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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

CARY W. GOLDSTEIN,

Plaintiff and Appellant,

v.

JULIE ANNETTE D'ARCA,

Defendant and Respondent.

B290466

Los Angeles County

Super. Ct. No. BC653215

APPEAL from a judgment of the Superior Court of Los Angeles County, Richard Fruin, Jr., Judge. Affirmed.

Goldstein | Clark, Cary W. Goldstein and Sarah C. Clark for Plaintiff and Appellant.

Chadwick J. Bradbury for Defendant and Respondent.

INTRODUCTION

Plaintiff and appellant Cary W. Goldstein sued his former client, defendant and respondent Julie Annette D'Arca, for unpaid attorney's fees he claimed she owed him under a written retainer agreement. Because Goldstein has presented an inadequate appellate record, we are unable to assess his claims of error and therefore affirm the judgment.

BACKGROUND

Based on what we can glean from the limited record before us, it appears Goldstein filed a breach of contract action against D'Arca alleging she failed to pay all the attorney's fees he earned when representing her in a civil matter that ultimately settled. After a one-day bench trial at which Goldstein and D'Arca testified and 14 exhibits were admitted into evidence, the court issued a written statement of decision, then entered judgment for D'Arca. The trial was not transcribed, and Goldstein did not request a settled or agreed statement of what occurred. (See Cal. Rules of Court,¹ rules 8.134 [agreed statement], 8.137 [settled statement].)

Goldstein filed a timely notice of appeal, and elected to proceed with a clerk's transcript only. Notably, he did not designate, and the clerk's transcript does not contain, either the complaint or D'Arca's answer. And, while Goldstein designated the trial exhibits—exhibits that apparently included the retainer agreement and the settlement agreement at issue in the case—he did not lodge them with this court. (See rule 8.224(b)(2).)

¹ All undesignated rule references are to the California Rules of Court. All undesignated statutory references are to the Civil Code.

DISCUSSION

“ ‘Under the doctrine of implied findings, the reviewing court must infer, following a bench trial, that the trial court impliedly made every factual finding necessary to support its decision.’ [Citation.] Furthermore, in the absence of evidence to the contrary, ‘ “[a] judgment or order of the lower court is presumed correct. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.” [Citations.]’ [Citation.]” (*Natkin v. California Unemployment Ins. Appeals Bd.* (2013) 219 Cal.App.4th 997, 1013, italics omitted.)

Goldstein, like all appellants, bears the burden of proof on appeal. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295–1296.) But the trial proceedings and pretrial hearings in this case were not reported, and Goldstein has not submitted a substitute for the missing transcripts, such as a settled or agreed statement. (See rules 8.134 & 8.137.) Accordingly, we may not reverse based on any error at those proceedings unless the error appears on the face of the record. (Rule 8.163; see *Dumas v. Stark* (1961) 56 Cal.2d 673, 674.) Put another way, “[w]ithout the proper record, we cannot evaluate issues requiring a factual analysis.” (*Pringle v. La Chapelle* (1999) 73 Cal.App.4th 1000, 1003.)

Here, each of Goldstein’s appellate claims rests on documents, statements, or testimony that are not before us.²

² Goldstein’s appellate briefs are replete with unsupported factual assertions. For example, the statement of facts in his opening brief cites primarily to his trial brief, which, in turn, cites to the exhibits he

First, Goldstein argues that section 1102.1 et seq. does not apply to the properties transferred to D’Arca under the settlement agreement in the underlying litigation—an argument contingent on the premise that the agreement was enforceable by court order because it provided for continuing jurisdiction. But Goldstein has not furnished a copy of the settlement agreement to support that claim.

Then, Goldstein argues that he had no duty to advise D’Arca of her right to section 1102.1 disclosures because he is not a real estate broker and the retainer agreement does not suggest he would act as one—but the record, which does not contain either the retainer agreement or any testimony Goldstein may have given on these topics, does not support either claim. (See *Hearn v. Howard* (2009) 177 Cal.App.4th 1193, 1201 [lack of a reporter’s transcript of the crucial proceedings requires us to “presume that what occurred at that hearing supports the judgment”].)

Next, Goldstein argues he did not materially breach the retainer agreement by failing to provide any required disclosures because D’Arca did not prove sufficiently specific damages. Yet while Goldstein acknowledges this is a question of fact, he does not provide any. In addition to failing to give us a copy of the retainer agreement he claims he did not breach, Goldstein supplies none of the trial testimony he claims falls short.

has not provided. Many of his factual claims lack even that inadequate support. (See rule 8.204(a)(1)(C) [requiring citations to record].) We disregard any statements of fact that are outside the record on appeal. (*SCC Acquisitions, Inc. v. Central Pacific Bank* (2012) 207 Cal.App.4th 859, 863.)

Finally, Goldstein complains about pretrial discovery, chastises the court for not abiding by representations it purportedly made before trial, goes on at length about his personal views of the court's statements, and explains the decisions he made in supposed reliance on those statements. We have no way to evaluate any of this.

Where, as in this case, a party fails to furnish an adequate record of the challenged proceedings, his appellate claims must be resolved against him. (*Maria P. v. Riles, supra*, 43 Cal.3d at pp. 1295–1296.) As Goldstein has not provided a sufficient record in this case, we conclude he has not met his burden of proving reversible error.

DISPOSITION

The judgment is affirmed. Respondent Julie Annette D'Arca shall recover her costs on appeal.

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LAVIN, Acting P. J.

WE CONCUR:

EGERTON, J.

DHANIDINA, J.