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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

PETER BASHKIROFF,

Plaintiff and Appellant,

v.

VENTURA PORT DISTRICT et al.,

Defendants and Respondents.

2d Civil No. B266738
(Super. Ct. No. 56-2013-00442997-CU-PN-VTA)
(Ventura County)

Plaintiff Peter Bashkiroff appeals a judgment of dismissal in favor of the Ventura Port District (District), a public entity, and Gregory Carson, Chairman of the Board of Port Commissioners, defendants in Bashkiroff's action for damages for the loss of personal property. Bashkiroff asserts a host of errors committed by the trial court. These include rulings on requests for admissions, motions for relief, summary judgment, sustaining demurrers, and dismissing this action. We affirm.

FACTS

Bashkiroff filed an action against the District, Carson and other defendants alleging tort causes of action for the loss of his personal property. He claimed that he hid eight or nine bags of his personal property behind shrubs at a public retaining wall and that Harbor Patrol officers removed his property between "April 7th and 10th, 2013."

The trial court sustained demurrers to Bashkiroff's complaints because he did not timely file a government tort claim. The court denied his request for relief because he had not "shown facts to support a finding of mistake, inadvertence, surprise, or excusable neglect." It found Bashkiroff knew by November 2013 that he had not properly filed a claim with the District. But he unreasonably delayed and "took no action to correct his error until March 28, 2014."

The case proceeded on Bashkiroff's civil rights cause of action. (42 U.S.C. § 1983.) In July 2014, the District served on Bashkiroff a set of requests for admissions of 25 facts. In the same month, the District filed to remove the case to the federal district court. In August, the federal court remanded the case back to the state court. After remand, Bashkiroff did not timely respond to the requests for admissions. The court granted defendants' motion to deem the facts admitted. (Code Civ. Proc., § 2033.280.) It denied Bashkiroff's motion for reconsideration

because it found he had not presented any "'new or different facts, circumstances, or law.'"

The trial court granted defendants' motion for summary judgment. It found Bashkiroff's declaration in opposition insufficient to show a triable issue of fact. A judgment of dismissal followed.

DISCUSSION

I. *Judgment Based on Discovery Admissions*

In granting summary judgment, the trial court noted that Bashkiroff claimed that defendants wrongfully "confiscated [his] personal property in violation of 42 U.S.C. § 1983." But defendants' "request for admissions were deemed admitted in January 2015, and those admissions effectively refute all of the relevant allegations of plaintiff's complaint."

Those admissions were: 1) Bashkiroff left his property "unattended" from April 6 to April 11, 2013; 2) he was not present when the property was removed; 3) he did not see who took the property; 4) he did not know the date the property was taken or who took it; 5) he has no witnesses or any "admissible evidence" that the property "was ever in the possession of," removed, or converted by a District employee; 6) he did not have "admissible evidence" that links a "white pickup truck referred to in [his] Complaints to the [District] and the alleged loss of [his] stored property"; and 7) he had no

"admissible evidence" that any District employee "violated [his] Civil Rights in relation to the events alleged." Summary judgment is properly granted based on admissions in discovery. (*Union Bank v. Superior Court* (1995) 31 Cal.App.4th 573, 580-581.)

II. *Motion to Deem Requests for Admissions Admitted*

Bashkiroff contends the trial court erred by granting defendants' "Motion to Deem [the] Requests for Admissions Admitted." The trial court found that Bashkiroff's responses were untimely and that he "*did not attempt to respond* to the [requests for admissions] until 11/21/14, after the motion was filed." (Italics added.) (See *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 777.)

The requests for admissions were served on July 3, 2014. Bashkiroff had 30 days to respond. The motion was filed on November 19, 2014. The responses were dated November 18. This could indicate an attempt to timely respond. The record, however, does not include *the proof of service* (*Null v. City of Los Angeles* (1988) 206 Cal.App.3d 1528, 1532), nor were the responses verified. The trial court correctly ruled that an unverified response "is the equivalent of *no response at all*." (*Appleton v. Superior Court* (1988) 206 Cal.App.3d 632, 636, italics added.)

Defendants noted this omission in a trial court brief and the court filed a tentative ruling stating that the responses were not verified. This gave Bashkiroff an opportunity to verify the responses *before* the court made its ruling on the motion. (*St. Mary v. Superior Court*, *supra*, 223 Cal.App.4th at p. 780.) But Bashkiroff did not comply. Consequently, the trial court in its final order correctly found Bashkiroff "has *not yet responded* to the RFAs" and has not "substantially complied." (Italics added.)

Bashkiroff suggests he served objections, not admissions, and objections do not have to be verified. But the trial court found there were no objections. The document he served is labeled "plaintiff's *admissions*." (Italics added.) The words "objection" or "objections" are not found in his responses. The substance of the responses involved answers. Bashkiroff now raises objections to the requests on appeal. But, where "responses to [requests for admissions] are not timely served, the responding party waives any objections thereto." (*St. Mary v. Superior Court*, *supra*, 223 Cal.App.4th at p. 776.)

Despite all these procedural deficiencies, Bashkiroff admitted he was not present when the property was removed. He said he did not know when the property was taken. He could not name a witness who allegedly saw District employees, or anyone else, take his property. His responses also show he relied on speculation, e.g., he said that the property "was taken *probably at*

night during 4-5 days away." (Italics added.) In answering whether he had evidence that any District employee converted his property, Bashkiroff said, "*Don't have evidence yet*, but it *could* happen." (Italics added.) He speculated that patrolmen "would delight in stealing this stuff." Facts, not speculation, are required to show how his loss occurred. (*Lyons v. Security Pacific Nat. Bank* (1995) 40 Cal.App.4th 1001, 1014.)

III. *Motion for Relief from Deemed Admissions*

Bashkiroff contends the trial court erred by denying his "motion for relief from deemed admissions." He claimed he was excused from responding timely because: 1) this case was removed to federal court, 2) he did not receive sufficient notice, 3) defendants did not meet and confer before filing the motion, and 4) he showed excusable neglect. We disagree.

A.) *Federal Court Removal and Remand*

Defendants note: 1) "the Notice of Removal to Federal Court was filed by [the District] [and] . . . the State Court action was stayed between July 11, 2014 and August 29, 2014"; 2) the federal court "filed a Notice of Remand on August 19, 2014"; and 3) Bashkiroff received notice and was required to timely respond to discovery.

The removal to federal court occurred a week after the requests for admissions were served. But the federal remand order returned jurisdiction to the state court in August. (*People*

v. Bhakta (2006) 135 Cal.App.4th 631, 636.) Consequently, the trial court had jurisdiction to enforce discovery requirements after the federal court remand. (*Ibid.*; 28 U.S.C. § 1447(c) [state court may "proceed with such case"].) The parties had notice that the case was back in state court: 1) in August 2014, the superior court clerk served them with a case management notice, and 2) the clerk also filed the remand order from the federal court.

A removal order neither invalidates previously served state court discovery nor excuses discovery non-compliance. During removal, the "federal court respects all orders and judgment had in any action in a state court prior to removal and *treats everything that occurred in the state courts as if it had taken place in the federal court*." (*People v. Bogart* (1970) 7 Cal.App.3d 257, 265, italics added.) "'[T]he order removing an action to a Federal court does not terminate the state court's jurisdiction *but merely stays or interrupts proceedings in that court* pending a disposal of the action by the Federal court.'" (*Peoples Trust & Sav. Bank v. Humphrey* (Ind.Ct.App. 1983) 451 N.E. 2d 1104, 1109.) "When the state court resumed jurisdiction, it had a duty 'to proceed as though no removal had been attempted.'" (*Limehouse v. Hulsey* (S.C. 2013) 744 S.E.2d 566, 577.) Consequently, on remand, the discovery clock starts running again and the party must respond within the remaining or "unexpired time" left in the discovery deadline. (*Dauenhauer*

v. Superior Court (1957) 149 Cal.App.2d 22, 26.) The trial court did not err. (*Ibid.*)

B.) *Notice*

Bashkiroff claims he did not receive sufficient notice. But the request for admissions contain a proof of service signed by attorney Jennifer Gysler on July 3, 2014. On October 24, 2014, defendants' counsel wrote to Bashkiroff advising him that his responses were overdue. They *warned him* that if he did not file them, they would file a motion "to [d]eem" the requests for admissions "admitted." They gave him an additional seven days to respond. Bashkiroff did not comply after receiving notice and he was well beyond the discovery deadline. (*Dauenhauer v. Superior Court*, *supra*, 149 Cal.App.2d at p. 26.)

C.) *Meet and Confer*

Bashkiroff argued he was entitled to relief because defendants did not "meet and confer" before filing the motion to deem the requests admitted. But the trial court correctly ruled there is no such requirement for this type of motion. (*St. Mary v. Superior Court*, *supra*, 223 Cal.App.4th at p. 777.)

D.) *Excusable Neglect*

Bashkiroff claimed he made a showing of excusable neglect. But the trial court found that "[t]here is *no evidence* to support this argument." (Italics added) Relief may be denied where the party neglects to submit the supporting evidence.

(*Cochran v. Linn* (1984) 159 Cal.App.3d 245, 252.) Unsworn claims of good cause raised only in briefs or arguments will not suffice. (*Moore v. El Camino Hospital Dist.* (1978) 78 Cal.App.3d 661, 664.) These rules apply equally to represented and self-represented parties. (*Burnete v. La Casa Dana Apartments* (2007) 148 Cal.App.4th 1262, 1270.) Bashkiroff has not cited to the record the facts to show the court's finding is incorrect (Cal. Rules of Court, rule 8.204(a)(1)(C); *Paiva v. Nichols* (2008) 168 Cal.App.4th 1007, 1037), and his appendix does not provide "an adequate record" to show error (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295).

Defense counsel Clayton Averbuck's declarations refuted the claim of excusable neglect. Averbuck asserted that 1) Bashkiroff did not request extensions; 2) Bashkiroff did not timely file responses; 3) Bashkiroff did not file responses after they gave him an extended seven-day deadline in their October 24 letter; 4) as of October 24, Bashkiroff "had the discovery *for over three and [a] half months and . . . over two months since the case was remanded*"; 5) they *waited three more weeks after the seven-day deadline expired* without receiving his responses; and 6) they ultimately had to file the motion because of his "*willful* failure" to comply. (Italics added.) These declarations supported the trial court's findings.

IV. *Declaration in Opposition to Summary Judgment*

Bashkiroff suggests the trial court erred by only considering the admissions in granting summary judgment. The court reviewed Bashkiroff's declaration in opposition to summary judgment and found it also showed that he could not prevail. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843.)

The trial court said Bashkiroff "*offers only his belief* that the [District] was involved in the removal of his property on the basis that two [District] patrol officers saw him put the property behind the bushes. (Plaintiff's Declaration at pages 2 and 3.)" (Italics added.) It said, "This is no evidence of any wrongdoing on the part of [the District]." Bashkiroff "offers *no evidence that detracts from the admissions*." (Italics added.) "There is *no evidence of wrongdoing* on the part of Chairman Greg Carson as an individual. Nor is there *any evidence of any wrongdoing* concerning the Board of Patrol Commissioners which could somehow be imputed to Mr. Carson." (Italics added.)

Moreover, Bashkiroff waived challenges to these findings by not citing to the record (Cal. Rules of Court, rule 8.204(a)(1)(C)), and his appendix is insufficient. (*Maria P. v. Riles*, *supra*, 43 Cal.3d at p. 1295; *Null v. City of Los Angeles*, *supra*, 206 Cal.App.3d at p. 1532.)

V. *Sustained Demurrers*

The trial court sustained demurrers to Bashkiroff's other tort causes of action because he did not timely file a government tort claim. (Gov. Code, § 911.2.) Bashkiroff apparently claims the trial court erred in its fact findings and in denying relief for excusable neglect. Parties seeking relief for failure to timely file the claim must present facts showing excusable neglect and that they acted with reasonable diligence. (*Department of Water & Power v. Superior Court* (2000) 82 Cal.App.4th 1288, 1293.)

Here the trial court found: 1) Bashkiroff did not timely file the claim with the District, 2) he knew by November 2013 that he had to file it, 3) he did not act diligently by waiting until late March 2014 to correct the omission, and 4) he made no showing of excusable neglect. Bashkiroff does not cite to facts in the record to contest these findings. (*Paiva v. Nichols*, *supra*, 168 Cal.App.4th at p. 1037.) He claimed his omission was the result of mistake and reliance on information from county officials. But the credibility of these claims was a matter exclusively for the trial court to determine. Moreover, the county officials were not the *city District defendants*. Absent evidence of an agency relationship, reliance on information from one public entity will not support grounds for estoppel against a different public entity. (*Calabrese v. County of Monterey* (1967) 251 Cal.App.2d 131, 139-

140) Defendants also claimed his motions lacked merit because he failed to show that anyone told him that "the County of Ventura and Ventura Port District were the same."

Moreover, Bashkiroff's *unsworn* assertions about mistake or estoppel in his trial court brief did not constitute evidence. (*Moore v. El Camino Hospital Dist.*, *supra*, 78 Cal.App.3d at p. 664.) Defendants presented evidence showing why his motion for relief should be denied. Pamela Casey's declaration showed: 1) the District is governed by a Board of Port Commissioners, appointed by the Ventura City Mayor and confirmed by the City Council, 2) Carson is the Board's Chairman, and 3) this information is available on the District's website.

Gysler declared that: 1) in Bashkiroff's original complaint, he "identified the [District] as an 'independent special district,'" 2) Bashkiroff was served with a demurrer in November 2013 that *raised his failure to file the claim* with the District, 3) this issue was raised more than once, but 4) Bashkiroff did not file "an Application for Late Claim with the [District]" until late March 2014.

Defendants correctly note that the record Bashkiroff produced is not sufficient to support his remaining challenges to the trial court's findings. (*Null v. City of Los Angeles*, *supra*, 206 Cal.App.3d at p. 1532.) Bashkiroff's appendix does not include all

the relevant documents the court reviewed. There are no reporter's transcripts or settled statements. Where the record is incomplete, we presume the missing portions support the court's finding. (*Ibid.*) "All intendments and presumptions are indulged to support it on matters as to which the record is silent." (*Ibid.*) As to Bashkiroff's remaining arguments, he has not shown grounds for reversal.

DISPOSITION

The judgment is affirmed. Costs on appeal are awarded to respondents.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Rocky Baio, Judge

Superior Court County of Ventura

P. Bashkiroff, in pro. per., for Plaintiff and Appellant.

Monroy, Averbuck & Gysler, Jon F. Monroy, Clayton C. Averbuck, and Jennifer E. Gysler for Defendants and Respondents.