

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

IVAN RENE MOORE,

Plaintiff and Respondent,

v.

KIMBERLY MARTIN-BRAGG,

Defendant and Appellant.

B276366

(Los Angeles County
Super. Ct. No. BC480013)

APPEAL from a judgment of the Superior Court of Los Angeles County, Michelle R. Rosenblatt and Michael M. Johnson, Judges. Affirmed.

Ivan Rene Moore, in pro per., for Plaintiff and Respondent.

Thomasina M. Reed, The Newell Law Firm, Felton T.

Newell, for Defendant and Appellant.

INTRODUCTION

Plaintiff Ivan Rene Moore and defendant Kimberly Martin-Bragg were “longtime domestic partners,”¹ but their former relationship has been eclipsed by a series of legal travails between them. In this matter, Moore successfully sued Martin-Bragg for conversion of personal property, trespass to chattel, and damages under Civil Code section 1965. Martin-Bragg challenges the \$3.15 million jury verdict in Moore’s favor. The inadequacy of the appellate record as well as Martin-Bragg’s failure to brief a number of the issues she raised compel that we affirm.

BACKGROUND

At one point, Moore was the record owner of residential property in Ladera Heights. For a time, the parties lived there together. According to *Moore, supra*, 219 Cal.App.4th 367, the parties agreed Martin-Bragg gained title to the property, but disputed whether she held title for herself or “in trust as a business arrangement for the benefit of Moore and his corporations [and] not for Martin-Bragg’s personal use or benefit.” (*Id.* at p. 371.)

In 2011, Martin-Bragg initiated an unlawful detainer action against Moore, who countered with his own lawsuit to quiet title. The trial court denied Moore’s motion to consolidate the two matters and found in favor of Martin-Bragg in the unlawful detainer action.

¹ *Martin-Bragg v. Moore* (2013) 219 Cal.App.4th 367, 371 (*Moore*).

In a published opinion filed August 1, 2013, Division One of this court reversed, finding the trial court’s “determination of the ownership issue within the summary unlawful detainer proceeding, and refusal to permit trial of the issue of title outside of those summary procedures, was an abuse of discretion requiring the judgment’s reversal and remand to the trial court for determination of the parties’ rights to legal and beneficial title to the property and their respective rights to possession based on that determination.”² (*Moore, supra*, 219 Cal.App.4th at p. 395.)

Meanwhile, having been evicted from the property without his personal belongings and with the appeal in *Moore* pending, Moore initiated this action against Martin-Bragg for trespass to chattel, conversion, negligence, and damages under Civil Code section 1965. He also filed a companion case against Martin-Bragg on a variety of other theories (BC483652).³ The trial court consolidated the two Moore lawsuits and subsequently bifurcated the trespass to chattel, conversion, and Civil Code section 1965 causes of action for jury trial.

The jury determined the value of Moore’s personal property was \$2.5 million and awarded him that sum. On the conversion cause of action, the jury also awarded Moore lost profits in the sum of \$650,000. The trial judge permitted Moore to amend his

² After remand, trial court proceedings spawned multiple trips to the appellate court for extraordinary relief and at least one appeal, which is currently pending (B272445). Along the way, Moore also was declared a vexatious litigant subject to prefiling orders.

³ The complaint in the companion action is not included in the Appellant’s Appendix.

pleading during trial to conform to proof and add a prayer for return of the personal property. The jury rendered an advisory verdict recommending the damages award be reduced by \$2,500,000 if Martin-Bragg returned Moore's personal property.

On November 8, 2013, after several iterations, the trial court entered an interlocutory judgment on the jury verdict. Court minutes for that date advised, "All previous versions of the proposed judgment are set aside."

Further proceedings in these consolidated matters, as well as several other related actions between the parties, were stayed pending a resolution of Moore's Code of Civil Procedure section 170.3 challenge to the trial judge (Hon. Michelle R. Rosenblatt).⁴ Moore's disqualification efforts were unsuccessful, the trial judge recused herself from further proceedings involving him, and the matters were assigned to a new judge (Hon. Michael M. Johnson).

In April 2016, the trial court held a hearing on an Order to Show Cause and dismissed with prejudice all the remaining causes of action in the consolidated and related actions as a terminating sanction for Moore's misconduct. A final judgment followed on May 23, 2016.

With entry of the final judgment, Martin-Bragg filed motions for judgment notwithstanding the verdict and for new trial. The trial court denied the motions on July 11, 2016, expressly finding Martin-Bragg failed to include an adequate record to permit review of the trial proceedings or to establish a

⁴ It is not entirely clear from the record, but it appears Moore sought Judge Rosenblatt's disqualification after she declared him a vexatious litigant.

legal basis for relief. Martin-Bragg's notice of appeal was filed July 22, 2016.

DISCUSSION

Moore responded to Martin-Bragg's notice of appeal with a motion to dismiss. This court denied the motion, but advised the parties we would consider the timeliness of the appeal and the adequacy of the appellate record along with the merits.

The appeal is timely. Martin-Bragg's failure to provide this court with an adequate appellate record forecloses our review of her appellate issues, however. She also forfeited issues by failing to provide citations to the record and to present legal arguments and relevant authority to support them.

A. Preliminary Issues

1. Timeliness of the Appeal

As described above, the interlocutory judgment was entered November 8, 2013. The final judgment was not entered until May 23, 2016. Court minutes for the hearing on Martin-Bragg's motions for judgment notwithstanding the verdict and for a new trial reflect the trial court considered their timeliness. Citing *Meyser v. American Bldg. Maintenance, Inc.* (1978) 85 Cal.App.3d 933, 936-937, the trial court correctly determined the motions could not be heard until entry of the final judgment. Martin-Bragg's notice of appeal from the final judgment is timely.

2. Adequacy of the Record

As noted, the trial court ruled it could not consider Martin-Bragg's motions for judgment notwithstanding the verdict or for a new trial on the merits because she provided an inadequate

record. Presumably this trial court finding was the impetus for Moore to seek dismissal of the appeal on the same basis. At the time his motion to dismiss was filed, however, the appellate record was not yet due.

Despite Moore's motion, the subsequent order that we would consider the adequacy of the record along with the merits of the appeal, numerous extensions of time, and a bankruptcy stay that had the effect of giving the parties even more time, Martin-Bragg failed to include all court minutes in the appendix and submitted incomplete reporter's transcripts without any agreed or settled statements to cover the gaps.⁵ She never sought permission to augment the record on appeal.

The adequacy of the appellate record is of paramount importance here, as Martin-Bragg asserts her claimed errors are to be reviewed under the substantial evidence standard. As this court has held: "In many cases involving the substantial evidence or abuse of discretion standard of review . . . a reporter's transcript or an agreed or settled statement of the proceedings will be indispensable." (*Southern California Gas Co. v. Flannery* (2016) 5 Cal.App.5th 476, 483 (*Flannery*)). The appellant is responsible for providing a reporter's transcript or an adequate substitute.⁶ (*Ibid.*; see also Cal. Rules of Court, rule 8.120(b) [an

⁵ California Rules of Court, rules 8.134 and 8.137.

⁶ A claim of instructional error is subject to de novo review (*Mansur v. Ford Motor Co.* (2011) 197 Cal.App.4th 1365, 1373), as is our analysis of the correctness of a special verdict (*Zagami, Inc. v. James A. Crone, Inc.* (2008) 160 Cal.App.4th 1083, 1092). Our ability to engage in a de novo review also depends on an adequate appellate record.

appellant “must include” a reporter’s transcript or agreed or settled statement when “rais[ing] any issue that requires consideration of the oral proceedings”].)

Martin-Bragg stated in her opening brief the jury trial began “July 15, 2013, going essentially day-to-day until July 29, 2013[,] when the jury rendered three separate special verdicts” She provided an appellate record that included court minutes and reporter’s transcripts for some, but not all, pretrial and trial days. There are no settled or agreed statements for any oral proceedings. Gaps between what occurred in the courtroom and what is reflected in the court minutes that were included in the record on appeal are evident:

- July 10, 2013 (no court reporter present; pretrial motions and motions in limine);
- July 12, 2013 (no court reporter present; pretrial; evidentiary issues, time estimates, and jury instructions discussed);
- July 15, 2013 (no court reporter present; voir dire, seating of jury, and plaintiff’s opening statement; trial to resume the following morning);
- July 16, 2013 (no court minutes or reporter’s transcript);
- July 17, 2013 (court reporter present; testimony; trial to resume the following morning; only partial reporter’s transcript);
- July 18, 2013 (no court minutes or reporter’s transcript);
- July 19, 2013 (no court minutes or reporter’s transcript);
- July 22, 2013 (no court minutes or reporter’s transcript);
- July 23, 2013 (court reporter present; testimony; trial to resume the following afternoon);
- July 24, 2013 (no court reporter present; testimony; trial to

resume the following morning);
July 25, 2013 (no court reporter present; testimony; jurors
excused early; jury instructions and verdict forms
discussed; trial to resume the following morning);
July 26, 2013 (no court reporter jury present; jury instructed;
closing arguments; jury in deliberations;
deliberations to resume July 29);
July 29, 2013 (no court minutes or reporter's transcript; jury
verdicts rendered).

B. Standard of Review

We presume the trial court judgment is correct. Error must be affirmatively shown. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.)

“[T]he substantial evidence standard of review is generally considered the most difficult standard of review to meet. . . . In deciding whether to raise a substantial evidence claim on appeal, appellate counsel should keep in mind that the appellate court accept[s] the evidence most favorable to the order as true and discard[s] the unfavorable evidence as not having sufficient verity to be accepted by the trier of fact.” (*Phillips v. Campbell* (2016) 2 Cal.App.5th 844, 850, internal quotation marks omitted.) Under this standard, “the power of an appellate court *begins* and *ends* with the determination as to whether there is any substantial evidence contradicted or uncontradicted which will support the finding of fact.” (*Primm v. Primm* (1956) 46 Cal.2d 690, 693.)

A sufficiency of the evidence challenge “requires defendants to demonstrate that there is *no* substantial evidence to support the challenged findings.’ (Italics added.) [Citations.] A recitation of only defendants’ evidence is not the

‘demonstration’ contemplated under the above rule. [Citation.] Accordingly, if, as defendants here contend, ‘some particular issue of fact is not [supported by substantial evidence], they are required to set forth in their brief *all* the material evidence on the point and *not merely their own evidence*. Unless this is done the error is deemed to be waived.” (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881 (*Foreman*).)

Where the appellate record is inadequate to permit us to assess whether the trial court has erred or the judgment is not supported by substantial evidence, we must affirm. (*Flannery, supra*, 5 Cal.App.5th at p. 483; see also *Vo v. Las Virgenes Municipal Water Dist.* (2000) 79 Cal.App.4th 440, 447-448.)

Additionally, “A party on appeal has the duty to support the arguments in the briefs by appropriate reference to the record, which includes providing exact page citations. We have no duty to search the record for evidence and may disregard any factual contention not supported by proper citations to the record.” (*Air Couriers Internat. v. Employment Development Dept.* (2007) 150 Cal.App.4th 923, 928; Cal. Rules of Court, rule 8.204(1)(C); *Sharabianlou v. Karp* (2010) 181 Cal.App.4th 1133, 1149 [“we will not scour the record on our own in search of supporting evidence”].)

In her opening brief, Martin-Bragg summarized the issues by positing eight questions. She categorized them under four headings, and we do the same. (See Cal. Rules of Court, rule 8.204(a)(1)(B) [“each brief must . . . [¶] [s]tate each point under a separate heading or subheading summarizing the point, and support each point by argument and, if possible, by citation of authority”].)

C. Analysis

1. *Substantial Evidence of Moore's Ownership or Entitlement to Possession of Property*

Martin-Bragg acknowledged a plaintiff suing for conversion or trespass to chattels need not prove ownership of the disputed property so long as he proves the right to possession. However, she presented no legal arguments addressing possession. (*Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956 (*Cahill*) ["Appellate briefs must provide argument and legal authority for the positions taken"].) Martin-Bragg also failed to include a statement of any evidence that supported the jury's verdict. She provided citation references only for her own testimony. She listed the trial exhibit numbers for photographs of the disputed property—but without citations to their location in the record. Martin-Bragg failed to include reporter's transcripts for much of Moore's testimony and, as previously noted, there are no settled or agreed statements.

The appellate record is inadequate for our review of this issue. Where the appellant contends "some particular issue of fact is not sustained, [she is] required to set forth in [her] brief *all* the material evidence on the point and *not merely [her] own evidence*. Unless this is done the error is deemed to be waived." (*Foreman, supra*, 3 Cal.3d at p. 881.)

2. *Instructional Error Claims*

Martin-Bragg next argued, "The trial judge excluded the special instructions that would have explained and guided [the jurors] in determining the impact of the claims by the corporations and Wells Fargo liens, this exclusion was prejudicial, and justifies reversal. Furthermore, the special

verdict was inadequate and failed to accurately state the law as it should be applied to the facts.”

As with the first issue, the appellate record is inadequate for our review. We know from court minutes included in the appendix that the trial court discussed jury instructions and/or the special verdict forms with the parties on two dates, July 12, 2013 and July 25, 2013. Martin-Bragg did not include reporter’s transcripts or agreed or settled statements for either session.

In terms of the two special instructions, Martin-Bragg’s brief advised only that she “requested that the court give special jury instructions Copies of those rejected instructions are in the record in 1 AA:84-85.” Her argument in support of the point, however, was minimal: She maintained the two instructions “would have explained and guided [the jurors] in determining the impact of the claims by the corporations and Wells Fargo liens”

The refused special instructions appear to relate to affirmative defenses for which Martin-Bragg would have had the burden of proof. With her failure to set forth all the trial testimony on the subject and the incomplete reporter’s transcripts, we have no way to assess whether any evidence supported giving the requested instructions. We also have no way of knowing whether, during the unreported conferences and based on the trial evidence, Martin-Bragg withdrew her request for the proposed instructions, the trial court suggested alternatives that she accepted, or some other accommodation was reached. Without a reporter’s transcript, we do not even know what instructions the trial court actually gave to the jurors. (See, e.g., *Regalado v. Callaghan* (2016) 3 Cal.App.5th 582, 593;

Bullock v. Philip Morris USA, Inc. (2008) 159 Cal.App.4th 655, 678-679.)

Under this same heading, Martin-Bragg also purported to challenge the special verdict form and its inclusion of lost profits as an element of Moore's damages on the conversion cause of action. The failure to brief these issues under their own headings would appear to constitute a forfeiture. (Cal. Rules of Court, rule 8.204(a)(1)(C).) Overlooking that shortcoming, the inadequate record gives us no basis on which we may evaluate the issues on their merits.

3. *Entry of the Interlocutory Judgment Permitting a Reduction in the Awarded Damages if Personal Property Were Returned to Moore*

Moore was permitted to amend the complaint during trial to conform to proof to seek the return of specific items of personal property.⁷ The interlocutory judgment provided that should Martin-Bragg return all or some of the specified items, the trial court would reduce the awarded damages by up to \$2.5 million.⁸

Martin-Bragg devoted only six sentences to the argument of this issue. The argument lacked citations to the record or to any relevant authority. There are no reporter's transcripts or agreed or settlement statements for our review. We do not

⁷ The items were listed in the November 8, 2013 interlocutory judgment: "clothing, shoes, kitchen equipment, personal property, piano, SSLK console, masters, '71 Camaro, and personal legal documents."

⁸ Nothing in the appellate record suggests Martin-Bragg returned any of Moore's personal property.

search the record to find evidence that supports the claimed error. (*Sharabianlou v. Karp, supra*, 181 Cal.App.4th at p. 1149.) We must assume the trial court properly exercised its discretion. And without an adequate record, we also assume Martin-Bragg agreed to the amendment or failed to object in the trial court.

4. *Waiver of the Right to Jury Trial*

The trial court has discretion to permit a jury trial “although there may have been a waiver.” (Code Civ. Proc., § 631, subd. (g).) Martin-Bragg contended the trial court abused its discretion by allowing Moore to proceed with a jury after he failed to timely post jury fees.

In her statement of the case, Martin-Bragg complained Moore failed to pay the jurors’ per diem fees for the last two days of trial. In her argument, she asserted Moore failed to meet the pretrial deadline to post jury fees. She concluded the trial court’s decision to permit the matter to proceed to a jury trial was prejudicial “because the [c]ourt eliminated evidence via in limine motions, jury instructions and a special verdict, none of which would have been requested or granted if the case [were] tried to the court.”

Martin-Bragg forfeited this issue on two fronts: The appellate record is inadequate for our review and her opening and reply briefs fail to provide any citations to the record. (Cal. Rules of Court, rule 8.204(a)(1)(C).) Again, we have no way of knowing whether Martin-Bragg expressly agreed to proceed with a jury or if she objected in the trial court.

5. *Other Issues are Forfeited*

In her opening brief, Martin-Bragg posed the following additional questions:

“2. Did the jury instructions correctly and fairly contain a reasonable and correct statement of the law of conversion and trespass to chattels?”

“3. Was the special verdict form appropriate given the facts and the law as it should be applied to the facts?”

“5. Should the special verdict have allowed the jury to decide the issue of ownership by the corporations and/or the liens in favor of Wells Fargo?”

“6. Was the instructional error prejudicial so as to justify reversal of the jury verdict and judgment?”

“8. Did Judge Rosenblatt’s decision to recuse herself from Moore’s cases prevent Martin-Bragg from [receiving] a fair determination of her JNOV and/or new trial motion?”

Martin-Bragg did not brief these issues. By failing to do so, she forfeited them. “Appellate briefs must provide argument and legal authority for the positions taken. 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. [Citation.] We are not bound to develop appellants’ argument for them. [Citation.] The absence of cogent legal argument or citation to authority allows this court to treat the contention as waived.” (*Cahill, supra*, 194 Cal.App.4th at p. 956, internal quotation marks omitted.)

DISPOSITION

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

NOT TO BE PUBLISHED IN THE OFFICIAL RESULTS.

DUNNING, J.*

We concur:

KRIEGLER, Acting P. J.

BAKER, J.

* Judge of the Orange Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.