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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

MIN J. KIM,

Plaintiff and Appellant,

v.

JAMES J. LEE,

Defendant and Respondent.

B240377

(Los Angeles County
Super. Ct. No. BC432219)

APPEAL from an order of the Superior Court of Los Angeles County. Alan S. Rosenfield, Judge. Affirmed.

Min J. Kim, in pro. per., for Plaintiff and Appellant.

Kim, Shapiro, Park & Lee, John P. Lee and Yalan Zheng for Defendant and Respondent.

* * * * *

Appellant, Min J. Kim, in propria persona, appeals from an order dismissing a sexual battery and false imprisonment complaint against respondent, James J. Lee. The trial court dismissed the complaint as an ultimate sanction for appellant's willful failure to comply with discovery orders. We affirm.

PROCEDURAL HISTORY

The complaint, which was filed on February 19, 2010, alleged respondent sexually assaulted appellant on two separate occasions in February 2008. On June 29, 2011, after answering appellant's amended complaint, respondent filed three written discovery requests. Respondent subsequently granted appellant two extensions to provide the discovery responses.

After appellant failed to provide any responses, respondent filed three discovery motions on August 31, 2011. The motions requested an order deeming admitted requests for admissions and orders compelling production of documents and responses to form interrogatories. Following a hearing on the motions on October 5, 2011, the trial court directed appellant to provide responses to the document and interrogatory requests within thirty days. The trial court deemed admitted respondent's requests for admissions. Appellant was also ordered to pay \$870 in sanctions.

On October 7, 2011, two days after the discovery hearing, appellant filed opposition to the three discovery motions. Appellant cited her physical and mental health as reasons for the failure to respond to the discovery responses in a timely fashion. On November 4, 2011, the trial court granted appellant's ex parte application for an order extending the time to provide discovery responses by November 30, 2011. In addition to the ex parte application filed on November 4, 2011, appellant filed a motion for reconsideration regarding the deemed admissions. The trial court subsequently denied reconsideration at a hearing on January 11, 2012.

On December 12, 2011, respondent filed a motion requesting either termination, issue, evidentiary, and/or monetary sanctions for appellant's failure to comply with the trial court's October 5, 2011 and November 4, 2011 orders. Appellant did not file written opposition to the sanctions motion prior to the February 6, 2012 hearing. At the hearing,

the trial court imposed terminating sanctions against appellant for her willful failure to comply with discovery including court orders to do so. The trial court noted that appellant's failure to comply was after repeated extensions from respondent and the trial court. Appellant filed a timely appeal from the order dismissing her complaint.

DISCUSSION

Appellant asserts the trial court abused its discretion in ordering a terminating sanction. The trial court's broad discretion in choosing the appropriate sanction is subject to reversal only for abuse. (*Van Sickle v. Gilbert* (2011) 196 Cal.App.4th 1495, 1516; *Doppes v. Bentley Motors, Inc.* (2009) 174 Cal.App.4th 967, 992.) A reversal of a sanctions order is only warranted for arbitrary, capricious or whimsical actions by the trial court. (*Van Sickle v. Gilbert, supra*, at p. 1516; *Liberty Mutual Fire Ins. Co. v. LcL Administrators, Inc.* (2008) 163 Cal.App.4th 1093, 1102.)

A substantial portion of appellant's claim on appeal is predicated upon events which occurred during the February 6, 2012 sanctions hearing. Respondent is correct, however, that the absence of a reporter's transcript from that hearing limits our ability to reach the merits of this claim. Appellant has an affirmative obligation to provide an adequate record so that we may assess whether the trial court erred. We do not presume error; rather, the presumption is that there was no error. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; *Gutierrez v. Autowest, Inc.* (2003) 114 Cal.App.4th 77, 88.)

In any event, the record aptly demonstrates that appellant had a history of refusing to respond to discovery requests and obtaining extensions from both respondent and the trial court. Appellant then repeatedly failed to comply with trial court orders to respond to discovery requests. The trial court was justified in imposing the ultimate sanction under these circumstances. (*Van Sickle v. Gilbert, supra*, 196 Cal.App.4th at p. 1516; *Doppes v. Bentley Motors, Inc., supra*, 174 Cal.App.4th at p. 992.) Because the trial court was justified in dismissing the complaint, we need not consider any other claims raised by appellant.

DISPOSITION

The order dismissing the complaint is affirmed. Respondent is awarded his costs on appeal.

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_____, J. *

FERNS

We concur:

_____, P. J.

BOREN

_____, J.

ASHMANN-GERST

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.