Filed 12/28/17 Neal v. Los Angeles Unified School Dist. CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

DIANE NEAL, Plaintiff and Appellant, v. LOS ANGELES UNIFIED SCHOOL DISTRICT, Defendant and Respondent.	B276414 (Los Angeles County Super. Ct. No.BC559280)

APPEAL from a judgment of the Superior Court of Los Angeles County, Michael M. Johnson, Judge. Affirmed.

Diane Neal in pro. per., for Plaintiff and Appellant.

Alexander Molina, Chief Labor and Employment Counsel, Anthony J. Bejarano and David V. Greco, Assistant General Counsel for Defendant and Respondent.

INTRODUCTION

Diane Neal, in propria persona, filed a lawsuit against her former employer, the Los Angeles Unified School District (LAUSD), alleging wrongful termination and related claims. The trial court granted LAUSD's motion for summary judgment and entered judgment on the complaint. Neal appeals. However, she has failed to support her contentions with an adequate record on appeal; therefore, we affirm the judgment.

FACTUAL AND PROCEDURAL HISTORY

Neal has provided only a skeletal record on appeal, consisting of the trial court's case docket, her complaint, the minute order and judgment reflecting the granting of summary judgment, her notice of appeal, notice designating record on appeal, and "clarification" of notice designating record on appeal. From these documents and the parties' briefs, we provide the following limited summary of the background facts.

Neal filed her complaint in October 2014 against LAUSD and the teacher's union, United Teachers of Los Angeles (UTLA). She alleged the following causes of action: (1) disability discrimination; (2) failure to provide reasonable accommodation; (3) failure to engage in a good faith interactive process; (4) wrongful termination in violation of public policy; and (5) intentional infliction of emotional distress.

According to the complaint, Neal was hired by LAUSD in 1998 as a third grade teacher. She was placed on disability leave in October 2004 "for mental health reasons" and subsequently discovered "other physical health problems" as well. She was cleared to return to work with "certain restrictions" as of September 2008. However, she was reassigned to a "work environment which was not only hostile, but also unsuitable to

her health condition." Neal further alleged that LAUSD failed to reasonably accommodate her disabilities or to discuss such accommodations, UTLA "helped and condoned LAUSD's disability discrimination," and LAUSD then terminated her because of her disabilities by forcing her into retirement in January 2011.

The court sustained UTLA's demurrer to the complaint and entered an order dismissing it from the case in May 2015. LAUSD, the remaining defendant, filed a motion for summary judgment, or in the alternative, summary adjudication, in December 2015. Neal filed an opposition in February 2016. The motion was argued on March 11, 2016; Neal appeared in propria persona. The court granted the motion and entered judgment in favor of LAUSD on April 8, 2016. Neal moved for reconsideration, which the court denied. Neal timely appealed.[1]

DISCUSSION

Neal argues on appeal that the court improperly granted summary judgment in favor of LAUSD because "the unrefuted evidence" supported her claims. However, Neal has failed to provide us with *any* of the briefing or evidence submitted by the

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[1] We reject LAUSD's contention that Neal's appeal is untimely based on the service of a notice of ruling. Neal's notice of appeal was due within 60 days following service of a notice of entry of judgment, or, in the absence of such service, within 180 days of entry of judgment. (Cal. Rules of Court, rule 8.104.) Here, the only evidence in the record of any service upon Neal was a proposed judgment served on March 21, 2016. There is no evidence that the final judgment, which was signed and filed by the court on April 8, 2016, was similarly served. As such, Neal had 180 days following entry of judgment to file her appeal; she did so on July 26, 2016, well within the time limit.

parties on summary judgment in this matter. The paucity of the record is fatal to her appeal.

The judgment and orders of the trial court are presumed on appeal to be correct, "'and all intendments and presumptions are indulged'" in their favor. (*Schnabel v. Superior Court* (1993) 5 Cal.4th 704, 718, quoting *In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) Appellant bears the burden of overcoming this presumption by showing error on an adequate record. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140-1141; *Ballard v. Uribe* (1986) 41 Cal.3d 564, 574 (*Ballard*).) "Failure to provide an adequate record on an issue requires that the issue be resolved against [appellant]." (*Hernandez v. California Hospital Medical Center* (2000) 78 Cal.App.4th 498, 502 (*Hernandez*); *Pringle v. La Chapelle* (1999) 73 Cal.App.4th 1000, 1003, fn. 2 [reviewing court is limited to matters contained in the record and without the proper record, the evidence is conclusively presumed to support the judgment].)

Here, Neal failed to meet her burden to provide an adequate record on appeal. She contends the evidence did not support the grant of summary judgment, but did not designate the summary judgment motion or related filings for inclusion in the clerk's transcript. Apart from the items that are automatically part of the clerk's transcript, Neal requested the inclusion of one additional document—her complaint. She did not designate any documents related to the summary judgment proceedings.[2] After LAUSD filed a respondent's brief pointing

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[2] Neal did request a reporter's transcript including the hearings on the motions for summary judgment and for reconsideration. However, we received a notice from the clerk of the superior court stating that, as reflected in the relevant

out the deficiencies in the record on appeal, Neal did not respond to these contentions and did not seek to augment the record.

We cannot evaluate whether the trial court erred in granting summary judgment if we are unable to review the papers and accompanying evidence in support of and opposition to the motion. We are therefore compelled by the state of the record to presume no error and affirm. (*Hernandez, supra,* 78 Cal.App.4th at p. 502; see also *Ballard, supra*, 41 Cal.3d at pp. 574–575.)

In addition, Neal violated the rule that an appellant's opening brief must "[p]rovide a summary of the significant facts limited to matters in the record." (Cal. Rules of Court, rule 8.204(a)(2)(C).) In her appellate briefs, Neal made no effort to summarize the evidence presented in the summary judgment proceeding, nor did she refer to any of the evidence submitted by LAUSD. Further, although Neal made numerous factual assertions on appeal, her briefs were devoid of any citation to the record. These unsupported citations were improper and cannot satisfy her appellate burden. (See, e.g., *Keyes v. Bowen* (2010) 189 Cal.App.4th 647, 655 [appellant must meet burden by "presenting legal authority on each point made and factual analysis, supported by appropriate citations to the material facts in the record; otherwise, the argument may be deemed forfeited"].)

We note that Neal's status as a self-represented litigant does not excuse her failure to provide an adequate record. Although a defendant is proceeding in propria persona, she must

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minute orders, no court reporter was present for either hearing. This notice was also sent to Neal, with instructions to contact the court if the minute orders were incorrect. She has not done so.

"'be treated like any other party and is entitled to the same, but no greater consideration than other litigants and attorneys.' . . . Indeed, "'the in propria persona litigant is held to the same restrictive rules of procedure as an attorney.'" [Citation.]" (*First American Title Co. v. Mirzaian* (2003) 108 Cal.App.4th 956, 958, fn. 1.) "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, 985.)

DISPOSITION

The judgment is affirmed. LAUSD is awarded its costs on appeal.

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COLLINS, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.