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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

ANTHONY EDWARD WEST,

Plaintiff and Appellant,

v.

J. SOTO et al.,

Defendants and Respondents.

B269746

(Los Angeles County  
Super. Ct. No. BS146999)

APPEAL from a judgment of the Superior Court of Los Angeles County. Joanne B. O'Donnell, Judge. Affirmed.

Anthony E. West, in pro. per., for Plaintiff and Appellant.

Xavier Becerra, Attorney General, Phillip J. Lindsay, Senior Assistant Attorney General, Julie A. Malone and Nikhil Cooper, Deputy Attorneys General for Defendant and Respondent.

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Anthony West appeals from the denial of his petition for a writ of mandate. Because West has failed to provide an adequate record demonstrating error, we affirm the trial court's judgment.

### **PROCEDURAL BACKGROUND**

West is an inmate in state prison who filed a healthcare grievance against certain prison medical officials seeking compensatory and punitive damages for their failure to provide adequate medical care. West contends his grievance and its resulting appeals were ignored or "cancelled" by the various administrators responsible for its review, namely, J. Soto, the prison's warden, and T. Van Dongen, the appeals coordinator (collectively, Respondents). West filed a petition in the Los Angeles Superior Court seeking a writ of mandate/prohibition to be issued directing Respondents to act immediately in processing his grievance and to take no acts of retaliation against him. Respondents filed an answer to the petition on April 24, 2015.

At an April 27, 2015 trial setting conference, West was told to file his opening brief by September 15, 2015. On September 14, 2015, West filed a document entitled, "Plaintiff's opposition to respondent's answer to deny his writ of mandate, Code of Civil Proce. 1085, 1086, 1102. Code of Civ. Proce. 430.20(a)(b), in opposition support granting writ. Memorandum of Points and Authorities (Plaintiff's Opposition)." West wrote the court to state he would not appear in the November 25, 2015 hearing on the petition for writ of mandate.

At the hearing, the trial court indicated it received no opening brief and denied the petition for writ of mandate.<sup>1</sup>

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<sup>1</sup> According to West, he moved for reconsideration on December 10, 2015, and requested the court take judicial notice of the error in the title of the document filed on September 14,

The court reasoned, “Without an opening brief, Petitioner cannot overcome the presumption of correctness that applies to Respondent’s decision. *Wirth v. State of California* (2006) 142 Cal.App.4th 131, 138 (the petitioner bears the burden of establishing his entitlement to a writ of mandate). Without an opening brief the Court is unable to review whether Respondents discharged their ministerial duties in connection with the informal act of considering Petitioner’s appeals, as there is no evidentiary basis to determine what actually transpired. *California Oak Foundation v. Regents of University of California* (2010) 188 Cal.App.4th 227, 255-256.”

West timely appealed.

### ARGUMENT

West contends the trial court erred in denying his petition for writ of mandate because he did in fact file an opening brief. West first contends the Plaintiff’s Opposition he filed in the trial court on September 14, 2015, was mislabeled and that it was actually his opening brief. In his reply brief on appeal, West also claims he filed an opening brief in the trial court on January 22, 2014. Specifically, a document entitled, “Petition for Writ of Prohibition/Mandate Opening Brief.”

Because the record is entirely inadequate to allow appellate review, we find no error and affirm.<sup>2</sup>

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contending it was intended to be the opening brief. However, in his reply brief, he admits the motion for reconsideration was never filed by the Superior Court. He blames the clerks of the court for the error.

<sup>2</sup> To the extent Respondents seek to dismiss West’s appeal, we deny the request. They have not filed a properly prepared motion under California Rules of Court, rule 8.54(a).

## **I. The Record on Appeal**

This much we know. Appended to West's opening brief on appeal are four exhibits: an unsigned proposed judgment denying the petition for writ of mandate (Exhibit A); the trial court's November 25, 2015 minute order denying the petition for writ of mandate (Exhibit B); the cover page for the Plaintiff's Opposition (Exhibit C); and a request for "judicial notice of document discrepancy on date, in motion for reconsideration from denial of writ of mandate," stamped received by Civil Appeals Room 111A on December 31, 2015 (Exhibit D). West claims he was unable to obtain a complete copy of the Plaintiff's Opposition because "[t]he Civil Appeals Unit Rm 111-A refuses to cooperate with Petitioner's request for a copy of the mistakenly entitled, opening brief, in Appendix (c)."

Appended to West's reply brief is a copy of a portion of the Plaintiff's Opposition. Its table of contents indicates that, exclusive of the table of authorities, the opposition is 14 pages long. West has appended 6 of those 14 pages and he does not explain what is in the omitted pages. The 6 pages he appended contain a paragraph-by-paragraph denial of Respondents' answer and affirmative defenses. The table of contents indicates that the omitted portion of the Plaintiff's Opposition, pages 7 to 14, include a memorandum of points and authorities with three arguments and a request for judicial notice. There is no indication what issues the three arguments raise; the table of contents merely lists them as Argument I, II, and III.

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(*Jocer Enterprises, Inc. v. Price* (2010) 183 Cal.App.4th 559, 565, fn. 4.) We also deny Respondents' request, made in their brief, to take judicial notice of rulings made in this appeal.

Also appended to his reply brief is a single cover page from a document entitled, “Petition for Writ of Prohibition/Mandate Opening Brief” with a file stamp from the superior court dated January 22, 2014. No other pages of this document are included in the appellate record.

## **II. West has Failed to Sufficiently Support his Claim of Error**

A writ of mandate is available to compel an agency’s performance of a clear, present, and ministerial duty where a petitioner has a beneficial right to performance of that duty. (*Santa Clara County Counsel Attys. Assn. v. Woodside* (1994) 7 Cal.4th 525, 540.) “All presumptions usually made by an appellate court in considering appeals apply to a proceeding in mandamus. [Citation.] The judgment is presumed to be correct, and the burden is on appellant to show reversible error.’ [Citation.]” (*Jackson v. Carleson* (1974) 39 Cal.App.3d 12, 16.) Every intendment and presumption not contradicted by or inconsistent with the record on appeal must be indulged in favor of the judgment. (*Kovacevich v. Fischer Motor Body Co.* (1928) 94 Cal. App. 405, 407.)

West has failed to meet his burden because he has failed to provide an adequate appellate record demonstrating the alleged error. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295.) The absence of a record showing what was before the trial court precludes a determination that the trial court erred. (*Oliveira v. Kiesler* (2012) 206 Cal.App.4th 1349, 1363.) Here, West provides only 6 of the 14-page Plaintiff’s Opposition. As to the “opening brief” filed in January 2014, only the cover page is included.

Without complete copies of these documents, we cannot undertake a meaningful review of West's arguments.<sup>3</sup>

In any event, our review of the scant record demonstrates that neither of the documents is an opening brief. Rule 3.231 of the local rules for the Los Angeles County Superior Court sets forth the procedure to litigate a petition for writ of mandate. It provides that a court will hold a trial setting conference at which it will set the dates for record preparation, briefing, and a hearing. "The hearing on the motion is the trial of the case." (Super Ct. L.A. County, Local Rules, rule 3.231 (b)(1).) Thus, an opening brief in the context of a petition for writ of mandate hearing is a trial brief which "must contain a statement of facts which fairly and comprehensively sets forth the pertinent facts, whether or not beneficial to that party's position, and each material fact must be supported by a citation to a page or pages from the administrative record . . . ." (Super Ct. L.A. County, Local Rules, rule 3.231 (i)(2).)

Neither of these briefs provides the argument and supporting evidence required of an opening trial brief. As a result, West failed to meet his burden of establishing the facts of his case. (*See California Standardbred Sires Stakes Com., Inc. v. California Horse Racing Bd.* (1991) 231 Cal.App.3d 751, 762.) Even West admits his Plaintiff's Opposition merely argues against the Respondent's affirmative defenses.

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<sup>3</sup> To compound the problem, West asserted at oral argument, when he appeared telephonically, that the Plaintiff's Opposition and the January 2014 "opening brief" were "one and the same." Given the record, we cannot determine the truth of this statement. Even if we accept his assertion, however, our analysis and conclusion are unchanged.

In his reply brief, West appears to abandon the argument that the Plaintiff's Opposition was mislabeled. He instead argues for the first time that he did file an opening brief on January 22, 2014. As an initial matter, we need not consider this issue because it was raised for the first time in a reply brief, leaving Respondents with no opportunity to respond. (*REO Broadcasting Consultants v. Martin* (1999) 69 Cal.App.4th 489, 500.) We also note that the "Petition for Writ of Prohibition/Mandate Opening Brief" cannot be the opening trial brief, as it was filed on January 22, 2014, well before any trial date had been set. It appears more likely that the January 2014 "opening brief" was the petition for writ of mandate which initiated the proceedings and to which Respondents answered on April 24, 2015.

By failing to file an opening brief, West failed to set forth the facts and evidence to prove his case.<sup>4</sup>

#### **DISPOSITION**

The judgment is affirmed.

BIGELOW, P.J.

We concur:

FLIER, J.

GRIMES, J.

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<sup>4</sup> West claims his lack of legal training excuses any errors he may have made below, including his failure to file an opening brief. It does not. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985 [self-represented litigants must be treated in the same manner as represented parties].)