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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 EIGHT

LORRAINE RHONE, Plaintiff and Appellant, v. FARMERS INSURANCE EXCHANGE et al., Defendants and Respondents.	B266290 (Los Angeles County Super. Ct. No. EC060297)

APPEAL from a judgment of the Superior Court of Los Angeles County. Laura C. Ellison, Judge. Affirmed.

Lorraine Rhone, in pro. per., for Plaintiff and Appellant.

Veatch Carlson, LLP, John E. Stobart for Defendant and Respondent Abraham Amigon.

Plaintiff Lorraine Rhone appeals from a judgment of nonsuit entered in favor of defendant Abraham Amigon at the close of Rhone's case-in-chief. Rhone contends the court coerced her into resting her case, denied her the right to make a closing argument, and improperly assisted Amigon's counsel. We find no error and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On March 4, 2011, Rhone and Amigon were involved in a automobile collision at an intersection in Glendale, California. On March 1, 2013, Rhone filed a complaint against Amigon and several other defendants related to the collision. Rhone alleged that while she was making a left turn, Amigon ran a red light and struck her vehicle. The trial court sustained demurrers as to all defendants except Amigon. A jury trial was held on May 29 and June 1, 2015, at which Rhone represented herself.

Prior to trial, the court granted Amigon's request to read the deposition testimony of a witness, Arthur Tagvoryan, in lieu of live testimony. Both Rhone and Amigon attempted to subpoena Tagvoryan to testify at trial, but he successfully evaded service. In response to the court's order, Rhone sought to read from a recorded statement Tagvoryan gave to an insurance company on April 19, 2011. Rhone's request prompted the following exchange between the court, Rhone, and Amigon's counsel, Bernhard Bihr:

> "The Court: Are you going to object to bringing out any of the statements?
>
> Mr. Bihr: Even though it doesn't conflict—
>
> The Court: Tell me 'Yes' or 'No.' I know the legal basis [for] which it should not come in.
>
> Mr. Bihr: No. It's an unsworn—

The Court: So you object [that it's] unsworn?

Mr. Bihr: Correct.

The Court: And you didn't have the opportunity to cross examine the statements?

Mr. Bihr: Correct.

The Court: Unfortunately he's right about that.

Rhone: So I can't read the statement he made in April of 2011 compared to the deposition he did in 2014?

The Court: No."

Rhone's case-in-chief consisted of two witnesses, herself and Alison Rhone Janele. Both witnesses testified on Friday May 29, 2015. After Rhone finished testifying, she informed the court she had no further witnesses. Although she did not request it, the court provided Rhone the weekend to arrange for additional witnesses.

On Monday June 1, 2015, Rhone again informed the court she had no further witnesses. The court asked Rhone whether her doctor would testify, to which Rhone responded that he was unavailable. The court then confirmed that Rhone had no further witnesses and asked Rhone if she rested her case. Rhone responded that she did.

After this exchange, Amigon moved for nonsuit, which the court granted. The court stated that Rhone presented sufficient evidence showing that Amigon was negligent. However, the court found she failed to present sufficient evidence showing she suffered injuries caused by such negligence.

Rhone timely appealed.

DISCUSSION

As we understand her arguments on appeal, Rhone contends the trial court improperly denied her the opportunity to make a closing argument, assisted Amigon's counsel in excluding Tagvoryan's recorded statement,[1] and coerced her into resting her case.[2] We disagree.

Rhone's assertion that she was improperly denied the right to make a closing argument is without merit. Rhone appears to be unaware that she was denied such an opportunity because the court granted nonsuit in Amigon's favor after she rested her case. A defendant may move for nonsuit after the plaintiff's presentation of her evidence in a trial by jury. (Code Civ. Proc., § 581c, subd. (a).) "A defendant is entitled to a nonsuit if the trial court determines that, as a matter of law, the evidence presented

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[1] Rhone does not contend that the court erred in excluding such evidence.

[2] We do not read Rhone's appeal as challenging the court's grant of Amigon's motion for nonsuit. Even if Rhone intended to do so, the record is inadequate to allow appellate review. As Rhone correctly acknowledges, we review rulings on motions for nonsuit de novo. (*McNair v. City and County of San Francisco* (2016) 5 Cal.App.5th 1154, 1168.) Rhone, however, failed to include in the record complete transcripts of the testimony given at trial, which makes it impossible for us to perform a de novo review. (See *Ritschel v. City of Fountain Valley* (2006) 137 Cal.App.4th 107, 124 ["[a]n appellate court's review of a judgment after the grant of a nonsuit 'must be based on the whole record, not just excerpts chosen by the appellant' "]; *Estate of Fain* (1999) 75 Cal.App.4th 973, 992 ["[w]here no reporter's transcript has been provided and no error is apparent on the face of the existing appellate record, the judgment must be *conclusively presumed correct as to all evidentiary matters*"].)

by plaintiff is insufficient to permit a jury to find in his favor. [Citation.] 'In determining whether plaintiff's evidence is sufficient, the court may not weigh the evidence or consider the credibility of witnesses. Instead, the evidence most favorable to plaintiff must be accepted as true and conflicting evidence must be disregarded . . . . A mere 'scintilla of evidence' does not create a conflict for the jury's resolution; 'there must be *substantial evidence* to create the necessary conflict.' " (*Nally v. Grace Community Church* (1988) 47 Cal.3d 278, 291.) "[A] grant of the motion serves to take a case from the jury's consideration . . . ." (*Campbell v. General Motors Corp.* (1982) 32 Cal.3d 112, 117.)

Here, the trial court granted nonsuit because it determined Rhone failed to produce substantial evidence showing she suffered injuries caused by Amigon's negligence. No argument by Rhone would have altered this determination. (See *Brown v. Boren* (1999) 74 Cal.App.4th 1303, 1319 ["argument is not evidence"].) As such, there was no need for the court to permit Rhone to give a closing argument.

As to Rhone's remaining contentions—that the court coerced her into resting her case and improperly assisted Amigon's counsel—she failed to provide a record on appeal sufficient for us to perform our appellate function.[3] "[I]t is settled

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[3] Although it was Rhone's burden to provide an adequate record, in November 2015, Justice Boren granted Amigon's request to file an amended designation of record on appeal indicating he would lodge directly with this court certified copies of the reporters' transcripts. In October 2017, several months after filing his respondent's brief, Amigon sent us via email what purports to be reporters' transcripts of the hearings and trial. The transcripts were not formally lodged or filed with the court. In addition, they are unsigned and uncertified. As such, the

that: 'A judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.' [Citations.]" (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) It is the appellant's burden on appeal to produce a record " 'which overcomes the presumption of validity favoring [the] judgment.' " (*Webman v. Little Co. of Mary Hospital* (1995) 39 Cal.App.4th 592, 595.) " 'Failure to provide an adequate record on an issue requires that the issue be resolved against [appellant].' " (*Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 187; *In re Marriage of Wilcox* (2004) 124 Cal.App.4th 492, 498; *Ehman v. Moore* (1963) 221 Cal.App.2d 460, 463.)

Given Rhone asserts the trial court treated the parties inappropriately, it is necessary for us to review all of the court's statements during the relevant exchanges. However, rather than provide complete reporters' transcripts of the trial and hearings, Rhone included in the record eight short excerpts from those transcripts, totaling only 24 pages.[4] Although the excerpts generally concern issues raised by the appeal, it is not clear that

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transcripts are not properly part of the record and we will not consider them. (See Cal. Rules of Court, rules 8.155(a)(1)(B) [court may order record augmented to include a *certified* transcript of oral proceedings]; 8.130(b)(3)(C), (f)(1) [reporter must prepare, certify, and file an original transcript or a party may submit its own *certified* transcript].)

[4] Of the 24 pages, eight are cover pages.

they contain the entirety of the relevant discussions with the court. As a result, we must presume the complete record would indicate the court did not err.

Moreover, as to Rhone's suggestion that the court improperly assisted Amigon's counsel, she fails to support her assertion with legal reasoning or citations to legal authority. " 'We are not bound to develop appellant['s] argument for [her]. [Citation.] The absence of cogent legal argument or citation to authority allows this court to treat the contention as waived.' " (*Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956.) This applies to all litigants, including those who are self-represented. (See *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246–1247.)

In any event, even on the meager record before us, there is no indication the court pressured Rhone into resting her case or improperly assisted Amigon's counsel. The record shows the court provided Rhone multiple opportunities to call additional witnesses, yet Rhone declined on each occasion. The court also explicitly asked Rhone if she rested her case, and Rhone stated that she did. Moreover, contrary to Rhone's suggestion, the court did not improperly assist Amigon's counsel in excluding Tagvoryan's recorded statement; instead, the court merely indicated it was familiar with the rules of evidence and questioned counsel to ascertain the precise basis for his objection to the evidence. We find nothing improper in any of these exchanges.

DISPOSITION

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

BIGELOW, P.J.

We concur:

FLIER, J.

GRIMES, J.