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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

MASOUD BAMDAD,

Plaintiff and Appellant,

v.

CHRISTOPHER R.
MCREYNOLDS,

Defendant and Respondent.

B268405

(Los Angeles County
Super. Ct. No. BC570647)

APPEAL from a judgment of the Superior Court of Los Angeles County, John P. Farrell, Judge. (Retired Judge of the L.A. Sup. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.)
Affirmed.

Masoud Bamdad, in pro. per., for Plaintiff and Appellant.

No appearance for Defendant and Respondent.

Plaintiff Masoud Bamdad appeals from the judgment in favor of defendant Christopher R. McReynolds¹ entered after the trial court sustained a demurrer without leave to amend and dismissed the action with prejudice based on a violation of the applicable statute of limitation in this action for legal malpractice. Bamdad, who is incarcerated in federal prison, argues the trial court should have stayed his malpractice action until the federal court finally resolved his claim of factual innocence, or in the alternative, the dismissal should have been without prejudice. We affirm on the basis that Bamdad has failed to present an adequate record demonstrating error or prejudice.

Allegations of the Complaint

Bamdad, representing himself, filed his complaint against McReynolds on January 23, 2015. He was housed at that time in the United States Penitentiary in Marion, Illinois, after his conviction by jury in federal court of 13 counts of unlawfully prescribing painkillers to his patients.

Bamdad alleged that McReynolds was introduced to him as an experienced federal attorney. Dissatisfied with his trial counsel, Bamdad retained McReynolds for \$5,000 to prepare post-trial motions. McReynolds appeared in court for Bamdad for the first time on July 30, 2009, but did nothing to help him. He fired McReynolds “in the

¹ McReynolds has not filed a brief or appeared in this appeal.

beginning of 2010,” because McReynolds provided ineffective assistance of counsel to Bamdad in numerous ways, causing damages and injury.

The complaint alleges the following causes of action: (1) legal malpractice; (2) misrepresentation; (3) breach of fiduciary duty; (4) willful misconduct; (5) breach of contract; (6) negligent infliction of emotional distress; (7) intentional infliction of emotional distress; and (8) unjust enrichment. Bamdad sought \$1 million in actual damages and \$5 million in punitive damages.

Demurrer and Ruling

According to the Los Angeles Superior Court case summary, McReynolds filed a demurrer to the complaint on June 29, 2015. Bamdad did not designate the demurrer filed by McReynolds for inclusion in the record on appeal.

Bamdad’s opposition to the demurrer, which is contained in the clerk’s transcript on appeal, was filed on July 28, 2015. The opposition concedes that Bamdad has not obtained post-conviction exoneration as required by California law. Bamdad placed blame for his lack of exoneration on McReynolds, the federal district court, and the Ninth Circuit Court of Appeals. Bamdad argued that the statute of limitations was tolled under Code of Civil Procedure section 340.6, subdivision (a)(4), because Bamdad “is under a legal or physical disability which restricts the plaintiff’s ability to commence legal action.” Bamdad asserted that he is seeking exoneration in “four open

cases in four different courts.” He contended that the statute of limitations had not yet started to run, or at worst, it commenced on August 5, 2014, when an appellate court “assured Bamdad that he in fact has a colorable claim of constitutional violation, which tainted the entire proceedings.” Citing *Coscia v. McKenna & Cuneo* (2001) 25 Cal.4th 1194, Bamdad also argued the trial court should have stayed his legal malpractice action until other courts have resolved habeas corpus petitions. Finally, Bamdad’s opposition describes as “meritless” McReynolds’s “argument regarding the uncertainty of Bamdad’s claims.”

A hearing on the demurrer was held on October 23, 2015. The record on appeal does not include a reporter’s transcript of the hearing, or suitable substitute such as a settled or agreed statement.

A minute order reflects that the trial court sustained the demurrer without leave to amend and ordered the action dismissed with prejudice. The minute order states that that court found from the face of the pleadings that Bamdad knew all of the facts alleged in the complaint no later than the beginning of 2010. The complaint was filed almost five years later, on January 23, 2015, a date “clearly more” than the longest statute of limitations applicable in the case of four years.² The court also found “the case was not tolled under C.C.P. section 340.6.”

² The statute of limitations in a legal malpractice case requiring exoneration is now two years from the date of exoneration, based on the 2009 amendment to Code of Civil Procedure section 340.6.

DISCUSSION

As noted above, the record on appeal provided by Bamdad does not include a record of the oral proceeding of the hearing on the demurrer, nor does it include the demurrer filed by McReynolds. In combination, these two deficiencies in the record compel affirmance on the ground Bamdad has not established error or prejudice.

The Requirement of a Complete Record

We presume that a judgment or order of the trial court is correct. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; *In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 822 (*Falcone*).) Demonstration of error, alone, is insufficient to warrant reversal. An appellant must also demonstrate prejudice, in the form of a miscarriage of justice, based on an examination of the entire record. (*Falcone, supra*, at pp. 822–823.) “A necessary corollary to this rule would seem to be that a record is inadequate, and appellant defaults, if the appellant predicates error only on the part of the record he provides the trial court, but ignores or does not present to the appellate court portions of the proceedings below which may provide grounds upon which the decision of the trial court could be affirmed.” (*Uniroyal Chemical Co. v. American Vanguard Corp.* (1988) 203 Cal.App.3d 285, 302.)

A party appealing an adverse judgment has the burden of providing an adequate record in order to show error and prejudice. (*Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 186–187 (*Foust*) [discussing various situations requiring a reporter’s transcript or agreed or settled statement on appeal]; *Hernandez v. California Hospital Medical Center* (2000) 78 Cal.App.4th 498, 502 (*Hernandez*) [record is inadequate for review where the appellant has not included moving papers].)

Analysis

The record on appeal provided by Bamdad is inadequate to demonstrate error or prejudice. In his designation of the record on appeal, Bamdad checked a box indicating he would proceed without an oral record of the proceedings, acknowledging that “WITHOUT a record of the proceedings in the superior court[,] . . . the Court of Appeal will not be able to consider what was said during those proceedings in determining whether an error was made in the superior court proceedings.” Despite this admonition, as well as a letter from this court advising him that the record might be incomplete, Bamdad has not included a record of the oral proceedings in the appellate record.

In addition, Bamdad designated only two documents for the clerk’s transcript—his complaint and the opposition to the demurrer. Bamdad’s designation of the record failed to include the demurrer which is the subject of this appeal.

The combination of these defects in the record precludes a finding of error or prejudice. Without the demurrer, we have no way of determining what arguments were made by McReynolds. We can surmise that he raised a statute of limitations defense, because that was the basis of the trial court's ruling, and also that McReynolds argued the complaint was uncertain, because Bamdad made a passing comment in his opposition to an uncertainty argument, but there is no way to determine what argument was actually made on either issue, or if additional issues were raised in the demurrer.

We need not decide whether a reporter's transcript, or suitable substitute, is generally necessary when reviewing an order sustaining a demurrer. In this case, the absence of a record of oral proceedings, combined with Bamdad's failure to include the demurrer in the record on appeal, precludes effective appellate review of the merits as well as Bamdad's contention that the dismissal should have been without prejudice. Without a record of what issues were presented in the demurrer, and what arguments were made at the hearing, if any, we are left to presume that the judgment is correct and that Bamdad has not shown reversible error. (See *Foust, supra*, 198 Cal.App.4th at pp. 186–187; *Hernandez, supra*, 78 Cal.App.4th at p. 502.)

DISPOSITION

The judgment is affirmed. No costs are awarded on appeal.

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KRIEGLER, J.

We concur:

TURNER, P.J.

KIN, J.*

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