

FILED

Oct 28, 2019

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jzelaya

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

ARTHUR RAOUL SAMORA,

Plaintiff and Appellant,

v.

YAHYA ASIMABOUL  
MUHAMMAD et al.,

Defendants and Respondents.

B286123

(Los Angeles County  
Super. Ct. No. BC556079)

APPEAL from a judgment and an order of the Superior Court of Los Angeles, Michele E. Flurer, Judge. Affirmed.

McElfish Law Firm, Raymond D. McElfish, Tara Heckard Bryant; Law Offices of Bob B. Khakshooy and Bob B. Khakshooy for Plaintiff and Appellant.

Horvitz & Levy, Jason R. Litt, Shane H. McKenzie; Acker & Whipple, Jerri L. Johnson and Melissa A. Ogunnubi for Defendants and Respondents.

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Legal jurisprudence is riddled with distinctions between substance and procedure. Sometimes, however, procedure is substance, as is the case here. Plaintiff and appellant Raoul Samora's failure to follow the most basic appellate procedures compels our disposition affirming the judgment below.

Samora asserts the trial court erred in not granting his motions for judgment notwithstanding the verdict and for a new trial. The premises of these motions are (1) the lack of substantial evidence for the jury's finding of no causation as to injuries he claims he incurred in a collision with a truck driven by defendant and respondent Yahya Muhammed;<sup>1</sup> and (2) juror misconduct.

Despite these contentions, his opening appellate brief contains only *one* citation to the appellate record in the statement of facts. Samora, moreover, refers almost exclusively to purported evidence not even presented at trial. He compounds these procedural lapses by failing to summarize the evidence in the light most favorable to the judgment, and by relying on evidence the trial court properly found inadmissible, as his trial counsel conceded below.

We conclude that Samora's procedural deficiencies preclude meaningful review. Accordingly, we affirm the judgment and denial of Samora's motion for judgment notwithstanding the verdict.

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<sup>1</sup> Samora also sued Muhammed's employer, defendant and respondent Total Transportation Services, Inc. (Total Transportation).

## BACKGROUND

To give context to our opinion, we have gleaned the following facts from the record. On August 28, 2014, Samora sued Muhammed and Total Transportation for alleged property damage and personal injury arising out of a motor vehicle accident.<sup>2</sup> The jury rendered a special verdict. It found Muhammad was negligent, but that Muhammad's negligence was not a substantial factor in causing harm to Samora. The jury awarded no damages to Samora. In accordance with instructions on the special verdict, jurors answered no further questions after finding that Muhammad's negligence was not a substantial factor in causing harm to Samora. Jurors therefore did not answer a question on comparative fault. The trial court entered judgment in accordance with the jury's verdict.

Samora moved for a new trial and judgment notwithstanding the verdict. In a declaration in support of Samora's motion for a new trial, his attorney, Lisa Saperstein, described conversations she and another attorney had with jurors after the jury rendered its verdict. She asserted those discussions revealed that jurors had reached a compromise verdict. Her motion did not contain any signed juror affidavits. Citing *People v. Williams* (1988) 45 Cal.3d 1268, 1318, Saperstein acknowledged that "the California Supreme Court held that attorney declarations are not admissible" to impeach a jury verdict. (Boldface omitted.) In seeking a new trial, Samora also argued the jury verdict was inadequate and contrary to the law,

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<sup>2</sup> According to respondents, Total Transportation Services, Inc. merged with Premium Transportation Services, Inc. in 2015.

the evidence was insufficient to support the verdict, and the verdict was against the weight of the evidence.

In response to Samora's postjudgment motions, the trial court summarized the evidence adduced at trial: "Plaintiff Arthur Samora[ ] was making a left turn out of a parking lot when his car collided with defendant Yahya Muhammad's truck . . . . Evidence presented by the defense showed that before this incident, Samora had complained of and received medical treatment for back and neck symptoms. Expert testimony regarding a 2007 MRI and other findings before the accident support [a finding] he had ' . . . significant underlying changes either injury based or degenerative, either sudden or gradual, that goes back for years prior to our event.' . . . The testimony received included that he [Samora] had sustained multiple prior injuries and accidents, and his doctor had previously recommended surgery before this accident. Sub Rosa video of the Plaintiff showed him retrieving and throwing a baseball in conflict with assertions as to Plaintiff's post accident limitations." Jurors also heard evidence that Samora's car hit Muhammad's truck.

The trial court denied Samora's motion for a new trial. The court ruled that attorney Saperstein's declaration about jury misconduct was inadmissible.

The trial court also denied Samora's motion for a judgment notwithstanding the verdict: "[A]fter weighing the evidence in the entire record, including reasonable inference[s], this Court cannot say that the jury should have reached a different verdict."

On November 3, 2017, Samora appealed from the judgment and from the order denying a judgment notwithstanding the verdict.<sup>3</sup>

On November 21, 2017, we notified Samora that he was in default for failing to file a case information statement as required by California Rules of Court, rule 8.100(g). We returned Samora's subsequently filed case information statement because he failed to include a copy of the order or judgment that is the subject of his appeal. In January 2018, we granted Samora's motion for relief from default.

When Samora failed to designate the record, and we relieved him from that default, he omitted most of defendant's evidence from his designation of the record. This resulted in respondents' first motion to dismiss on February 5, 2018, which we denied when Samora agreed to designate the entire record and file an appellant's appendix. Even then Samora failed to file an appellant's appendix, which resulted in another notice of default and ultimately relief from that default. Samora filed an appellant's appendix on February 8, 2019. That appendix, however, failed to include respondents' opposition to Samora's posttrial motions.

On March 4, 2019, respondents filed a second motion to dismiss in which they argued that the procedural deficiencies in Samora's opening appellate brief prevent meaningful appellate review. Among those procedural deficiencies respondents identify the near absence of citation to the record; failure to address unfavorable evidence despite Samora's substantial evidence challenge; reliance on inadmissible evidence to support

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<sup>3</sup> An order denying a new trial motion is not separately appealable. (*Walker v. Los Angeles County Metropolitan Transportation Authority* (2005) 35 Cal.4th 15, 19.)

Samora's jury misconduct contentions; and Samora's reliance on deposition testimony instead of trial testimony.<sup>4</sup> Samora did not oppose the motion to dismiss. Samora did not file a reply appellate brief.

## DISCUSSION

Samora contends he is entitled to a new trial because (1) the jury verdict was against the weight of the evidence; (2) jurors were required to conclude that Muhammad was a substantial factor in causing Samora harm; (3) jurors engaged in misconduct; (4) the trial court permitted Muhammad to introduce irrelevant video evidence from the accident; and (5) jurors awarded inadequate damages, requiring a new trial or an additur. Respondents argue, inter alia, that Samora's deficient briefing precludes meaningful review. We agree.

"An appealed judgment is presumed correct, and the appellant must affirmatively demonstrate error." (*Rayii v. Gatica* (2013) 218 Cal.App.4th 1402, 1408.) We may disregard purported facts unsupported by citations to the appellate record. (*Mueller v. County of Los Angeles* (2009) 176 Cal.App.4th 809, 816, fn. 5.)

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<sup>4</sup> As set forth in our discussion, we agree that these deficiencies are fatal to Samora's appeal. We, however, conclude that the better course is to affirm the judgment rather than dismiss the appeal. (Cf. *Berger v. Godden* (1985) 163 Cal.App.3d 1113, 1120 ["The Supreme Court has indicated in dicta that a question may exist as to whether it is ever appropriate to dismiss an appeal as frivolous, rather than to affirm a judgment from which a frivolous appeal has been taken"].) Thus, respondents' motion to dismiss is moot.

California Rules of Court, rule 8.204 requires Samora to “[p]rovide a summary of the significant facts limited to matters in the record.” (Cal. Rules of Court, rule 8.204(a)(2)(C).) California Rules of Court, rule 8.204 further requires that Samora “[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.” (*Id.*, rule 8.204(a)(1)(C).) There is only one citation to the record in Samora’s statement of facts, to wit, to his expert’s opinion that the accident aggravated a preexisting medical condition to Samora’s spine requiring him to have neck and back surgery.<sup>5</sup>

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<sup>5</sup> In his argument section Samora cites to testimony he claims demonstrates that jurors were required to conclude the motor vehicle accident caused Samora injury. Samora, however, provides only brief excerpts of the testimony and ignores evidence from the same witnesses that is unfavorable to him.

For example, Samora cites testimony from a witness he identifies as a defense expert that the collision “was severe enough to cause . . . a neck and a back injury.” The same witness testified, “I have no doubt that he had some soft tissue injury to his neck. It exacerbated. It did not aggravate his underlying condition.” But Samora ignores testimony from the witness that the accident “did not aggravate his [Samora’s] underlying condition. [¶] So it came back to baseline, and the records pretty much demonstrate that he came back to baseline for various periods.” Samora also ignores the same witness’s testimony that “[t]here’s no evidence within the proper time window . . . that there was in fact a low back injury as a result of this accident.” Samora cites to another witness who testified Samora warranted medical care after the motor vehicle accident. That testimony does not constitute uncontradicted testimony that Muhammad caused the need for that medical care.

As yet another example, Samora argues that the trial court erred in allowing defendants to show a video of the scene of the accident taken on a day different from the day of the accident. He provides literally *no* record citation and *no* citation to legal authority to support this contention.

“‘It is the duty of a party to support the arguments in its briefs by appropriate reference to the record, which includes providing exact page citations.’ [Citations.] If a party fails to support an argument with the necessary citations to the record, that portion of the brief may be stricken and the argument deemed to have been waived.” (*Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856.) Because Samora has failed to support his appellate challenges with citation to the record, he has forfeited them. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1247 [appellant forfeited challenges on appeal by failing to comply with rules of procedure, failing to cite to the record, and failing to discuss all evidence material to his contentions].)

Further, by failing to cite to the evidence *supporting* the judgment, Samora cannot demonstrate that the evidence was not sufficient to support the jury’s verdict. (*Rayii v. Gatica, supra*, 218 Cal.App.4th at p. 1408.) Our high court has explained: “‘It is well established that a reviewing court starts with the presumption that the record contains evidence to sustain every

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Samora argues, but does not show, that the expert testimony supported only the conclusion that Samora suffered an injury as a result of the accident. Even if the expert evidence were uncontradicted, jurors could reject the uncontradicted testimony. (*Graf v. Marvin Engh Truck Co.* (1962) 207 Cal.App.2d 550, 555–556.)

finding of fact.’ [Citations.] Defendants’ contention herein ‘requires defendants to demonstrate that there is *no* substantial evidence to support the challenged findings.’ (Italics added.) [Citations.] A recitation of only defendants’ evidence is not the ‘demonstration’ contemplated under the above rule. [Citation.] Accordingly, if, as defendants here contend, ‘some particular issue of fact is not sustained, they are required to set forth in their brief *all* the material evidence on the point and *not merely their own evidence*. Unless this is done the error is deemed to be waived.’” (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881.) Samora has thus also forfeited his contention that the jury verdict was against the weight of the evidence.

In addition, instead of referencing trial testimony, Samora bases much of his appellate challenge on his own deposition testimony.

“When an appellant’s brief makes no reference to the pages of the record where a point can be found, an appellate court need not search through the record in an effort to discover the point purportedly made. [Citations.] We can simply deem the contention to lack foundation and, thus, to be forfeited.” (*In re S.C.* (2006) 138 Cal.App.4th 396, 406–407.) In sum, Samora’s multiple failures to cite to the record in support of his arguments, his disregard of evidence supporting the verdict, and his reliance on evidence not even before the jury do not compel us to fix it by our scouring the record for him.

Finally, the trial court found counsel Saperstein’s declaration describing certain jurors’ description of the jury’s deliberations inadmissible because it was unsworn hearsay. (*People v. Williams, supra*, 45 Cal.3d at p. 1318, disapproved on another ground in *People v. Diaz* (2015) 60 Cal.4th 1176, 1190;

see also *Burns v. 20th Century Ins. Co.* (1992) 9 Cal.App.4th 1666, 1672.) Indeed, as previously noted, Samora's trial counsel conceded the inadmissibility of the juror hearsay statements. Samora does not contend the trial court erred in excluding these statements. He simply ignores the trial court's ruling, thus forfeiting any argument that the trial court erred in excluding that evidence. (*Lopez v. Baca* (2002) 98 Cal.App.4th 1008, 1014-1015.)

### DISPOSITION

The judgment is affirmed. The order denying Samora's motion for a judgment notwithstanding the verdict is affirmed. Respondents are awarded their costs on appeal.

NOT TO BE PUBLISHED.

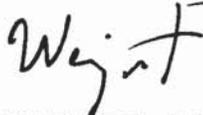


BENDIX, J.

We concur:



CHANEY, Acting P. J.



WEINGART, J.\*

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