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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

KUROSH CHAMAN,

Plaintiff and Appellant,

v.

LOS ANGELES COUNTY
METROPOLITAN
TRANSPORTATION
AUTHORITY,

Defendant and
Respondent.

B278359

(Los Angeles County
Super. Ct. No. BC484587)

APPEAL from an order of the Superior Court of
Los Angeles County. Randolph M. Hammock, Judge. Affirmed.

Kurosh Chaman, in pro. per., for Plaintiff and Appellant.

Law Offices of John C. Doyle and John C. Doyle for
Defendant and Respondent.

After appellant Kurosh Chaman failed to appear for the final status conference before the trial court, which proceeding had been continued six times over the course of a year, the trial court dismissed Chaman's complaint against respondent the Los Angeles County Metropolitan Transportation Authority (MTA). Five months later, Chaman filed a motion under Code of Civil Procedure section 473, subdivision (b) to set aside the dismissal, stating he had experienced medical problems that prevented him from attending the final status conference. The trial court denied Chaman's motion for relief and Chaman appealed.

As explained below, Chaman has failed to provide an adequate record on appeal and has failed to support his position with either reasoned legal argument or citations to the abbreviated appellate record. Moreover, based on our review of the abbreviated record, we conclude the trial court did not abuse its discretion in denying Chaman relief from the dismissal. Accordingly, we affirm.

BACKGROUND

The following facts and procedural history are taken from the trial court's order denying Chaman's motion to set aside the dismissal of his case.

1. Events Preceding Dismissal of Chaman's Complaint

On May 11, 2012, Chaman filed a complaint against MTA based on injuries he sustained on December 14, 2011, while riding an MTA bus. Beginning in December 2013, Chaman represented himself in the action and apparently prosecuted his case until about January 2015. Between January 2015 and January 2016, the trial court continued the final status conference and trial five times based on party stipulations.

Eventually, the final status conference was scheduled for January 14, 2016. Chaman did not appear and the trial court continued the status conference for a sixth time to the then-trial date of January 27, 2016. MTA notified Chaman of the court's order. However, on January 27, 2016, Chaman again did not appear. Thus, that same day, the trial court granted MTA's oral motion under Code of Civil Procedure section 581, subdivision (b)(5) for dismissal of the case without prejudice.

2. Chaman's Unsuccessful Motion to Set Aside the Dismissal

About five months later, on June 22, 2016, Chaman filed a motion under Code of Civil Procedure section 473, subdivision (b) seeking to set aside the January 27 dismissal. Chaman explained he tried to attend the January 2016 final status conference and trial date, but he became ill and, as a result, "arrived 10 minutes late that day." In a supporting declaration, he stated he had surgery before the final status conference,¹ and on his way to court, he "suddenly . . . was bleeding and had no other choice to return home and go to the hospital." He stated he contacted the court to ask for a brief continuance, but "unfortunately, Clerk said they cannot move the hearing." Chaman also attached what he called a "hospital report," which was a letter dated June 17, 2016 from "Prime Care Physicians" and signed by "A.david Matian, DO." The letter stated: "Kory, According to your statement, you were late to court on 01/27/16 due to urinary bleeding. This is presumably consistent with your ongoing urinary medical issues in my opinion. Your surgeon,

¹ Although it is unclear, it appears the referenced surgery is not related to the injuries Chaman alleges in his complaint against MTA.

however, may be able to validate this issue further if you wish to get his opinion as well.” MTA opposed the motion.

On July 29, 2016, the trial court denied Chaman’s motion to set aside the dismissal. The court agreed with MTA that Chaman failed to meet his burden under Code of Civil Procedure section 473, subdivision (b) and had not shown the January 27 dismissal was the result of excusable neglect. The court held the June 17 letter Chaman submitted was “insufficient to show that [Chaman] failed to attend the FSC/trial because of an incapacitating medical condition.” The court held the letter was not a hospital record, was based on inadmissible hearsay, and revealed the signing doctor had no personal knowledge of what happened to Chaman on January 27, 2016. The court also noted defense counsel reported Chaman did not arrive 10 minutes late to court on January 27, “but rather did not show up at all. Moreover, there is no record at all that [Chaman] appeared in court at ‘8:45 a.m.’ as he now claims.” Finally, the trial court held Chaman failed to explain why he waited five months to file his motion for relief. The court stated Chaman “offers no adequate and reasonable explanation as to why he waited five months to bring the motion, other than he was ‘in-and-out of the hospital during that period.’” Accordingly, the trial court denied Chaman’s motion to set aside the dismissal. On August 8, 2016, MTA filed notice of entry of the court’s order denying Chaman’s motion for relief.

3. Chaman's Notice of Appeal

On September 16, 2016, Chaman filed a notice of appeal. Chaman elected to proceed without a reporter's transcript or other record of the oral proceedings below. He also failed to designate any documents for the clerk's transcript on appeal. Thus, the clerk's transcript consists of the following required documents only: the case summary, the July 29, 2016 order denying Chaman's motion to set aside the dismissal, MTA's August 8, 2016 notice of ruling, Chaman's notice of appeal, and Chaman's designation of the record on appeal.

DISCUSSION

1. Rules of Appellate Review

We reiterate the following well-established rules, with which unfortunately pro se litigants are not always familiar. First, "an appealed judgment is presumed correct, and appellant bears the burden of overcoming the presumption of correctness." (*Boyle v. CertainTeed Corp.* (2006) 137 Cal.App.4th 645, 649-650.) "The appellant has the burden of showing error occurred. [Citations.] An appellant must support his argument in the briefs by appropriate references to the record, which includes providing exact page citation." (*Byars v. SCME Mortgage Bankers, Inc.* (2003) 109 Cal.App.4th 1134, 1140.) This requirement is found in California Rules of Court, rule 8.204(a)(1)(C), which states a brief on appeal "must" "[s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears." Thus, as appellant, it is Chaman's obligation to demonstrate how the trial court erred and to provide a record from which the claimed error may be shown. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295-1296.) Second, the appellant must support his position on

appeal with cognizable legal argument and citations to authority. (*Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956 (*Cahill*).)

When these basic rules of appellate review are violated, the reviewing court may disregard the unsupported arguments. When a party fails to provide a single citation to the record on appeal to support his arguments, we may properly disregard the brief and treat the unsupported issues as waived or forfeited. (*Lonely Maiden Productions, LLC v. GoldenTree Asset Management, LP* (2011) 201 Cal.App.4th 368, 384 (*Lonely Maiden*).) “We look askance at this practice of stating what purport to be facts—and not unimportant facts—without support in the record. This is a violation of the rules . . . with the consequence that such assertions will, at a minimum, be disregarded.” (*Liberty National Enterprises, L.P. v. Chicago Title Ins. Co.* (2011) 194 Cal.App.4th 839, 846.) And “ “[w]hen an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived.” [Citation.] ‘We are not bound to develop appellants’ arguments for them. [Citation.] The absence of cogent legal argument or citation to authority allows this court to treat the contention as waived.’ ” (*Cahill, supra*, 194 Cal.App.4th at p. 956.)

Finally, a party who chooses to represent himself on appeal “is to be treated like any other party and is entitled to the same, but no greater consideration than other litigants and attorneys.” (*Barton v. New United Motor Manufacturing, Inc.* (1996) 43 Cal.App.4th 1200, 1210; *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247.)

2. Code of Civil Procedure section 473 and the Abuse of Discretion Standard of Review

Under subdivision (b) of Code of Civil Procedure section 473, a court may order relief “from a judgment, dismissal, order, or other proceeding taken against [a party] through his or her mistake, inadvertence, surprise, or excusable neglect. Application for this relief . . . shall be made within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken.” Thus, as the moving party here, Chaman had “ ‘a double burden: He must show a satisfactory excuse for his default, and he must show diligence in making the motion after discovery of the default.’ ” (*Huh v. Wang* (2007) 158 Cal.App.4th 1406, 1420.)

A motion to vacate under Code of Civil Procedure section 473, subdivision (b) “ ‘is addressed to the sound discretion of the trial court, and in the absence of a clear showing of abuse . . . the exercise of that discretion will not be disturbed on appeal.’ ” [Citations.] The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason.” (*Strathvale Holdings v. E.B.H.* (2005) 126 Cal.App.4th 1241, 1249.) “However, [b]ecause the law favors disposing of cases on their merits, “any doubts in applying section 473 must be resolved in favor of the party seeking relief from default [citations]. Therefore, a trial court order denying relief is scrutinized more carefully than an order permitting trial on the merits.” ’ ” (*Austin v. Los Angeles Unified School Dist.* (2016) 244 Cal.App.4th 918, 929.) We defer to the trial court's implicit determination of Chaman's credibility. (*Hodge Sheet Metal Products v. Palm Springs Riviera Hotel* (1961) 189 Cal.App.2d 653, 658.)

3. Chaman has shown no error.

Chaman has not shown the trial court abused its discretion in denying his motion to set aside the dismissal of his case. First, because Chaman did not provide us with an adequate record, it is difficult, if not impossible, for us to review what happened before the trial court. Chaman elected to proceed without a record of the oral proceedings below, and he designated no documents for the clerk's transcript. Thus, the documents that were included in the clerk's transcript are only those few documents that must be included and as far as we can tell do not paint the whole picture. Although Chaman attaches various documents to his briefs, it is unclear which, if any, were before the trial court. Indeed, it is clear some documents attached to his appellate briefs were not before the trial court because they are dated after the court's July 29 order denying Chaman's request to set aside the dismissal. Of course, as the reviewing court, we cannot consider evidence that was not before the trial court and is not properly before us. (*Lima v. Vouis* (2009) 174 Cal.App.4th 242, 250, fn. 11; *Doers v. Golden Gate Bridge etc. Dist.* (1979) 23 Cal.3d 180, 184, fn. 1 ["documents not before the trial court cannot be included as part of the record on appeal"]; *County of Nevada v. Phillips* (1952) 111 Cal.App.2d 428, 430 ["This court cannot . . . act upon a mere assertion of an appellant in his brief as to matters not shown by the record, and reverse a judgment of a trial court thereon"].)

Second, Chaman makes no reference to the clerk's transcript, abbreviated as it is, in either his opening or reply briefs on appeal. None of his factual statements is supported by a citation to the record. As noted above, when a party fails to provide a single citation to the record on appeal to support his arguments, we may properly disregard the brief and treat the

unsupported issues as waived or forfeited. (*Lonely Maiden, supra*, 201 Cal.App.4th at p. 384.)

Third, Chaman fails to support his position with cogent legal argument. Although Chaman includes case citations in his appellate briefs, almost all of his citations are related to the abuse of discretion standard of review, which neither party disputes is the proper standard to be applied here. Beyond general descriptions of the abuse of discretion standard, Chaman fails to provide a reasoned legal analysis or specific application of law to the facts of his case.² Again, in such circumstances, we may treat the contention as waived. (*Cahill, supra*, 194 Cal.App.4th at p. 956.)

In any event, the truncated record before us does not reveal the trial court abused its discretion. In particular, the trial court did not abuse its discretion in finding Chaman had not shown excusable neglect under Code of Civil Procedure section 473. The trial court determined Chaman's reason and evidence for his absence at the final status conference, which already had been continued six times, was neither sufficient nor credible. We do not reweigh the trial court's credibility findings. (*Hodge Sheet*

² In his reply brief on appeal, Chaman asserts for the first time that the mandatory provision of Code of Civil Procedure section 473, subdivision (b) entitles him to relief. That provision provides for mandatory relief from a dismissal or default when the party's attorney submits an affidavit of fault. However, not only is it improper to raise issues for the first time in a reply brief (*California Retail Portfolio Fund GMBH & Co. KG v. Hopkins Real Estate Group* (2011) 193 Cal.App.4th 849, 862), the mandatory provision simply is not applicable here because Chaman represents himself (*Esther B. v. City of Los Angeles* (2008) 158 Cal.App.4th 1093, 1100).

Metal Products v. Palm Springs Riviera Hotel, supra, 189 Cal.App.2d at p. 658.) In addition, based on the record before us, the court did not abuse its discretion in determining Chaman lacked diligence in waiting five months to seek relief from the dismissal. Thus, we conclude the trial court did not abuse its discretion in finding Chaman failed to satisfy the requirements for relief under Code of Civil Procedure section 473.

DISPOSITION

The order is affirmed. The Los Angeles County Metropolitan Transportation Authority is entitled to its costs on appeal.

NOT TO BE PUBLISHED.

LUI, P. J.

We concur:

ASHMANN-GERST, J.

CHAVEZ, J.