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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

RONALD BLAGDEN ANDERSON, SR., Plaintiff and Appellant, v. LOS ANGELES UNIFIED SCHOOL DISTRICT, Defendant and Respondent.	B275753 (Los Angeles County Super. Ct. No. BC537420)

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

Ronald Blagden Anderson, Sr., in pro. per., for Plaintiff and Appellant.

Office of General Counsel, Associate General Counsel I, Marcos F. Hernandez for Defendant and Respondent.

The trial court granted defendant's motion for terminating sanctions after plaintiff refused to cooperate with opposing counsel or to comply with multiple court orders to attend his deposition. Plaintiff appeals the ensuing judgment. We affirm.

BACKGROUND

Self-represented appellant Ronald Blagden Anderson, Sr., filed this employment action against respondent Los Angeles Unified School District (LAUSD) in February 2014.[1] The operative second amended complaint (SAC) was filed in March 2015.

The SAC generally alleges that, in the course of a prior lawsuit appellant filed against LAUSD, his former employer, LAUSD's agents wrongfully revealed (in publically available court records) appellant's un-redacted personnel file, which contained personal and confidential information, including, among other things, his Social Security number and performance evaluations. By doing so, LAUSD is alleged to have violated various statutory and constitutional rights.[2] The SAC also

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[1] At times during this action appellant has been represented by counsel.

[2] There are five causes of action: (1) violation of the "California Whistleblower Protection Act" (Gov. Code, § 8547, et seq.); (2) employment discrimination and retaliation in violation of the Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900, et seq.); (3) violation of FEHA for failure to prevent age–based and race–based harassment; (4) violation of FEHA for retaliating against appellant for

alleges that LAUSD unlawfully retaliated against appellant for reporting these violations and for suing LAUSD three times, by terminating his employment, and denying him lifetime health benefits. The SAC further alleges that LAUSD violated FEHA by implementing an employment agreement that discriminates against credentialed substitute African-American teachers over 40 years of age.

The First Motion to Compel

On December 21, 2015 the trial court granted LAUSD's motion to compel appellant's deposition (MTC1), after appellant had failed to appear for his properly noticed deposition on October 13, failed to file a formal objection or seek a protective order, and failed to discuss the matter with counsel for LAUSD to reschedule the deposition. (See Code Civ. Proc., §§ 2025.420, 2025.450, subd. (b)(2).) Based on its review of the parties' memoranda, declarations and evidence filed in connection with MTC1 (not all of which is included in the appellate record), the court understood that appellant had a strong objection to the presence of armed police or security personnel during his deposition, based on an experience he had at a deposition in 2013 in one of his prior actions against LAUSD.

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opposing harassment and improper governmental activity; and (5) retaliation against and wrongful termination of appellant for whistleblowing activities (Lab. Code, § 1102.5).

LAUSD took issue with appellant's characterization of the circumstances of the June 2013 deposition. It informed the court that, when appellant appeared for that deposition, he was escorted by a single security officer from the ground floor lobby of LAUSD's administrative headquarters to a deposition room on the 20th floor. No security personnel were inside the deposition room, but security did remain outside throughout the deposition. When the deposition ended, appellant was escorted by one security officer downstairs to the building exit. LAUSD chose to have security present to escort appellant to and from his June 2013 deposition, and to remain outside, based on unspecified "bizarre, threatening, and unruly behavior" in which he had engaged. Further, in 2015, in another suit against LAUSD, appellant filed an unsigned declaration containing personal attacks and explicit sexually violent threats against two Caucasian superior court judges. Appellant referred to one judge as "a bitch in black robes," who "urinate[d] on [him]," then said "it is raining." He said the judge "should be disrobed, undressed, raped and violated," and called her a "malicious bitch [who] perverts American justice" and "endorses and permits the killings of our Black sons, our uncles, our brothers and our fathers by white law enforcement authorities." Similar attacks and threats were levied against a different judge, whom appellant referred to as a "decetiful, [*sic*] malicious and dishonest bitch" with "JUDICIAL DYSLEXIA" and who, among other things, had "succumb[ed] to the political VIAGRA" to "use[] and misuse[] the integrity of" other judges to protect LAUSD's "miscreant" legal counsel.

In the end, in an effort to balance appellant's concern for his personal safety with LAUSD's security concerns, the trial court ordered appellant to appear for his deposition at LAUSD headquarters on January 6, 2016. One nonuniformed LAUSD employee would be allowed to escort him to the deposition. Armed security personnel were not to be permitted inside the deposition room, but could remain outside. The trial court denied LAUSD's request for monetary sanctions. Appellant's ex parte application for reconsideration of the court's December 2015 order was subsequently denied.

Appellant appeared for his deposition on January 6. However, fewer than 30 minutes after the deposition began, appellant claimed he required medical attention for heart palpitations. Emergency medical personnel were summoned and took appellant to a hospital. LAUSD's counsel subsequently attempted unsuccessfully to contact appellant (by then self-represented) to proceed with the deposition.

The Second Motion to Compel

On January 21, 2016, LAUSD filed a second motion to compel (MTC2) seeking an order requiring appellant to attend his deposition and monetary sanctions. In an opposition to that motion, and a contemporaneous ex parte application seeking a "protective order against men with guns," appellant argued that the deposition should not proceed because LAUSD's counsel had perjured himself.

In connection with appellant's application for a protective order, the court noted that appellant submitted letters from his physician,

dated December 8, 2015 and January 11, 2016, stating that appellant suffered from generalized anxiety disorder and PTSD, and his fear and anxieties rendered him incapable of being deposed "with armed police presence at the time of his deposition," as was the case on January 6, 2016. The court noted that the physician's opinion was predicated on false information he had received from appellant, as there was "no evidence that there were armed police officers present at the deposition." Moreover, the doctor had not said appellant could not be deposed in the absence of armed security personnel or police officers. The court denied appellant's ex parte application to prevent the deposition from going forward, on the ground that appellant's application was really a renewed "request for reconsideration of the court's order compelling [appellant's] deposition," which had previously been denied.

On February 5, 2016, the trial court granted MTC2, and ordered appellant to appear for deposition and provide seven hours of testimony beginning February 16. The court denied LAUSD's request for terminating sanctions, but specifically "cautioned [appellant] that if he [did] not make himself available for a full day of deposition as ordered by the court, absent medical evidence that he [could not] sit for his deposition if there is no armed police presence, then the court may impose terminating sanctions, upon a request by defendant LAUSD."

Appellant did appear for deposition on February 16. There were no security personnel in the deposition room. After about 90 minutes, appellant said he felt heart palpitations, and needed a break to take

water and his medication. He left the deposition and did not return. LAUSD's counsel later tried multiple times to contact appellant, and left voice mail messages for him to discuss the deposition, but received no response.

The Third Motion to Compel

On February 25, 2016, LAUSD filed a third motion seeking to compel plaintiff's deposition, and for terminating and monetary sanctions (MTC3).[3] Appellant opposed the motion, but provided no evidence of a medical condition that had prevented him from continuing his deposition on February 16.

The trial court granted LAUSD's request for terminating sanctions based on appellant's willful failure to cooperate or coordinate with LAUSD to schedule and/or conduct his deposition. The court observed that appellant's case had been pending for over two years, noted his history of discovery abuse and his willful refusal to comply with the court's orders to submit to a deposition. The court also noted that nothing in appellant's opposition to MTC3 indicated he intended to comply with any future court order. The court ordered appellant to pay monetary sanctions to LAUSD for its attorney fees incurred in

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[3] On February 11, 2016, this Court found appellant failed to demonstrate an entitlement to extraordinary relief with regard to the trial court's February 5, 2016 ruling, and denied his February 9, 2016 petition for writ of mandate.

preparation of MTC3, but reduced LAUSD's request from $3,375 to $1,750 in light of appellant's indigence.

On April 26, 2016, the trial court denied appellant's motion for reconsideration of denial of MTC3, for failure to introduce new evidence. The action was dismissed and judgment in favor of LAUSD was entered on April 26, 2016.

DISCUSSION

1. *Governing Principles*

As we stated in recently *Los Defensores, Inc. v. Gomez* (2014) 223 Cal.App.4th 377 (*Gomez*): "'California discovery law authorizes a range of penalties for conduct amounting to "misuse of the discovery process,"' including terminating sanctions. (*Doppes v. Bentley Motors, Inc*. (2009) 174 Cal.App.4th 967, 991, quoting Code Civ. Proc., § 2023.030.) Misuses of the discovery process include the following: '(d) Failing to respond or to submit to an authorized method of discovery. [¶] . . . [¶] (f) Making an evasive response to discovery. [¶] (g) Disobeying a court order to provide discovery.' (Code Civ. Proc., § 2023.010.) Terminating sanctions may take the form of '[a]n order rendering a judgment by default against [the offending] party.' (Code. Civ. Proc., § 2023.030, subd. (d)(4).)" (*Gomez, supra,* 223 Cal.App.4th at p. 390.) The trial court's discretionary power to impose discovery sanctions after considering the totality of circumstances, is broad and subject to reversal only for arbitrary, capricious, or whimsical action. (See *Do It Urself Moving & Storage, Inc. v. Brown, Leifer, Slatkin & Berns* (1992)

7 Cal.App.4th 27, 36; *Lang v. Hochman* (2000) 77 Cal.App.4th 1225, 1246 (*Lang*).) Terminating sanctions are to be used sparingly, but "'where a violation is willful, preceded by a history of abuse, and the evidence shows that less severe sanctions would not produce compliance with the discovery rules, the trial court is justified in imposing the ultimate sanction.' [Citation.] Under this standard, trial courts have properly imposed terminating sanctions when parties have willfully disobeyed one or more discovery orders. (*Lang, supra,* 77 Cal.App.4th at pp. 1244–1246)." (*Gomez, supra,* 223 Cal.App.4th at p. 390; *Lopez v. Watchtower Bible & Tract Society of New York, Inc.* (2016) 246 Cal.App.4th 566, 604–605 (*Lopez*).)

"When the trial court's exercise of its discretion relies on factual determinations, we examine the record for substantial evidence to support them. [Citations.] In this regard, 'the power of an appellate court begins and ends with the determination as to whether, on the entire record, there is substantial evidence, contradicted or uncontradicted, which will support the determination [of the trier of fact] . . . .' [Citation.]" (*Gomez, supra,* 223 Cal.App.4th at pp. 390–391.)

2. *Analysis*

We conclude the record contains ample evidence to support the trial court's conclusion that terminating sanctions were warranted under the circumstances here, due to appellant's willful failure to comply with its discovery orders as to MTC1 and MTC2, or to cooperate

with LAUSD in any respect, effectively denying the defendant any ability to prepare its defense or any pre-trial motions in this case.

In its February 2016 order granting MTC2, the court noted that appellant had failed to comply with an explicit order to submit to a day-long deposition. And, notwithstanding multiple attempts by LAUSD, appellant consistently had "refused to engage in meaningful dialogue" with LAUSD's counsel about scheduling new dates for the deposition to continue. The court observed that it previously had warned appellant that he stood at risk of suffering terminating sanctions if he did not show up for his deposition.[4] The court had determined not to impose such a severe sanction at that time (because appellant did appear for deposition, albeit for under 30 minutes, and claimed to be ill). Nevertheless, the court made it clear it would not tolerate gamesmanship. The February 2016 order explicitly "cautioned that if [appellant did] not make himself available for a full day deposition as ordered by the court, absent medical evidence that he cannot sit for his deposition if there is no armed police presence, then the court may impose terminating sanctions," if LAUSD requested them.

In February 2016, LAUSD filed MTC3 and made just such a request. LAUSD asserted that, although appellant initially complied with the order to appear on February 16, his deposition responses were evasive, nonresponsive and intentionally confusing, and he had once

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[4] In its December 21, 2015 order, the court warned appellant that his failure to "show up for the hearing [*sic*]" would put him "at risk of imposition of full sanctions."

again left the deposition early. Appellant prevented the taking of his deposition, thus depriving LAUSD of evidence necessary to file any dispositive motion or prepare for trial.

Relying on *Crawford v. JPMorgan Chase Bank, N.A.* (2015) 242 Cal.App.4th 1265 (*Crawford*), appellant asserts that, rather than ordering him to appear for deposition at LAUSD headquarters, "the trial court could have accommodated [his] PTSD . . . by suggesting that . . . LAUSD 'use the judge's name to request a conference room' at the Los Angeles Superior Court for the deposition." (*Id.* at p. 1269.) *Crawford* does not assist appellant.

First, if appellant's anxieties and fear were triggered by the presence of armed security and police officers, a deposition in a courthouse, well–secured by numerous armed officers, would do little or nothing to alleviate his concerns. Second, appellant failed to raise this argument below, and has forfeited the claim on appeal. Third, the facts of *Crawford* actually illustrate why terminating sanctions were justified here.

In *Crawford*, the plaintiff noticed depositions for three defendants to be taken at plaintiff Crawford's personal residence. (*Crawford, supra*, 242 Cal.App.4th at p. 1267.) Defendants were afraid for their personal safety because of threatening language in plaintiff's petition, including references to the Oklahoma City and Boston bombings. They refused to appear for deposition at Crawford's home. (*Id.* at p. 1268.) Instead of filing motions to compel, Crawford filed retaliatory small claims actions against the defendants, based on their refusal to appear

for deposition. (*Id.* at p. 1268.) Those cases were consolidated with the initial case. (*Ibid.*) When defendants attempted to depose plaintiff's brother, who was a material witness (and whose attorney was plaintiff Crawford), the brother refused to attend the deposition based on his own safety concerns. (*Id.* at pp. 1268–1269.) When the issue of an appropriate venue for deposition arose at a hearing, the court suggested that taking the brother's deposition inside the San Francisco Superior Court might alleviate his safety concern. The judge suggested that defendants use the judge's name to request a conference room. (*Id.* at p. 1269.) After a series of disputes, the brother finally appeared for a deposition. However, that proceeding was soon terminated after Crawford threatened opposing counsel with pepper spray and to shoot him with a stun gun. (*Id.* at p. 1270.) Defendant filed a motion for terminating sanctions. (*Ibid.*) The *Crawford* court found that, if "ever a case required a terminating sanction, this [was] it. [Plaintiff] threatened to use pepper spray and a Taser on opposing counsel and was openly contemptuous of the trial court. He made it impossible to continue with the litigation. Far from the trial court abusing its discretion, it would have been an abuse of discretion not to impose a terminating sanction." (*Id.* at p. 1271.)

Courts should tailor sanctions to a particular discovery abuse and impose terminating sanctions only in the most extreme cases when it is unlikely less severe sanctions will be effective. (See, e.g., *Lopez, supra,* 246 Cal.App.4th at pp. 604–605.) Like *Crawford*, this case demonstrates that lesser sanctions would have been inadequate.

Appellant consistently accused opposing counsel of dishonest and fraudulent behavior, and refused to cooperate or even to speak with him. Appellant also made physically and sexually threatening and openly contemptuous statements to and about superior court judges assigned to his cases. He now complains on appeal that no judge made her conference room available for his deposition. Appellant's discovery abuse continued despite multiple warnings and the imposition of monetary sanctions. When appellant did appear for deposition, he consistently gave evasive, incomplete, nonresponsive answers during those two very short periods, before derailing both proceedings by leaving. Each time he claimed to feel unwell, but he never provided adequate evidence to substantiate that claim. Under such circumstances, terminating sanctions were warranted because attempts to informally resolve discovery matters, or to get appellant to comply with court orders regarding those matters, were futile. "The law does not require a futile act." (*Crawford, supra,* 242 Cal.App.4th at p. 1274.)

Appellant maintains that terminating sanctions were too severe because some of his objections have merit. But he failed to support this contention with any citation to the record, or to refute LAUSD's contention that deposition responses he did give were substantively worthless. (Cal. Rules of Court, rule 8.204(a)(1)(C).) Absent a "coherent argument in [his] brief describing the discovery and the circumstances of its denial, and citing legal authorities, the discovery contention is waived." (*Osborn v. Hertz Corp*. (1988) 205 Cal.App.3d 703, 707-708, fn. 2; see *Schaeffer Land Trust v. San Jose City Council* (1989) 215

Cal.App.3d 612, 619, fn. 2 ["'A point which is merely suggested . . . with no supporting argument or authority, is deemed to be without foundation and requires no discussion.'"].)

On this record, we find no abuse of discretion in choosing terminating sanctions for appellant's repeated and willful discovery abuse. (See *Kuhns v. State of California* (1992) 8 Cal.App.4th 982, 988.)

3. *Monetary Sanctions*

LAUSD insists it is entitled to monetary sanctions on appeal (attorney fees and costs) because appellant "completely stonewalled" LAUSD's efforts to obtain discovery, refused to comply with court orders and "not only left his deposition early, but refused to communicate with counsel for defendant to re-calendar the deposition." We agree.

"Although this court possesses the power to appraise and fix attorney fees on appeal, the better practice is to remand the cause to the trial court for the determination of such fees. [Citations.]" (*Schoolcraft v. Ross* (1978) 81 Cal.App.3d 75, 82.) After the remittitur is filed, the trial court should, in accordance with the provisions of California Rules of Court, rules 8.278 and 3.1702(c), hear any application for costs and attorney fees for services on appeal. (See *Milman v. Shukhat* (1994) 22 Cal.App.4th 538, 546.)

DISPOSITION

The judgment is affirmed. LAUSD shall recover costs on appeal, and shall be permitted to make a motion in superior court for attorney fees on appeal.

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WILLHITE, J.

We concur:

EPSTEIN, P. J.

COLLINS, J.