds that there is no reasonable probability that the Plaintiff will be able to effectuate service against the Defendant within a reasonable amount of time." The court then dismissed the case without prejudice. No reporter was present at the hearing.

Plaintiff filed a timely notice of appeal. Defendant did not file a respondent's brief. Indeed, the notices of default this court mailed to defendant at the address plaintiff provided were returned as "unable to forward."

DISCUSSION

While we are mindful defendant is representing himself on appeal, he "is to be treated like any other party and is entitled to the same, but no greater consideration than other litigants and attorneys." (*Barton v. New United Motor Manufacturing, Inc.* (1996) 43 Cal.App.4th 1200, 1210.) Thus, he is bound to follow the most fundamental rule of appellate review which is that the judgment or order challenged on appeal is presumed to be correct, and "it is the appellant's burden to affirmatively demonstrate error." (*People v. Sanghera* (2006) 139 Cal.App.4th 1567, 1573.) "All intendments and presumptions are indulged to support [the order] on matters as to which the record is silent, and error must be affirmatively shown." (*Denham v. Superior Court of Los Angeles County* (1970) 2 Cal.3d 557, 564.) To overcome this presumption, an appellant must provide a record that allows for meaningful review of the challenged order. (*Ibid.*) If the record does not include all of the evidence and materials the trial court relied on in making its determination, we will not find error. (*Haywood v. Superior Court* (2000) 77 Cal.App.4th 949, 955.)

Further, "an appellant must present argument and authorities on each point to which error is asserted or else the issue is waived." (*Kurinij v. Hanna & Morton* (1997) 55 Cal.App.4th 853, 867.) Matters not properly raised or that lack adequate legal discussion will be deemed forfeited. (*Keyes v. Bowen* (2010) 189 Cal.App.4th 647, 655-656.) In short, an appellant must demonstrate prejudicial or reversible error based on sufficient legal argument supported by citation to an adequate record. (*Yield Dynamics, Inc. v. TEA Systems Corp.* (2007) 154 Cal.App.4th 547, 556-557.)

We cannot determine from the record what arguments plaintiff made before the trial court in response to its order to show cause. Plaintiff's declarations are not part of the record, nor is there a reporter's transcript. The case summary shows plaintiff never filed a proof of service of the FAC and summons on defendant. The only other document included in the record on the subject is the court's minute order finding plaintiff unlikely to effectuate service in a reasonable amount of time. Section 1167.1 of the Code of Civil Procedure permits a court to dismiss a complaint without prejudice "[i]f proof of service of the summons has not been filed within 60 days of the complaint's filing." The court's order therefore was proper.

Nor does plaintiff present any argument or authorities in his opening brief as to why the court erred in dismissing his case for lack of service. Rather, plaintiff recites his factual allegations against defendant, arguing the merits of his claims. Plaintiff thus has failed to meet his burden to affirmatively show error. We also note plaintiff was not prejudiced by the court's ruling as the court dismissed plaintiff's case *without prejudice*.

DISPOSITION

The order dismissing plaintiff's case is affirmed. Plaintiff is to bear his own costs on appeal. Because defendant did not participate in the appeal, no costs are awarded to him.

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EGERTON, J.

We concur:

EDMON, P.J.

LAVIN, J.