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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION THREE

JOSE FLORES,

Plaintiff and Appellant,

v.

ANTHONY DORIA,

Defendant and Respondent.

B279602

Los Angeles County  
Super. Ct. No. BC621009

APPEAL from a judgment of the Superior Court of Los Angeles County, David Sotelo, Judge. Affirmed.

Law Offices of Mark R. McKinniss and Mark R. McKinniss  
for Plaintiff and Appellant.

Ribeiro Law Corporation and David D. Ribeiro for  
Defendant and Respondent.

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## **INTRODUCTION**

This is an appeal from a judgment rendered after a bench trial. It appears the plaintiff and appellant, Jose Flores, contends the judgment is not supported by substantial evidence. Because Flores failed to provide this court with a transcript of the trial or an appropriate substitute, we are unable to evaluate the merit, if any, of his challenge to the judgment. Accordingly, we affirm the judgment.

## **FACTS AND PROCEDURAL BACKGROUND**

On May 19, 2016, Flores filed a complaint against defendant and respondent Anthony Doria stating five causes of action: negligence; breach of implied contract; intentional infliction of emotional distress; conversion; and trespass to chattels. According to the complaint, Doria agreed to store certain items of Flores's personal property in a shed located behind his home in North Hollywood. We infer that at some point, Flores sought the return of his property and at that time it was no longer in Doria's possession.

The court conducted a bench trial on December 6, 2016, and heard the testimony of Flores, Flores's wife, and Doria. On the basis of that testimony, the court entered judgment in favor of Doria.

Flores timely appeals.

## **DISCUSSION**

Flores challenges the judgment entered by the court after the bench trial. Although his arguments are difficult to discern, we understand Flores to argue that the court's judgment is not supported by the evidence offered at trial. We are unable to

evaluate this argument, however, because Flores failed to provide this court with a record or a summary of the evidence presented to the trial court. (See Cal. Rules of Court, rules 8.130 [reporter's transcript], 8.134 [agreed statement], 8.137 [settled statement].) The only materials provided to us in the appellant's appendix are the complaint, the briefing and ruling on Doria's demurrer, Doria's trial brief, and the notice of ruling following the bench trial. None of these materials provide any insight into the evidence presented to the court and upon which its judgment rests.

The most fundamental rule of appellate review is that the judgment or order challenged on appeal is presumed to be correct, and "it is the appellant's burden to affirmatively demonstrate error." (*People v. Sanghera* (2006) 139 Cal.App.4th 1567, 1573.) "All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown." (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) Failure to provide an adequate record requires that the issue be resolved against the appellant. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295; see *Oliveira v. Kiesler* (2012) 206 Cal.App.4th 1349, 1362.)

"In numerous situations, appellate courts have refused to reach the merits of an appellant's claims because no reporter's transcript of a pertinent proceeding or a suitable substitute was provided. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295–1296 [attorney fee motion hearing]; *Ballard v. Uribe* (1986) 41 Cal.3d 564, 574–575 (lead opn. of Grodin, J.) [new trial motion hearing]; *In re Kathy P.* (1979) 25 Cal.3d 91, 102 [hearing to determine whether counsel was waived and the minor consented to informal adjudication]; *Vo v. Las Virgenes Municipal Water Dist.* (2000) 79

Cal.App.4th 440, 447 [trial transcript when attorney fees sought]; *Estate of Fain* (1999) 75 Cal.App.4th 973, 992 [surcharge hearing]; *Hodges v. Mark* (1996) 49 Cal.App.4th 651, 657 [nonsuit motion where trial transcript not provided]; *Null v. City of Los Angeles* (1988) 206 Cal.App.3d 1528, 1532, [reporter's transcript fails to reflect content of special instructions]; *Buckhart v. San Francisco Residential Rent etc., Bd.* (1988) 197 Cal.App.3d 1032, 1036 [hearing on Code Civ. Proc., § 1094.5 petition]; *Sui v. Landi* (1985) 163 Cal.App.3d 383, 385–386 [motion to dissolve preliminary injunction hearing]; *Rossiter v. Benoit* (1979) 88 Cal.App.3d 706, 713–714 [demurrer hearing]; *Calhoun v. Hildebrandt* (1964) 230 Cal.App.2d 70, 71–73 [transcript of argument to the jury]; *Ehman v. Moore* (1963) 221 Cal.App.2d 460, 462 [failure to secure reporter's transcript or settled statement].)" (*Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 186–187.) This is such a case.

In short, we cannot evaluate Flores's contention that the judgment is unsupported by the evidence because we do not know what evidence was presented to the court. Flores's failure to provide a transcript, agreed statement, or settled statement is fatal to his appeal.

## **DISPOSITION**

The judgment is affirmed. Respondent to recover his costs on appeal.

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LAVIN, J.

WE CONCUR:

EDMON, P. J.

CURREY, J.\*

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