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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

FRANCISCO CARRASCAL,

Plaintiff and Appellant,

v.

SAID VEDAD et al.,

Defendants and Respondents.

H052499

(Santa Clara County  
Super. Ct. No. 16CV302708)

Code of Civil Procedure section 583.360 requires a trial court to dismiss a case that is not brought to trial within five years after it is commenced. And before a case may proceed to trial or default judgment, a trial court must find that the summons and complaint were properly served.

It is clear from the arguments and materials Francisco Carrascal has presented on appeal that he wants a chance to prove defendants Said Vedad and Karen Vedad did not pay him for construction work that he and his wife performed at defendants' request. It is also clear that Carrascal tried to comply with the five-year timeframe, as he repeatedly asked the trial court to enter defendants' default. Each time, however, his application was rejected based on defects in proof that the summons and complaint had been served. The trial court ultimately dismissed the complaint for failure to comply with the five-year statute.

Based on the strength of the evidence he is prepared to present in support of his breach of contract claim, Carrascal asks us to reverse the judgment of dismissal. But

without a certificate of service in the limited appellate record Carrascal has designated, we cannot fault the trial court for not reaching the merits or entering a default judgment. With due respect for the harm Carrascal extensively describes, we must affirm the dismissal under the mandate of Code of Civil Procedure section 583.360.

## **I. BACKGROUND**

Carrascal sued defendants for breach of contract in 2016, alleging they failed to pay him for improvement work he completed on their residential property. Defendants did not answer the complaint, and the trial court found that they had not been properly served with the summons. Carrascal still requested entry of default. He argued respondents moved to New York and were evading service to avoid paying damages for breaching their oral agreement. The trial court conducted multiple status conferences regarding effecting service and Carrascal's requests for entry of default. In 2024, the court on its own motion dismissed Carrascal's suit with prejudice because it was not brought to trial within five years. (Code Civ. Proc., §§ 583.310, 583.360.) Carrascal objected that the trial court was biased in favor of wealthy landowners, and this timely appeal followed. (Defendants have not participated in this appeal.)

## **II. DISCUSSION**

### **A. THE RECORD ON APPEAL AND MOTION TO AUGMENT**

It is an appellant's burden to provide an adequate appellate record. (*In re Marriage of Obrecht* (2016) 245 Cal.App.4th 1, 9.) A party may move to augment the record to include "[a]ny document filed or lodged in the case in superior court." (Cal. Rules of Court, rule 8.155(a)(1)(A).) A reviewing court cannot augment the record to consider documents not presented to the trial court. (*DeYoung v. Del Mar Thoroughbred Club* (1984) 159 Cal.App.3d 858, 863 (*DeYoung*).)

The clerk's transcript here includes documents filed by Carrascal in the trial court requesting default and objecting to dismissal; the dismissal order; a post-dismissal objection; and various appellate documents such as the notice of appeal and register of

actions. (See Cal. Rules of Court, rule 8.122(b).) We have deferred for consideration with the merits of the appeal Carrascal's motion to augment the record with handwritten documents alleging judicial bias in this matter and in other cases filed in California; an allegedly retaliatory criminal case against him; his wife's medical documents; and multiple photographs of him and his wife completing work on respondents' property.

Carrascal fails to show that the documents or photos he seeks to add to the record were filed or lodged in the trial court before the challenged dismissal order. (*DeYoung, supra*, 159 Cal.App.3d at p. 863.) Some photos, although filed in the trial court, now include additional captions and arguments not previously made. In any event, the photos relate to the merits of the breach of contract claim and resulting injuries, and not to the basis for the challenged dismissal. (See *Mission Beverage Co. v. Pabst Brewing Co., LLC* (2017) 15 Cal.App.5th 686, 696, fn. 4 [denial of augmentation because materials not relevant to issues on appeal].) For these reasons, we deny the motion to augment the record.

#### **B. CARRASCAL HAS NOT SHOWN ERROR IN THE DISMISSAL**

A trial court must dismiss an action not brought to trial within five years after it is commenced. (Code Civ. Proc., §§ 583.360, 583.310.) A trial court's dismissal order is presumed correct and error must be affirmatively shown. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564 (*Denham*).) The appellant has the burden to show reversible error based on an adequate record (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574) and must support the arguments on appeal with citation to relevant authority. (*People ex rel. 20th Century Ins. Co. v. Building Permit Consultants, Inc.* (2000) 86 Cal.App.4th 280, 284; see Cal. Rules of Court, rule 8.204(a)(1)(B).) "When 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." (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852 (*Benach*).) These appellate principles apply with equal force to self-represented litigants. (See *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246–1247.)

Carrascal’s briefing on appeal relates entirely to an automobile collision involving a different defendant and proceedings before a different trial court judge. We do not consider those arguments because they do not concern the judgment entered in *this* matter. In oral argument, Carrascal urged that the trial court wrongly dismissed this case due to bias against self-represented litigants, but he has not specified how the record or legal authority demonstrate judicial bias or due process violations here. (See *Benach*, *supra*, 149 Cal.App.4th at p. 852.) Carrascal’s burden to show error requires “more than a mere assertion” that the outcome was wrong. (*Ibid.*) As a result, we treat the unsupported arguments as waived. (*Ibid.*)

We acknowledge the difficulty experienced by litigants navigating applicable procedural rules, and Carrascal’s frustration with the justice system and with not having the chance to prove his case is evident. But because difficulties with service of process prevented the trial court from reaching the merits of the oral contract dispute, we are also barred from addressing the merits on appeal. We must affirm the dismissal where there has been no showing of error. (*Denham*, *supra*, 2 Cal.3d at p. 564.)

### **III. DISPOSITION**

The order dismissing the action is affirmed. The parties shall bear their own costs on appeal, if any. (Cal. Rules of Court, rule 8.278(a)(5).)

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Grover, Acting P. J.

**WE CONCUR:**

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Lie, J.

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Wilson, J.