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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 FIVE

YOUVAL ZIV, Plaintiff and Respondent, v. JASON VOGEL, Defendant and Appellant.	B265103 (Los Angeles County Super. Ct. No. BC566592)

Appeal from an order of the Superior Court of the County of Los Angeles, Richard E. Rico, Judge. Affirmed.

Hess, Hess, & Herrera, Alejandro H. Herrera for Plaintiff and Respondent.

Jason Vogel, in pro. per., for Defendant and Appellant.

INTRODUCTION

Defendant and appellant Jason Vogel (defendant), appearing in pro. per., appeals from the trial court's order denying his special motion to strike (anti-SLAPP motion)[1] brought pursuant to Code of Civil Procedure section 425.16. For the reasons explained below, we affirm the order denying that motion, as the appellate record provided by defendant is not adequate to allow for meaningful review.

BACKGROUND

According to the trial court's ruling on the anti-SLAPP motion, plaintiff and respondent Youval Ziv (plaintiff) filed a complaint against defendant asserting eight causes of action based on allegations that defendant had "engaged in a campaign to ruin [p]laintiff's life and business ventures, as revenge for litigation between [p]laintiff and [d]efendant's wife . . . ." Defendant, who was represented by counsel in the trial court, filed an anti-SLAPP motion to strike the complaint. The trial

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[1] "'SLAPP' is an acronym for 'strategic lawsuit against public participation,' and the quintessential issue raised by such a special motion to strike, or anti-SLAPP motion, is whether the challenged action was one 'arising from' activity protected by the anti-SLAPP statute [citation] which authorizes early dismissal of SLAPP actions. (See, e.g., *Navellier v. Sletten* (2002) 29 Cal.4th 82, 85, fn. 1 [citation].)" (*Maughan v. Google Technology, Inc.* (2006) 143 Cal.App.4th 1242, 1244, fn.1.)

court denied the motion, finding that the claims against defendant in the complaint did not arise out of any activity protected by the anti-SLAPP statute. Defendant filed a timely notice of appeal.

On February 8, 2016, this court issued an order re: briefing, instructing the parties to brief the issue of whether defendant's failure to provide a reporter's transcript or a suitable substitute of the relevant hearing warranted affirmance based on the inadequacy of the record. This court also stated in that order that other documents relative to the litigation's merits had been omitted from the record on appeal and noted specifically that an appellate court may uphold a trial court's decision when the pertinent pleadings have not been provided. Thereafter, the parties submitted their briefs, but the record on appeal has not been further augmented to include any additional pleadings or reporter's transcripts.

DISCUSSION

At the heart of defendant's appeal is his contention that the trial court erred "in finding that the allegations contained in [plaintiff]'s [c]omplaint do not arise out of any activity protected by the anti-SLAPP statute." Yet, defendant has failed to provide this court with the very document he sought to strike—the complaint. Without the complaint, we cannot begin to engage in

the first-prong analysis required to evaluate properly an anti-SLAPP motion, namely, a determination of whether the allegations of the complaint are based on acts that arise from protected activity. (*DuPont Merck Pharmaceutical Co. v. Superior Court* (2000) 78 Cal.App.4th 562, 565.) Indeed, as defendant acknowledges in his opening brief, we must conduct an independent review of the trial court's ruling on an anti-SLAPP motion de novo. (*Kajima Engineering & Construction, Inc. v. City of Los Angeles* (2002) 95 Cal.App.4th 921, 929.) Because defendant's failure to provide the complaint frustrates meaningful review of the trial court's order, affirmance is warranted.

The reason for this follows from the cardinal rule of appellate review that judgments and orders of the trial court are presumed correct and that error must be affirmatively shown. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) Consequently, the appellant bears the burden of providing an adequate record, and failure to do so requires that issues be resolved against him. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295-96.) When the appellant has failed to include in the record on appeal the document or documents central to evaluating the trial court's decision, the courts of appeal have affirmed the decision appealed from. (See, e.g., *Rancho Sante Fe Ass'n v. Dolan-King* (2004) 115 Cal.App.4th 28, 46 [affirming order

challenging attorney's fees where appellant did not provide moving papers or opposition]; *Hernandez v. California Hospital Medical Center* (2000) 78 Cal.App.4th 498, 502 [affirming order granting motion to strike portions of complaint where appellant did not provide order, motion, or opposition papers].)

Indeed, where, as here, the decision appealed from involves determination of the propriety of the complaint, dismissal is particularly apt where the appellant fails to provide the complaint (or related complaints) at issue. (*Neiderer v. Ferreira* (1987) 189 Cal.App.3d 1485, 1509 [affirming judgment for cross-defendants on the cross-complaint where cross-complaint not included in record on appeal]; see also *Taliaferro v. Davis* (1963) 220 Cal.App.2d 793, 794 [affirming grant of motion to strike amended complaint on ground that plaintiff added new party without leave of court where plaintiff did not include original complaint in record on appeal]; *Utz v. Aureguy* (1952) 109 Cal.App.2d 803, 805-06 [affirming dismissal of third amended complaint where plaintiff did not provide three prior complaints "for the comparison of one with another to ascertain if there were any departures, variances, inconsistencies, or conflicts within them, or other evidence of a shifting of theories"].)

Our affirmance due to inadequacy of the record is further compelled by defendant's failure to provide the reporter's transcript for the relevant hearing before the trial court (or

suitable substitute pursuant to California Rules of Court, rules 8.134 or 8.137). Defendant claims in his opening brief that the trial court did not consider any oral argument at the hearing on the anti-SLAPP motion. If true, we recognize that a reviewing court might otherwise be able to review the trial court's decision on an anti-SLAPP motion. (See *Chodos v. Cole* (2013) 210 Cal.App.4th 692, 699 [reaching merits of anti-SLAPP motion where neither party relied upon oral arguments before the trial court and appellate court had all filings before the trial court].) But here, defendant's failure to provide the complaint he sought to strike, as well as any transcript (or suitable substitute) of the hearing on defendant's motion to strike, renders the record on appeal wholly inadequate for us to address the merits of defendant's appeal.

In numerous situations, appellate courts have refused to reach the merits of an appellant's claims because no reporter's transcript or suitable substitute was provided. (E.g. *Walker v. Superior Court* (1991) 53 Cal.3d 257, 273-274 [transfer order]; *Ballard v. Uribe* (1986) 41 Cal.3d 564, 574-575 [new trial motion hearing]; *Boeken v. Philip Morris Inc.* (2005) 127 Cal.App.4th 1640, 1672 [transcript of judge's ruling on an instruction request]; *Vo v. Las Virgenes Municipal Water Dist.* (2000) 79 Cal.App.4th 440, 447 [trial transcript when attorney fees sought].) We do the same here.

Finally, we acknowledge that defendant is a pro. per. litigant, but that does not excuse his failure to provide an adequate record on appeal. To begin with, we note the longstanding rule that pro. per. litigants are held to the same standards and must follow the same rules of procedure as litigants who are represented by counsel.[2] "[M]ere self-representation is not a ground for exceptionally lenient treatment. Except when a particular rule provides otherwise, the rules of civil procedure must apply equally to parties represented by counsel and those who forgo attorney representation. (See *Lawrence v. Superior Court* (1988) 206 Cal.App.3d 611, 619, fn. 4 [253 Cal.Rptr. 748].) . . . A doctrine generally requiring or permitting exceptional treatment of parties who represent themselves would lead to a quagmire in the trial courts, and would be unfair to the other parties to litigation." (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985; see also *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1247 [as is the case with attorneys, pro. per. litigants must follow correct rules of procedure].)

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[2] That principle would seem particularly appropriate here. According to his declaration submitted in support of his anti-SLAPP motion, among his numerous educational and professional bona fides, defendant is "an accomplished and prolific author"; has created, directed, and written hundreds of documentaries and shows; graduated magna cum laude from Georgetown; earned a graduate degree in psychology; and has worked closely with numerous "leaders in academe" in various capacities.

Moreover, this court put defendant on notice of the potential inadequacy of the record when we issued our order re: briefing and cited numerous cases indicating the consequences that may flow therefrom. To date, defendant has not availed himself of the procedure to augment the record on appeal. (Cal. Rules of Court, rule 8.155). He must therefore bear the consequence of his failure to provide a record on appeal sufficient to address his claims. (*Maria P. v. Riles, supra,* 43 Cal.3d at 1295-1296 [noting that appellants could have augmented the record and affirming based on the failure to provide an adequate record].)

Accordingly, based on the inadequacy of the record, we affirm the trial court's order denying defendant's anti-SLAPP motion.

DISPOSITION

The order denying defendant's anti-SLAPP motion is affirmed. Plaintiff is awarded costs on appeal.

KIN. J.*

We concur:

TURNER, P. J.

KRIEGLER, 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.