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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

MICHAEL WHITE,

Plaintiff and Respondent,

v.

JULIUS JOHNSON,

Defendant and Appellant.

B266531

(Los Angeles County
Super. Ct. No. BC532114)

APPEAL from a judgment of the Superior Court of Los Angeles County, Susan Bryant-Deason, Judge. Affirmed.

Julius J. Johnson, in propria persona, for Defendant and Appellant.

Michael White, in propria persona, for Plaintiff and Respondent.

Julius Johnson appeals from a judgment in favor of Michael White after a bench trial on White's legal malpractice complaint against Johnson and his law firm. We affirm.

BACKGROUND

A. Factual Background

On September 2, 2011, Los Angeles Sheriff's Department (LASD) deputies responded to a call about two possibly-Russian males jumping a fence and retreating into a white van near 7772 Santa Monica Boulevard. The officers approached a white cargo van parked at 7768 Santa Monica Boulevard, knocked on the van door, and announced themselves. White, who was sleeping inside when the officers knocked, emerged from the van at the officers' direction.

After White exited the van, one of the officers entered the van to retrieve White's identification. While he was in the van, the officer also saw a brown paper bag that contained a handgun—registered to White—and ammunition. The officers arrested White and charged him with carrying a loaded firearm in a vehicle under former Penal Code section 12025, subdivision (a) (Stats. 2011, ch. 39, § 63, p. 245).

White was released on bail after three days in jail. The district attorney's office rejected the case after determining that the officers lacked probable cause to arrest White for the offense with which he was charged.

After the district attorney declined to prosecute White, White retained Johnson to represent him against the county. On December 20, 2011, White filed a claim with the county alleging unlawful search and unlawful arrest. The claim alleged more than \$155,000 in damages.

Through Johnson, White later filed a lawsuit in state court alleging assault and battery, intentional infliction of emotional distress, negligence, and deprivation of civil rights. The county removed the case to federal court. Neither Johnson nor counsel for the county appeared at a scheduling conference on January 7, 2013, and the district court dismissed White's complaint "for lack of prosecution and for failure to appear at the Scheduling Conference."¹

On White's behalf, Johnson filed a motion for relief from the dismissal, which the district court denied on January 29, 2013. On April 9, 2013, the district court denied a motion for reconsideration of its denial of the motion for relief. Johnson's motions for relief and, later, reconsideration cited technology problems in his office as the reason he missed the January 7, 2013 hearing. In its order denying the motion for reconsideration, the district court noted the "discrepancy between the dates of [Johnson's] alleged email outage and the [district court's] email to counsel," his "failure to respond to a January 18, 2013 email from the" district court, Johnson's "failure to abide by Court rules and respond to Court emails," and that Johnson " 'did not even properly notice' " the motion for relief. The district court could not " 'conclude that [Johnson's] failure to appear at the scheduling conference was attributable to an isolated incident of excusable neglect.' " The district court further explained: "It appears that each time [Johnson] misses a deadline, the range of

¹ White repeatedly contends that the county had, through Johnson, offered him a substantial settlement of his federal claims. There is nothing in the record to corroborate this claim, and it does not appear that the trial court took this particular contention into account when rendering judgment.

dates during which his email service was unavailable fortuitously expands to cover that additional time frame.”

After the district court denied the motion for reconsideration, Johnson filed a notice of appeal to the United States Court of Appeals for the Ninth Circuit. On May 14, 2013, the Court of Appeals issued an order noting that the docketing and filing fees for the appeal had not been paid and stating that the appeal would be dismissed if the appellant failed to comply with the order in any of three articulated ways within 21 days. On June 19, 2013, the Court of Appeals dismissed the appeal and ordered Johnson “to notify immediately his . . . client in writing regarding” the dismissal.

B. Procedural Background

On January 3, 2014, White filed a complaint against Johnson for legal malpractice. The trial court presided over a bench trial of White’s action on May 12, 13, 14, and 20, 2015.

At trial, both White and Johnson testified extensively. Additionally, the trial court heard from the deputy who arrested White on September 2, 2011 and Johnson’s assistant who had communicated with White during the events leading up to the dismissal of his federal court case. Among other evidence, the trial court admitted the incident report and probable cause declaration regarding White’s arrest, the form noting the district attorney’s rejection of White’s charges, and the claim Johnson filed on White’s behalf with the county. The trial court also reviewed the motion for reconsideration Johnson filed on White’s behalf, and the federal district court’s order denying the motion for reconsideration, which extensively quoted the order denying the motion for relief.

The trial court issued a minute order on May 20, 2015 stating: “The court finds judgment in favor of the plaintiff Michael White and against defendants Julius Johnson and The Law Offices of Julius Johnson and Associates, Inc. in sum of \$40,000.00.” The trial court signed a judgment on June 12, 2015 and an amended judgment on July 13, 2015 for White against Johnson and Johnson’s law office. Johnson timely appealed the amended judgment.²

DISCUSSION

Johnson challenges the sufficiency of the evidence to support the trial court’s judgment, arguing that the officers who arrested White had probable cause to do so and that a jury could have convicted White of a violation of the Penal Code section with which he was charged. Johnson also contends the trial court committed legal error by not sua sponte admitting evidence it was not asked to admit, and that the trial court’s judgment should be vacated because a lawyer is not required to loan money to a client for appellate costs.

“The elements of a cause of action in tort for professional negligence are: (1) the duty of the professional to use such skill, prudence, and diligence as other members of his profession commonly possess and exercise; (2) a breach of that duty; (3) a proximate causal connection between the negligent conduct and the resulting injury; and (4) actual loss or damage resulting from the professional’s negligence.” (*Budd v. Nixen* (1971) 6 Cal.3d 195, 200, superseded by statute on another ground, as stated in *Adams v. Paul* (1995) 11 Cal.4th 583.) Johnson’s sufficiency of the evidence challenge questions the causal connection between

² Neither the record nor our files contain a notice of appeal by The Law Offices of Julius Johnson and Associates, Inc.

his conduct and White's injury. Johnson's argument that he had no responsibility to pay White's appellate fees also challenges the causation element. Johnson contends the trial court's failure to sua sponte admit a document it was not asked to admit is a "plain error affecting a substantial right," pursuant to Federal Rules of Evidence, rule 103(a)(2)(e).

A. Causation

1. Probable Cause for White's Arrest

Johnson contends that there was probable cause for White's September 2011 arrest and that a jury could have found White guilty of carrying a concealed weapon in a vehicle in violation of former Penal Code section 12025, subdivision (a)(1). Because LASD had probable cause to arrest White, and because a jury could have convicted him, Johnson argues, Johnson's errors did not injure White. On those contentions, Johnson challenges the sufficiency of the evidence to support the trial court's judgment here.

"When a trial court's factual determination is attacked on the ground that there is no substantial evidence to sustain it, the power of an appellate court *begins and ends* with the determination as to whether, *on the entire record*, there is substantial evidence, contradicted or uncontradicted, which will support the determination, and when two or more inferences can reasonably be deduced from the facts, a reviewing court is without power to substitute its deductions for those of the trial court. *If such substantial evidence be found, it is of no consequence that the trial court believing other evidence, or drawing other reasonable inferences, might have reached a contrary conclusion.*" (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873-874, original italics.)

Johnson's brief recounts a series of facts about White's arrest that he contends gave LASD "a lawful right of access to" White's gun, which Johnson contends was evidence or contraband "found in plain view during a lawful observation."

Johnson repeats his assertions that the LASD's foray into White's van was "lawful" because in order to invoke the "plain view" doctrine in this case, LASD must have first had "lawful" access to the interior of White's van and to the gun he was charged with concealing. (*Horton v. California* (1990) 496 U.S. 128, 140.) Johnson repeatedly cites evidence that LASD "obtained . . . White's verbal consent" to enter his van. "In the instant case," Johnson contends, LASD "had . . . White's verbal consent to go into [his] van." Having lawfully obtained access to White's van and found the gun and ammunition, Johnson argues, LASD had probable cause to arrest White and charge him with the Penal Code violation they did.

Johnson's arguments regarding the substantial evidence standard of review are incorrect. Johnson's argument is, boiled down to its essence, that there is evidence in the record upon which the trial court *could* have concluded that LASD had probable cause to make the arrest and charge White with the crime it did.

Johnson's explication of the facts and reliance upon his hand-picked facts to support his argument leans heavily on us to ignore *other* facts. White testified that immediately upon his emergence from the van, he was handcuffed and one deputy told another, "if he moves, shoot him." White testified that he did *not* give LASD consent to enter his van.

The trial court believed White's testimony and several times said so on the record. The trial court also disbelieved the deputies' testimony and said so on the record.

White testified consistently that he was told LASD was looking for two Russian suspects when they encountered White, who is African-American. Both the incident report and probable cause determination, however, stated that officers were responding to a "suspicious person in a vehicle call." Well into the trial, the county produced a supplemental incident report authored by the officer who assisted with the district attorney's reject determination that noted the call was *actually* a call about two possibly-Russian males jumping a fence and disappearing into a white van. White's testimony corroborated by LASD's supplemental report impacted the trial court's credibility determinations.

2. Johnson's Responsibility for Appellate Fees

Johnson's contention that he was not responsible to pay White's filing and other fees on appeal to the Ninth Circuit is a deflection.

Johnson and White disagree about Johnson's attempts to inform White about his appeal and secure White's signature on a fee waiver that would have prevented the Ninth Circuit from dismissing White's appeal. Johnson contends he sent multiple letters to White between May 14, 2013, when the Ninth Circuit ordered White to pay docketing and filing fees, and June 4, which was the deadline to comply with the terms of the Ninth Circuit's order. White testified that he received only one letter requesting his presence in Johnson's office to sign a fee waiver, dated June 3, 2013. That is the only such letter that was offered or admitted at trial—by either party. Johnson's assistant admitted that White

repeatedly requested the fee waiver be mailed to him, and that she had a conversation with him that prompted the June 3 letter, in which she told him she would send him the fee waiver, but that he would “not receive it in time in order to fill it out and have it sent back” to Johnson’s office.

Whether Johnson was required to pay filing and docketing fees for White is irrelevant. The trial court could have reasonably believed that Johnson failed to take *multiple* other steps that could have preserved White’s appeal, and knew long before the Ninth Circuit dismissed the appeal that his actions were going to result in a dismissal.

B. Trial Court’s Failure to Admit LASD’s Supplemental Report

During trial, the trial court referenced and LASD’s representative testified about a supplemental report upon which the district attorney’s office based its rejection of White’s prosecution. A copy of the supplemental report was provided to White and Johnson during the trial. Johnson’s trial attorney questioned the arresting officer about the contents of the supplemental report.

Johnson contends that the document was admissible under the Federal Rules of Evidence to give effect to his “substantial right to appeal the [trial] court’s decision.” Johnson argues that the trial court should have admitted the document even though no party moved the document’s admission, and no party objected to its admission. Johnson cites no authority for either proposition.

We disagree with Johnson for two reasons. First, Johnson does not argue that the supplemental report should have been admitted in the federal court, where no evidence was ever taken.

Nor does Johnson contend that the evidence should have been admitted as part of the case underlying White's legal malpractice case. In either of those circumstances, the Federal Rules of Evidence might apply. But the argument here is that the evidence was admissible under the Federal Rules to give effect to *Johnson's* rights arising under *state* law.³ "[S]tate courts . . . are not bound by the Federal Rules of Evidence," but by the California Evidence Code. (*Roberti v. Andy's Termite & Pest Control, Inc.* (2003) 113 Cal.App.4th 893, 897, fn. 4.) Johnson's assertions about the Federal Rules of Evidence, therefore, are inapposite.

Further, we are aware of no authority that would require the trial court to inject itself into civil proceedings to sua sponte admit evidence. We find no error in the trial court's failure to sua sponte admit a supplemental incident report about which the parties elicited trial testimony.

DISPOSITION

The trial court's judgment is affirmed. Respondent is entitled to costs on appeal.

NOT TO BE PUBLISHED.

CHANNEY, J.

We concur:

ROTHSCHILD, P. J.

CURREY, J.*

³ The content of the supplemental report was testified to at length during the trial.

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