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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

KAN-MAN LAI,

Plaintiff and Appellant,

v.

CITY OF LOS ANGELES, by and
through the DEPARTMENT OF
WATER AND POWER,

Defendant and Respondent.

B263706

(Los Angeles County
Super. Ct. No. BC469876)

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

Kan-Man Lai, in pro. per., for Plaintiff and Appellant.

Michael N. Feuer, City Attorney, Joseph A. Brajevich, General Counsel for Water and Power, Anat Ehrlich, Assistant City Attorney, and Jed M. Silverstrom, Deputy City Attorney for Defendant and Respondent.

Plaintiff and appellant Kan-Mai Lai (Lai), in propria persona, appeals a judgment entered following a defense verdict in favor of her former employer, defendant and respondent City of Los Angeles, by and through the Department of Water and Power (DWP).¹ The jury returned a special verdict, finding that Lai was unable to perform the essential duties of her position as a laboratory technician with reasonable accommodation for her physical condition.

We conclude Lai has not met her burden as the appellant to establish reversible error. Therefore, the judgment is affirmed.

FACTUAL AND PROCEDURAL BACKGROUND²

On September 20, 2011, Lai filed this wrongful termination action against the DWP. The operative second amended complaint set forth two causes of action: (1) disability discrimination in violation of the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.); and (2) wrongful termination in violation of public policy. Lai pled, inter alia, that she commenced her employment with the DWP on October 15, 2008, and was terminated seven weeks later, on December 3, 2008. Her disabilities include a back injury, eczema, and an anxiety/stress disorder. Said conditions limited her ability to perform her job assignment without the following

¹ Lai, as an appellant in propria persona, is entitled to the same, but no greater, consideration than other litigants and attorneys. (*Bistawros v. Greenberg* (1987) 189 Cal.App.3d 189, 193; *Harding v. Collazo* (1986) 177 Cal.App.3d 1044, 1054-1056.)

² This summary is developed solely from the clerk's transcript, as Lai did not furnish a reporter's transcript on appeal.

reasonable accommodations: not being required to lift more than 20 pounds; being permitted to wear protective clothing to avoid exposure to toxic chemicals; being given sufficient time to become comfortable in her work environment; and not being exposed to yelling or insults so as to avoid needless stress.

The DWP demurred. The trial court overruled the demurrer to the first cause of action for disability discrimination, and sustained the demurrer without leave to amend as to the second cause of action, on the ground that a tort claim for wrongful termination in violation of public policy cannot be asserted against a public entity. (*Miklosy v. Regents of University of California* (2008) 44 Cal.4th 876, 898-900.)

On July 3, 2014, the trial court granted the unopposed motion of Haney & Young LLP to be relieved as Lai's counsel due to irreconcilable differences between counsel and Lai. Lai subsequently filed an ex parte application for reconsideration. The trial court denied the request, noting there was no explanation as to "why plaintiff did not file written opposition to counsel's motion to be relieved as counsel."

On September 4, 2014, the trial court granted the DWP's motion to compel an independent medical examination, stating that by "asserting a causal link between her claimed psychological injuries and Defendant's conduct, Plaintiff has placed her mental condition in controversy."

On October 1, 2014, the trial court granted the following accommodation: "Lai will be accommodated as appropriate during Court proceedings with breaks; she may use CourtCall for all non-trial proceedings."

On October 20, 2014, Lai obtained new counsel.

On January 16, 2015, the parties filed a joint statement of the case, which provided in relevant part: “Lai was employed by [the DWP] as a Laboratory Technician at its Harbor Generating Station electric power plant from October 13, 2008 through December 3, 2008, when her employment was terminated. [¶] [Lai] claims that she had various work restrictions due to various claimed disabilities. She claims that the [DWP] failed to engage in a good faith interactive process (or communication) with [her] to determine whether and how her claimed work restrictions could be reasonably accommodated to allow her to perform all of the essential functions of her job; failed to reasonably accommodate her work restrictions by modifying the work to allow her to perform all of the essential functions of her job; and discriminated against her based on her claimed disabilities when it terminated her employment. [¶] [DWP] denies each of these claims and contends that: 1) It engaged in a good faith interactive process with [Lai] and did not disqualify her from performing her job due to any work restrictions in performing the Laboratory Technician position of which [Lai] made it aware and documented; 2) It provided reasonable accommodation to allow [Lai] to perform the essential functions of her job for all work restrictions in performing the Laboratory Technician position of which [Lai] made it aware and documented; 3) It did not terminate [Lai] because of any work restriction or disability she may have had but because she repeatedly arrived late to work, including on five of her first six days of work, improperly removed official documents from the Laboratory in which she worked, and otherwise performed her work in a substandard manner. [¶] [DWP] further contends that: 1) [Lai’s] claims should be barred or limited because she failed to take reasonable steps to mitigate

her damages by obtaining other employment and 2) some or all of [her] claims are barred by her failure to include them in a timely administrative complaint filed with the California Department of Fair Employment and Housing.”

On January 27, 2015, the matter came on for a jury trial. After the defense rested, the trial court granted the DWP’s motion for directed verdict “as to the cause of action for failure to engage in a good faith interactive process on the ground that plaintiff failed to introduce any evidence showing that defendant failed to engage in a good faith interactive process with plaintiff.”

On February 2, 2015, the jury returned a unanimous special verdict in favor of the DWP, finding that Lai was unable to perform the essential job duties of a laboratory technician with reasonable accommodation for her physical condition. The trial court then discharged the jury.

That same day, although Lai was represented by counsel, she filed a motion for reconsideration, in propria persona, requesting, inter alia, that the court set aside its order “striking” her cause of action alleging a violation of the interactive process.

On February 24, 2015, the trial court entered judgment on the verdict in favor of the DWP.

On February 25, 2015, Lai filed another motion in propria persona, objecting to the “proposed judgment on jury verdict.” On March 16, 2015, Lai filed yet another post-trial motion in propria persona, again seeking reconsideration and an order vacating the judgment.

On April 6, 2015, the trial court summarily denied all of Lai’s post-trial motions. The court noted that Lai’s motions were brought in propria persona, but she continued to be represented by counsel, who had not been substituted out. “Also, the motions

were filed after entry of judgment, and the court has no jurisdiction to consider the issues raised by Plaintiff.”

On April 24, 2015, Lai filed a timely notice of appeal from the judgment entered on February 24, 2015.

The DWP filed a memorandum of costs. On May 7, 2015, the trial court denied a motion by Lai to tax costs, and thereafter awarded the DWP costs in the amount of \$82,994.14, to be added to the February 24, 2015 judgment. In awarding costs to the DWP, the trial court explained, “this is the unusual case where an award in favor of the defendant is fully justified. Plaintiff’s case was completely frivolous; she presented no evidence to support her FEHA claims; she claimed discrimination, but the evidence was clear that she was terminated for the simple reason that she could not get to work on time; and she was the only witness who testified in support of her claims. The court found her testimony entirely incredible; and while Plaintiff may not have perjured herself in the criminal sense, her testimony certainly reflects a distorted and entirely unsupported version of reality. [¶] Beyond the lack of merit to her case, Plaintiff was extraordinarily difficult and vexatious throughout the case. She has been represented by four attorneys, and she represented herself for several months. Plaintiff has made multiple motions for reconsideration which had no merit whatsoever, and several of the motions were made when she had an attorney of record representing her in the case. Plaintiff was so difficult, uncontrollable and obstreperous that the court had to appoint a discovery referee to supervise the completion of her deposition. [¶] In short, this is an entirely appropriate case for an award in favor of the defendant.”

DISCUSSION

Resolution of this appeal is governed by settled principles. An appellant has the burden of providing an adequate record for review, and failure to provide an adequate record on an issue requires that the issue be resolved against the appellant. (*Randall v. Mousseau* (2016) 2 Cal.App.5th 929, 935.) Further, “[u]nder well-established principles of appellate review, ‘[t]o demonstrate error, appellant must present meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error.’” (*Saltonstall v. City of Sacramento* (2015) 234 Cal.App.4th 549, 587-588.)

As indicated, Lai has not furnished this court with a reporter’s transcript of the trial. Accordingly, this court cannot determine whether the trial court erred in granting the DWP’s motion for directed verdict on Lai’s claim that the DWP failed to engage in the interactive process. In a properly presented appeal from a judgment based on a directed verdict in favor of the defendant, we would review the evidence in the light most favorable to the plaintiff, resolving all conflicts and drawing all inferences in its favor and disregarding conflicting evidence. (*Wolf v. Walt Disney Pictures & Television* (2008) 162 Cal.App.4th 1107, 1119.) Here, however, Lai’s failure to supply this court with a reporter’s transcript requires that the issue be resolved against her. (*Randall v. Mousseau, supra*, 2 Cal.App.5th at p. 935.)

As for Lai’s numerous other assignments of error, the opening brief is virtually devoid of citations to the record, and fails to present any intelligible arguments. We are not required to search the record to ascertain whether it contains support for Lai’s contentions. (*Mansell v. Board of Administration* (1994)

30 Cal.App.4th 539, 545.) Further, it is not this court's function to serve as Lai's backup appellate counsel and to develop arguments on her behalf. (*Ibid.*) Given Lai's failure to present an intelligible legal argument, we treat her contentions as waived. (*Ibid.*)

DISPOSITION

The judgment is affirmed. The DWP shall recover its costs on appeal.

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EDMON, P. J.

We concur:

ALDRICH, J.

GOSWAMI, J.*

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