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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

STEVEN JON WOLFE,

Plaintiff and Respondent,

v.

DOUGLAS DAVID DEVITO,

Defendant and Appellant.

B268378

(Los Angeles County
Super. Ct. No. BS154887)

APPEAL from a judgment of the Superior Court of the
County of Los Angeles, Mark A. Borenstein, Judge. Affirmed.

Kevin Winston McKesson; Law Offices of Charles O. Agege
and Charles O. Agege for Defendant and Appellant.

Segal Law Group, Lawrence Segal, and Andrew D. Shupe
for Plaintiff and Respondent.

* * * * *

Plaintiff Steven Jon Wolfe obtained a civil harassment restraining order against defendant Douglas David DeVito, who did not appear at the hearing. The trial court denied defendant's postjudgment motion to set aside the restraining order, rejecting defendant's claim that he had not been served with notice of the proceedings. In his opening appellate brief, defendant maintains that he did not receive notice of the proceedings. His reply brief, however, makes a number of new claims of error. We affirm, finding that defendant failed to supply any citations to the record, failed to fairly summarize the evidence, and may not raise new issues in his reply brief. And, in any event, our limited review of the record demonstrates no error.

BACKGROUND

On May 19, 2015, plaintiff filed a request for a civil harassment restraining order with the superior court, alleging that defendant, a former employee of one of plaintiff's roommates, repeatedly harassed plaintiff in 2014 and 2015. Defendant left strange voicemail messages for plaintiff, sent "rambling, incoherent, and disturbing" text messages, and showed up at plaintiff's home and damaged his property. Plaintiff provided declarations from several witnesses, a transcript of a voicemail message from defendant, screen shots of numerous text messages, and other evidence.

A Judicial Council form proof of personal service, for use in civil harassment proceedings, was filed on June 3, 2015, reflecting that Thomas Brown "personally gave copies of the documents" to defendant at 2:00 p.m. on June 2, 2015, at 429 Bauchet Street, Los Angeles, California 90012.

On June 9, 2015, the court held a hearing on the request for a restraining order. The court found that defendant had been properly served. Several witnesses testified, including plaintiff, Los Angeles Police Detective Thomas Brown (who had investigated the harassment), plaintiff's private investigator, and several other witnesses. The trial court found "clear and convincing evidence" of a "course of conduct" directed at plaintiff, including threats of violence, and issued the restraining order.

On September 11, 2015, defendant moved to set aside the judgment on the basis that he was not properly served with notice of the proceedings, and the order was barred by res judicata. His memorandum argued that the judgment should be set aside as void under Code of Civil Procedure section 473, subdivision (d) for lack of proper service. It also argued that plaintiff had previously filed a request for a restraining order against defendant in March 2015, which was denied on April 13, 2015.

Defendant's declaration in support of the motion averred that he was in custody between June 1, 2015 and June 15, 2015. On the date of his release, the Los Angeles Sheriff's Department gave him his personal belongings, which included "some paperwork regarding the instant case" which was not given to him until his release. A property receipt from the jail indicated that "restraining order paperwork" was turned in by "Det. Tom Brown" on June 2, 2015. Defendant's declaration stated that he attached a copy of the minute order from the previous proceeding, where plaintiff's request for a restraining order had been denied. However, the minute order was not appended to the declaration.

Defendant also filed a "motion to stay execution of enforcement of . . . judgment." His declaration in support of the

motion averred that Detective Brown subjected defendant to a custodial interrogation on June 2, 2015 after defendant had been in custody for 36 hours without a bed or access to an attorney. The declaration made no mention of whether Brown had served him.

In opposition to the motion, plaintiff argued that the application for a restraining order was based on new conduct by defendant, and that defendant was validly served first by Detective Brown, and then by jail staff. The opposition included a declaration by Detective Brown, testifying that he personally met with defendant on June 2, 2015 at the Men's Central Jail facility and that he "physically delivered/presented/served" defendant with the restraining order documents, he explained the nature of the papers served upon defendant, and informed him of the date, time, and location of the hearing. According to Detective Brown, jail policy prevents an inmate from keeping papers given to them by visitors, and therefore, after the meeting, the papers were logged and kept with defendant's personal belongings.

Plaintiff also presented an additional proof of service, executed by a deputy of the Los Angeles Sheriff's Department, indicating that the documents were again personally served on defendant at the Airport Courthouse, while defendant was in custody, on June 3, 2015.

With his reply, defendant submitted a supplemental declaration averring that due to the conditions of his confinement, he was "unable to recall" the details of his encounter with Detective Brown. However, he later remembered some details, such as Detective Brown having a "large stack of

papers” during the interrogation, although he denied having any knowledge of the “pending hearing specifics.”

Regarding the service on June 3, defendant testified that he was unable to review the documents “without being hindered by handcuffs” and that no one discussed with him “in specific terms regarding a TRO or the hearing pending.” He did recall a stack of documents being thrown in his cell, and after his left hand was un-cuffed he tried to read the documents, but could not comprehend them because he was sleep deprived.

The trial court denied defendant’s motion, finding that he was properly served. This appeal followed.

DISCUSSION

This appeal suffers from a number of deficiencies preventing appellate review. In his opening brief, defendant does not make a single citation to the record on appeal, does not summarize the evidence supporting the judgment below, such as the proofs of service and declaration of Detective Brown, and only discusses the evidence which is favorable to defendant.

We may disregard any claims when no appropriate reference to the record is furnished. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246.) Moreover, an appellant must recite in the opening brief all “significant facts” included in the record, not just the evidence favorable to his position. The failure to fairly summarize the evidence forfeits any claim of error on appeal. (Cal. Rules of Court, rule 8.204(a)(2)(C); *Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881; *County of Solano v. Vallejo Redevelopment Agency* (1999) 75 Cal.App.4th 1262, 1274.)

Defendant’s reply brief, without adequate explanation, raises several *new* arguments which were not briefed in the opening brief, nor raised to the trial court. The reply brief argues

the judgment should have been set aside for *mistake or excusable neglect* (which were never asserted as bases for relief below), res judicata barred introduction of evidence of harassment that occurred prior to the filing of the first request for a restraining order, the judgment is not supported by substantial evidence, and “judicially noticed records clearly contradict the testimony adduced at the June 9, 2015 . . . hearing” (even though none of this evidence was presented in support of defendant’s motion to set aside the judgment).

Defendant asks that we take judicial notice of a transcript of a voicemail message; the minute order denying plaintiff’s March 20, 2015 restraining order request; portions of the transcript of the preliminary hearing for defendant’s criminal case stemming from the harassment at issue in this case; and portions of a transcript of an audio recording of the meeting between plaintiff and Detective Brown on June 2, 2015.

We will not consider defendant’s belated arguments, raised for the first time in his reply brief, to which plaintiff has had no opportunity to respond. (*Reichardt v. Hoffman* (1997) 52 Cal.App.4th 754, 764; *People v. Mitchell* (1995) 36 Cal.App.4th 672, 674, fn. 1.) Nor will we take judicial notice of documents not presented to the trial court, which have no relevance to these proceedings. (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 444, fn. 3.)

And, in any event, there is no merit to the claim that defendant was not properly served with notice of the civil harassment proceedings. Penal Code section 4013 provides that the sheriff or jailor who has custody of an inmate may effect service of process, and that an inmate may also be served by “any person who may lawfully serve process.” (§ 4013, subds. (a), (b);

see also Code Civ. Proc., § 414.10.) Defendant was twice served with notice of the proceedings. Substantial evidence supports the trial court's conclusion that defendant was personally served. (See, e.g., *Conseco Marketing, LLC v. IFA & Ins. Services, Inc.* (2013) 221 Cal.App.4th 831, 841.) Therefore, there was no basis for finding the judgment void for lack of jurisdiction under Code of Civil Procedure section 473, subdivision (d). (*Cruz v. Fagor America, Inc.* (2007) 146 Cal.App.4th 488, 495-496.)

DISPOSITION

The judgment is affirmed. Plaintiff is awarded his costs on appeal.

GRIMES, J.

WE CONCUR:

RUBIN, Acting P. J.

FLIER, J.