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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

KYLE WYATT TAYLOR,  
  
Plaintiff and Appellant,

v.

JONATHAN ESQUEDA et al.,  
  
Defendants and  
Respondents.

2d Civil No. B281813  
(Super. Ct. No. 15CV03745)  
(Santa Barbara County)

Kyle Wyatt Taylor appeals from the judgment entered after the trial court entered an order of dismissal. (Code Civ. Proc.,<sup>1</sup> §§ 581d, 904.1, subd. (a)(1).) He contends the court abused its discretion when it granted the order. We affirm.

**BACKGROUND**

In October 2015, Taylor sued Jonathan Esqueda, Maria Rosalva Esqueda, and Erick Esqueda for injuries he

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<sup>1</sup> All further statutory references are to the Code of Civil Procedure.

allegedly sustained in an automobile accident. Eight months later, the Esquedas propounded discovery to prepare for trial: form and special interrogatories, demands for inspection, and requests for admission. When Taylor had not responded to the discovery requests by October 2016, the trial court granted the Esquedas' motions to compel responses. Taylor's responses were due the following month.

In December 2016, the Esquedas moved to dismiss the action because Taylor had not complied with the trial court's orders. The court scheduled a hearing on the motion for February 2017. Taylor did not appear at that hearing, and the court dismissed the action.

Unbeknownst to the trial court and the Esquedas, Taylor filed and served his responses to the discovery requests and his opposition to the motion to dismiss the afternoon before the court ruled on the motion.

### DISCUSSION

Taylor contends the trial court abused its discretion when it granted the motion to dismiss because it was unaware he had responded to the Esquedas' discovery requests the previous day. The Esquedas argue Taylor forfeited his contention because he did not file a motion for reconsideration challenging the court's dismissal of the action, and even if there was no forfeiture, the court did not abuse its discretion when it dismissed the action. There was no abuse of discretion.

#### *Forfeiture*

“An appellate court will ordinarily not consider procedural defects or erroneous rulings . . . where an objection could have been but was not presented to the lower court by some appropriate method.” (*Doers v. Golden Gate Bridge etc. Dist.*

(1979) 23 Cal.3d 180, 184, fn. 1.) “[I]t is unfair to the trial judge and to the adverse party to take advantage of an error on appeal when it could easily have been corrected at the trial.” [Citation.]” (*Ibid.*, italics omitted.) Appellate courts are “loath to reverse a judgment on grounds . . . the trial court did not have an opportunity to consider. [Citation.]” (*JRS Products, Inc. v. Matsushita Electric Corp. of America* (2004) 115 Cal.App.4th 168, 178 (*JRS Products*).)

Here, Taylor protests that the trial court was unaware he had responded to discovery requests when it granted the motion for dismissal. But Taylor could have appeared at the hearing on the motion to dismiss to advise the court and the Esquedas that he had complied with the discovery requests. And he had 10 days within which to bring that fact to the court’s attention in a motion for reconsideration. (§ 1008, subd. (a).) Because he did neither, the court did not have an opportunity to consider it. (*JRS Products, supra*, 115 Cal.App.4th at p. 178.) Taylor has therefore forfeited his contention on appeal. (*Horton v. Superior Court* (1987) 194 Cal.App.3d 727, 738.)

#### *Abuse of Discretion*

A party’s lack of proper responses to discovery requests may result in sanctions. (*Karz v. Karl* (1982) 137 Cal.App.3d 637, 648-649; see § 2023.010, subds. (d) [failure to respond], (f) [providing evasive responses] & (g) [disobeying a court order to respond].) Sanctions may include termination of an action. (*Karz v. Karl*, at pp. 648-649; see § 2023.030, subd. (d).) Due process prohibits an order that goes further than is necessary to accomplish the purpose of discovery. (*Newland v. Superior Court* (1995) 40 Cal.App.4th 608, 613.) The trial court should examine the entire record to determine whether to impose

a termination sanction. (*Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 796.) We review the imposition of sanctions for abuse of discretion. (*Oceanside Union School Dist. v. Superior Court* (1962) 58 Cal.2d 180, 186.)

The trial court did not abuse its discretion when it terminated Taylor's cause of action. The Esquedas propounded discovery in June 2016. Taylor did not respond. In October, the trial court ordered him to comply with all discovery requests by the following month. He did not do so. Taylor had a third opportunity to respond when the Esquedas moved to dismiss the action in December. He did not file and serve his responses until the afternoon before the February 2017 hearing on the motion to dismiss. "Belated compliance with discovery orders does not preclude the imposition of sanctions," including dismissal of an action. (*Sauer v. Superior Court* (1987) 195 Cal.App.3d 213, 230.)

Even if the belated responses were considered, the order was necessary. First, Taylor did not sign the discovery responses he provided under oath, as required. (§§ 2030.250, subd. (a) [interrogatories], 2031.250, subd. (a) [demands for inspections], 2033.210, subd. (a) [requests for admissions].) "Unsworn responses are tantamount to no responses at all." (*Appleton v. Superior Court* (1988) 206 Cal.App.3d 632, 636.)

Second, Taylor did not answer any of the form interrogatories. A party's failure to do so may warrant dismissal. (*Frates v. Treder* (1967) 249 Cal.App.2d 199, 206; see §§ 2030.290, subd. (c), 2030.300, subd. (e).)

Third, Taylor's responses to the inspection demands did not comply with sections 2031.220 and 2031.230: His "yes" answers to demands 7 and 8 do not state whether the documents will be produced in whole or in part, and do not state who

possesses those documents. (See § 2031.220.) His “none” answers to several other demands do not affirm he made a diligent search and reasonable inquiry into complying with those demands, nor do they specify the bases for his inability to comply or name other parties that may have such documents in their possession. (See § 2031.230.) A party’s failure to provide Code-compliant responses may warrant dismissal. (*Electronic Funds Solutions, LLC v. Murphy* (2005) 134 Cal.App.4th 1161, 1183-1184; see §§ 2031.310, subd. (i), 2031.320, subd. (c).)

DISPOSITION

The judgment is affirmed. The Esquedas shall recover costs on appeal.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Thomas Pearce Anderle, Judge

Superior Court County of Santa Barbara

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Kyle Wyatt Taylor, in pro. per., for Plaintiff and  
Appellant.

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