Filed 6/15/18 Yu v. Salemi CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

CHRIS YU, Plaintiff and Appellant, v. MICHAEL SALEMI, Defendant and Respondent.	B278840 (Los Angeles County Super. Ct. No. BC556669)

APPEAL from a judgment of the Superior Court of the County of Los Angeles, Gail Ruderman Feuer, Judge. Affirmed.

Chris Yu, in pro. per., Plaintiff and Appellant.

Law Office of Peacock & Le Beau, Jeffery O. Le Beau, for Defendant and Respondent.

INTRODUCTION

Plaintiff Chris Yu agreed to provide housekeeping services for defendant Michael Salemi in return for room and board in Salemi's residence. When defendant ended the arrangement, locked plaintiff out of his home, and placed her belongings in storage, plaintiff sued, alleging a variety of legal theories, including forcible detainer, conversion, and unpaid wages. Following a failed settlement and subsequent bench trial, the trial court entered judgment in favor of defendant.

On appeal, plaintiff, appearing in pro. per., purports to raise a number of challenges to the judgment, but the record provided on appeal and her briefing fail to affirmatively demonstrate any prejudicial error warranting reversal. We therefore affirm the judgment.

FACTUAL BACKGROUND[1]

In March 2014, plaintiff responded to an advertisement by defendant which read: "'Room for Rent . . . Room, food, TV & internet available in Long Beach. In exchange for 6 hours a week of housekeeping. Please call.'" Based on the advertisement, plaintiff and defendant agreed that she would move into a bedroom in his house and store her belongings in a second bedroom and defendant's nearby warehouse.

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[1] The factual background is taken from the trial court's detailed statement of decision. Because, as explained below, the record on appeal does not allow us to review the factual sufficiency of the trial court's findings, the background facts are included solely to provide context for the discussion that follows and not to facilitate a substantial evidence review.

Plaintiff moved into defendant's house in March 2014. At the time, defendant's son also lived in the house, but the trial court found that he was not paying rent and therefore was not a lodger. Although plaintiff claimed that she worked as defendant's employee for 98 hours a week and was owed back wages and penalties, the trial court found that she only worked six hours per week as defendant's housekeeper, was not his employee but rather an independent contractor, and was not owed any back wages or penalties.

In early June 2016, when defendant's girlfriend, Pham, moved into his house, plaintiff began to "act strange[ly]." Defendant saw her hiding in "the corner of the rooms" or "behind the cabinets," and she would "hurry from the room when [defendant] saw her . . . ." Defendant became uncomfortable with plaintiff's behavior, and Pham confided in defendant that she did not feel safe in the house alone with plaintiff.

On June 1, 2014, defendant orally informed plaintiff that "she needed to move out," and confirmed his expectation in a letter to plaintiff on June 5. The letter advised plaintiff that her services were no longer required and that she "need[ed] to move out" as soon as possible, but no later than June 15. The letter further warned plaintiff that if she was unable to move her belongings by that date, defendant would "take [them] to a storage unit for . . . [safe]keeping." The trial court found the June 5 letter to be formal written notice of defendant's termination of the parties' agreement.

On June 10, 2014, defendant took back plaintiff's key to his house, and in a series of e-mails or texts sent between that date and June 17, he reconfirmed that she must leave the house. In response, plaintiff requested an additional 30 days to move out,

and, in a June 13, 2014, email to defendant described the work she was performing for him and requested that she be allowed to rent a room in the house.

By June 15, defendant believed plaintiff had vacated the house, but he was not certain. That day, however, plaintiff, who was still residing at the house, called the police. When the police arrived, defendant explained to them about the advertisement and the "lodger laws," but the police "would not do anything."

On June 16, defendant gave plaintiff written notice that he considered her a trespasser; the notice also advised plaintiff that if she did not vacate the premises, defendant would have her arrested. Defendant and Pham then went "out of town," and on June 20, plaintiff left the house and was unable "to get back in" because defendant had taken her key.

Defendant and Pham returned home on June 23 and, on June 25, defendant texted plaintiff and told her if she failed to retrieve her belongings by June 26, he would remove them on June 27. On June 26, plaintiff came to defendant's house and another incident involving the police occurred. Plaintiff claimed that when she tried to move her belongings downstairs, defendant and Pham "became physical," pushing plaintiff to the ground and urging defendant's dog to bite her. Plaintiff called 911 for "assault and battery," prompting police and paramedics to respond.

Defendant explained that on June 26, he "found [plaintiff] in his kitchen drinking milk"; she told him she was not moving out and then refused to speak with him further. He began moving her belongings downstairs and onto the porch. When plaintiff went outside, defendant locked her out, but when Pham arrived, she and defendant "walked around outside the [house]

for [approximately 15 to 30] minutes . . . being followed by [plaintiff]." Defendant and Pham eventually "made a rush to get into the house and had to fight off [plaintiff] to keep her from forcing her way into [the house]. Plaintiff damaged the screen door and "threw items around."

Defendant called the police and then went to his office to retrieve copies of the notices he had sent to plaintiff. When he returned, "[e]veryone was gone," and neighbors told him the police had arrested plaintiff and Pham. According to plaintiff, she ultimately spent two days in jail.

Based on the testimony of the parties about the June 26 incident, the trial court found that plaintiff had not established that defendant used force or fear against plaintiff on June 26 to evict her. The trial court further found that plaintiff was a "lodger" with a personal license to reside in defendant's home on a "week-to-week basis"—not a tenant with a possessory interest in the property—and that defendant had given her at least 14-days prior notice of his intent to evict without resort to the unlawful detainer laws to effect the eviction.

After plaintiff was released from jail, she texted defendant to ask for her belongings, but he told her he had moved them to storage. Defendant claimed that after the June 26 incident, he texted plaintiff, urging her to pick up her belongings so he did not have to move them to storage. When plaintiff did not respond, defendant packed up her belongings and moved them to storage. According to plaintiff, defendant told her she needed to pay him $500 to release her belongings from storage.

In a series of emails in July 2014, defendant informed plaintiff that she could pick up her personal belongings without charge if she signed a release of liability. Although plaintiff

indicated that she would pick up her belongings on July 30, she failed to do so or sign the requested release.

In September 2014, defendant informed plaintiff that she could pick up her belongings "without conditions." Thereafter, plaintiff came to defendant's warehouse during September, but left without taking anything.

Plaintiff contacted defendant in November and December 2014 in an effort to retrieve her belongings, and she finally retrieved them in January 2015, but claimed that her belongings had been damaged in an unspecified amount. The trial court, however, determined that defendant had not damaged any of plaintiff's personal belongings.

PROCEDURAL BACKGROUND

According to the statement of decision, on January 16, 2016, plaintiff filed her second amended complaint, alleging nine cause of action, specifically: (1) forcible entry; (2) forcible detainer; (3) use of threats and violence; (4) conversion; (5) intentional infliction of emotional distress; (6) negligence; (7) "fraudulent false representation;" (8) unpaid wages and penalties; and (9) breach of contract.

According to a February 17, 2016, minute order, the parties on that date participated in a mandatory settlement conference and reached a settlement that required defendant to pay plaintiff $15,000 on or before March 2, 2016. The trial court therefore set a hearing on March 14, 2016, for an order to show cause regarding dismissal of the action. The court also took the final status conference and trial date off calendar.

The record on appeal next shows that on May 9, 2016, plaintiff filed her trial brief for a trial set for June 6, 2016.

According to the statement of decision, the matter came on for a bench trial on June 6 and 7, 2016. Following closing arguments, the trial court ordered the parties to meet and confer, submit a joint summary of the trial testimony, and ten-page closing briefs limited to plaintiff's conversion claim. Plaintiff thereafter submitted a closing brief addressing each of her claims for relief and her own proposed statement of testimony.[2]

On August 5, 2016, the trial court issued a 29-page tentative statement of decision which provided that, unless a party specified further controverted issues or made proposals to be included in the statement within 10 days, the decision would become the final decision of the court.[3] The statement concluded that the "court . . . finds in favor of defendant . . . on the [f]irst through [n]inth [c]auses of [a]ction." On September 26, 2016, the trial court entered judgment in favor of defendant; and on November 4, 2016, plaintiff filed a notice of appeal from that judgment.

DISCUSSION

A. Record and Briefing on Appeal

The record on appeal consists solely of a partial clerk's transcript. It does not include a reporter's transcript for the trial

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[2] According to the statement of decision, on July 5, 2016, defendant submitted a document entitled "Parties Summary of Trial Testimony." The trial court treated that document as a summary of the trial testimony in lieu of a reporter's transcript. Plaintiff, however, did not include that document in the record on appeal.

[3] The record does not contain any indication that either party responded to the tentative statement of decision within the specified 10-day period.

proceedings or a suitable substitute, such as an agreed-upon or settled statement. (Cal. Rules of Court, rules 8.134 and 8.137). Thus, we do not have before us the trial testimony of the parties and other witnesses upon which the trial court's statement of decision was based. Similarly, we do not have in our record the trial exhibits or a copy of the joint summary of testimony that defendant submitted, both of which the trial court expressly relied upon when making its decision. We do not even have a copy of the operative second amended complaint, which presumably framed the issues for decision at trial.

The foregoing deficiencies in the record are compounded by plaintiff's opening brief, which purports to raise a number of challenges to the trial court's decision, but fails to support such challenges with cogent, reasoned argument or citations to the record. That brief also fails to identify and adequately discuss the appropriate standards of review, and instead merely repeats that the applicable standard for each of her many claims is "de novo," without citation to relevant authority or reasoned discussion. Moreover, as explained more fully below, the brief attempts to raise certain issues about which there is either little or no information in the record, such as an "unknown adverse judgment" and a "settlement."

B. Controlling Rules of Appellate Review

The well-established appellate rules governing the review of trial court judgments and orders operate in this case to severely limit the scope of our review of plaintiff's claims. In particular, the presumption of correctness, the doctrine of implied findings, the constraints on our review of an appeal based only on a judgment roll, and the rules applicable to pro. per. litigants

each apply here and, in combination, foreclose substantive review of the multiple issues plaintiff purports to raise on appeal.

1. *Presumption of Correctness: Appellant's Burden to Overcome*

In *Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852, the court explained the presumption of correctness to which judgments and rulings of a trial court are entitled on appeal, as well as an appellant's burden to overcome that presumption with cogent, reasoned arguments supported by citations to the record and pertinent legal authority. "It is a fundamental rule of appellate review that the judgment appealed from is presumed correct and ""all intendments and presumptions are indulged in favor of its correctness."" [Citation.]' (*State Farm Fire & Casualty Co. v. Pietak* (2001) 90 Cal.App.4th 600, 610 [109 Cal.Rptr.2d 256].) An appellant must provide an argument and legal authority to support his contentions. This burden requires more than a mere assertion that the judgment is wrong. 'Issues do not have a life of their own: If they are not raised or supported by argument or citation to authority, [they are] . . . waived.' (*Jones v. Superior Court* (1994) 26 Cal.App.4th 92, 99 [31 Cal.Rptr.2d 264].) It is not our place to construct theories or arguments to undermine the judgment and defeat the presumption of correctness. When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived. (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785 [79 Cal.Rptr.2d 273].)" Thus, it has been held that "[w]here a point is merely asserted by counsel without any argument of or authority for its proposition, it is

deemed to be without foundation and requires no discussion." (*People v. Ham* (1970) 7 Cal.App.3d 768, 783; see also *Niko v. Foreman* (2006) 144 Cal.App.4th 344, 368 ["One cannot simply say the court erred, and leave it up to the appellate court to figure out why"]; *Dabney v. Dabney* (2002) 104 Cal.App.4th 379, 384 ["We need not consider an argument for which no authority is furnished"]; and *People ex rel. 20th Century Ins. Co. v. Building Permit Consultants, Inc.* (2000) 86 Cal.App.4th 280, 284 ["[The appellants'] discussion on this point is conclusory and fails to cite any authority to support the claim. Such a presentation amounts to an abandonment of the issue"].)

2. *Doctrine of Implied Findings*

Here, because plaintiff did not object to the statement of decision on the basis that it failed to decide a controverted fact or otherwise was ambiguous, we must presume the trial court made all factual findings necessary to support its ultimate conclusions. (Code Civ. Proc., § 634.) "The doctrine of implied findings is based on our Supreme Court's statutory construction of section 634 and provides that a 'party must state any objection to the statement in order to avoid an implied finding on appeal in favor of the prevailing party . . . . [I]f a party does not bring such deficiencies to the trial court's attention, that party waives the right to claim on appeal that the statement was deficient . . . and hence the appellate court will imply findings to support the judgment.' (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133-1134, fn. omitted [275 Cal.Rptr. 797, 800 P.2d 1227].) Stated otherwise, the doctrine (1) directs the appellate court to presume that the trial court made all factual findings necessary to support the judgment so long as substantial evidence supports

those findings and (2) applies unless the omissions and ambiguities in the statement of decision are brought to the attention of the superior court in a timely manner. (*Ibid.*; see Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2003) ¶ 8:23, p. 8-8; see generally, §§ 632, 634; rule 232.)" (*SFPP v. Burlington Northern & Santa Fe Ry. Co.* (2004) 121 Cal.App.4th 452, 462.)

3. *Appeal Based on Judgment Roll*

Because plaintiff supports her appeal only with a partial clerk's transcript, our review of the trial court's decision is further confined by the principles governing appeals from judgment rolls. "[When there is] no usable record of the evidence . . . before the court, the general rule stated in 3 California Jurisprudence 2d, Appeal and Error, section 267, page 798, applies: 'As a general rule, evidence which was introduced in the trial court will not be considered on appeal unless it is incorporated in the record. Thus, where an appeal is taken on a record consisting of a judgment roll or clerk's transcript alone, the consideration of the court is confined, since the evidence is not before it, to a determination of whether the complaint states a cause of action; whether the findings are within the issues; whether the judgment is supported by the findings; and whether reversible error appears on the face of the record. If the evidence is not set forth in the record, the appellate court will not consider an objection that the lower court failed to make a finding on a material issue. . . .' [¶] In 3 California Jurisprudence 2d, Appeal and Error, section 271, page 810, it is said: 'A reviewing court will not consider the sufficiency of the evidence unless all the evidence pertaining to the matter complained of is included in the

record on appeal. It follows that the sufficiency of the evidence cannot be reviewed where the record omits the evidence altogether, as where the appeal is on the judgment roll alone.'" (*Estate of Bernard* (1962) 206 Cal.App.2d 375, 383.)

4. *Appeals by Pro. Per. Litigants*

As noted, plaintiff is acting on appeal in pro. per, as she did in the trial court. "Under the law, a party may choose to act as his or her own attorney. (*Paradise v. Nowlin* (1948) 86 Cal.App.2d 897, 898 [195 P.2d 867]; *Gray v. Justice's Court* (1937) 18 Cal.App.2d 420, 423 [63 P.2d 1160].) '[S]uch a party is to be treated like any other party and is entitled to the same, but no greater consideration than other litigants and attorneys. [Citation.]' (*Barton v. New United Motor Manufacturing, Inc.* (1996) 43 Cal.App.4th 1200, 1210 [51 Cal.Rptr.2d 328].) Thus, as is the case with attorneys, pro. per. litigants must follow correct rules of procedure. (*Kabbe v. Miller* (1990) 226 Cal.App.3d 93, 98 [275 Cal.Rptr. 893]; *Bistawros v. Greenberg* (1987) 189 Cal.App.3d 189, 193 [234 Cal.Rptr. 377] [self-represented party 'held to the same restrictive procedural rules as an attorney']; *Nelson v. Gaunt* (1981) 125 Cal.App.3d 623, 638-639 [178 Cal.Rptr. 167] [same].)" (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247.)

C. Analysis

1. *Plaintiff's Challenges to "The Proceedings"*

Plaintiff's claims of error in the argument section of her opening brief start first with a series of complaints about "The Proceedings," namely: (1) an "Unknown Adverse Judgment" against her; (2) the trial court's failure to consider defendant's

responses to her requests for admissions; (3) a breached settlement agreement; and (4) the conduct of the trial itself.[4] None of those complaints, however, are supported by reasoned, comprehensible argument or appropriate citation to the record.

As to the first issue, plaintiff seems to suggest that a default judgment was entered against her, either because she failed to respond to defendant's answer or because she failed to respond to a demurrer. These vague assertions are not supported by reasoned argument or record citations. Moreover, the record does not contain any indication of entry of default, a default judgment, an answer, or a demurrer. Therefore, plaintiff has failed to raise a cognizable issue concerning an "unknown adverse judgment" that we can meaningfully review.

Plaintiff's claim about requests for admissions is likewise flawed. Although she claims she had a right to use defendant's discovery admissions against him, plaintiff does not provide for this court's review any of defendant's responses to requests for admission or point to any ruling by the trial concerning the use of any such admissions. In her brief, plaintiff only describes one such purported admission, i.e., that "[defendant] admitted he . . . allowed [plaintiff] to stay in June, 2014." Even assuming defendant made such an admission, plaintiff fails to provide any support from the record or reasoned argument as to how that admission undermines the trial court's findings. Indeed, such an admission does not necessarily contradict the trial court's finding

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[4] Plaintiff also includes a section apologizing for the lack of a reporter's transcript but contending the court may still conduct its appellate review of the trial court's judgment. We agree that we may proceed without a reporter's transcript, but the scope of our review is limited here.

that defendant permitted plaintiff to live in his residence up until he provided notice that she should leave on June 5, 2014. We therefore can assign no error to the trial court concerning plaintiff's claim regarding requests for admissions.

Plaintiff also asserts that defendant "breached the settlement" by requesting her social security number and "signing the independent contractor tax form." The record indicates the parties reached a settlement pursuant to which defendant would pay $15,000 to plaintiff by no later than March 2, 2016. There is no transcript or other document in the record specifying any other terms of the settlement, explaining why the settlement was not consummated, or noting why the matter instead proceeded to trial. The lack of a reasoned explanation for the basis of plaintiff's breach claim supported by citations to the record and relevant legal authority precludes us from considering it further.

Finally, with respect to her claim under the heading "The Trial," plaintiff contends the trial court "erred in not finding all material and equitable facts and issues." We must reject this claim for lack of specificity alone. Moreover, any specific objections should have been raised in the trial court in response to the tentative statement of decision. Plaintiff's failure to timely make any such objections precludes her from raising them on appeal. Indeed, we must conclusively presume the trial court made all necessary factual findings; and, due to the lack of any factual record, we cannot review the sufficiency of the evidence in support of such findings.

2. *Plaintiff's "Basic Opposition to Rulings"*

In the next section of her opening brief, entitled "Basic Opposition to Rulings," plaintiff attempts to raise challenges based on her eviction from defendant's home. According to plaintiff, the trial court erred by: (1) not finding that defendant "waived" his rights under the unlawful detainer law; (2) finding that defendant was protected from tort liability by the litigation privilege in Civil Code section 47; (3) concluding that plaintiff was a "mere lodger" without rights under the unlawful detainer laws applicable to tenants; and (4) concluding that defendant's notice of termination of his agreement with plaintiff was sufficient to effect a lawful eviction of her.

The problem with each of these assertions is that the trial court made factual findings—based on credibility determinations and a weighing of the parties' respective evidence—that plaintiff was a lodger, that plaintiff was not a tenant entitled to the protections of the unlawful detainer laws, and that plaintiff received the required notice under Civil Code section 1946.5,[5] for lodgers. Those express findings, as well as those we are required

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[5] Section 1946.5, subdivisions (a), (c), and (d), provides in pertinent part: "(a) The hiring of a room by a lodger on a periodic basis within a dwelling unit occupied by the owner may be terminated by either party giving written notice to the other of his or her intention to terminate the hiring . . . . [¶] . . . [¶] (c) As used in this section, 'lodger' means a person contracting with the owner of a dwelling unit for a room or room and board within the dwelling unit personally occupied by the owner, where the owner retains a right of access to all areas of the dwelling unit occupied by the lodger and has overall control of the dwelling unit. [¶] (d) This section applies only to owner-occupied dwellings where a single lodger resides."

to presume under the implied findings doctrine, support the trial court's conclusions that defendant followed the law applicable to lodgers when terminating plaintiff's right to continue living in his house. Moreover, because defendant complied with the lawful procedures to evict a lodger, the trial court did not err in concluding that defendant's "threat" that he would call the police to report plaintiff as a trespasser was privileged conduct protected from tort liability by Civil Code section 47. (*Hagberg v. California Federal Bank* (2004) 32 Cal.4th 350, 375 [noting that, except for malicious prosecution, an absolute privilege exists to "shield[] a citizen's report to the police concerning suspected criminal activity of another person"].)

3. *Causes of Action*

The final section of plaintiff's brief purports to take issue with each of the trial court's detailed rulings on plaintiff's nine causes of action. These claims on appeal, however, suffer from the same procedural deficiencies as plaintiff's other claims. In support of each of its rulings, the trial court was careful to make express factual findings that supported its ultimate conclusions in favor of defendant on any given cause of action. In light of the record on appeal, we have no basis to question or disturb those findings or conclusions.

In support of her forcible entry, forcible detainer, and use of threats and force claims (first, second, and third causes of action), plaintiff argues that defendant "coerced" her to leave his home on multiple occasions, "insult[ed] her as a trespasser," and "physically forced [her] out." In addition, she claims her evidence showed that defendant "willfully interrupted" plaintiff's lawful tenancy by taking away her key within five days of his initial

notice to vacate, thereafter locked her out of her room, and physically forced her from the premises. The trial court expressly found against plaintiff on these factual issues and presumptively made every other factual finding necessary to support the adverse rulings on each of these causes of action.

Similarly, in support of her conversion claim (fourth cause of action), plaintiff claims that, due to defendant's storage of her property, some property was lost and she suffered damage to some of her remaining property in addition to emotional distress. The trial court expressly found that plaintiff's property was neither missing nor damaged and impliedly found that defendants' conduct did not result in emotional distress—findings that negate an essential element of plaintiff's claim for conversion. (CACI No. 2100 [conversion requires proof of element that plaintiff was harmed].)

As to her common law tort claims for intentional infliction of emotional distress, negligence, and fraud (fifth, sixth, and seventh causes of action), plaintiff relies on essentially the same facts as her other claims on appeal. But, as to each of these claims, the trial court found that plaintiff failed to carry her evidentiary burden. Moreover, the trial court made specific findings that defendant properly stored plaintiff's belongings, gave plaintiff notice of her right to retrieve her belongings, properly requested that plaintiff pay for the storage costs prior to releasing plaintiff's belongings, and engaged in activity protected under Civil Code section 47 when threatening to report plaintiff to the police as a trespasser if she did not leave. The trial court also specifically found that plaintiff was not credible concerning the number of hours she worked for defendant and that defendant did not make any false representation concerning the

hours plaintiff should work each week. These findings support the trial court's rulings on plaintiff's common law tort claims and are not subject to further review on this record.

Finally, as to her claims for unpaid wages and breach of contract (eighth and ninth causes of action), plaintiff again claims that her evidence showed she was an employee who contracted with plaintiff to work over 90 hours per week and that, after she performed such onerous employment duties, defendant failed to pay her the wages she was owed. But, as noted above, the trial court found plaintiff not credible in her testimony about her agreement to work for defendant and how much work she actually performed. Rather, the trial court specifically found, based on defendant's testimony, that plaintiff was not an employee, but had instead contracted with defendant to work six hours each week in exchange for room, board, and internet—all of which defendant provided. These findings, which are unassailable on appeal in light of the record provided, fully support the trial court's rulings on the wage and hour and contract claims.

DISPOSITION

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

KIN, J.*

We concur:

BAKER, Acting P. J.

MOOR, J.

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