Filed 3/20/23 Cordero v. Catwalk to Sidewalk CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

AMADA CORDERO, Plaintiff and Respondent, v. CATWALK TO SIDEWALK, INC., Defendant and Appellant.	B304899 (Los Angeles County Super. Ct. No. VC066042)

APPEAL from a judgment of the Superior Court of Los Angeles County, Brian F. Gasdia, Judge. Affirmed.

Legacy Pro Law dba LPL Lawyers, Gi Nam Lee for Defendant and Appellant.

Rodriguez Apodaca Law Firm, Richard A. Apodaca; The Ehrlich Law Firm, Jeffrey I. Ehrlich for Plaintiff and Respondent.

A jury found that Catwalk to Sidewalk, Inc., wrongfully discharged Amada Cordero based on her having suffered a work-related injury. It awarded her $160,000 in compensatory damages and $50,000 in punitive damages. Catwalk to Sidewalk appeals, arguing insufficient evidence supported the verdict, the award of punitive damages was improper, and the trial court abused its discretion by denying defendant's request for a continuance. We conclude sufficient evidence supported both the punitive damages award and the jury's finding that Catwalk to Sidewalk wrongfully discharged Cordero because of her injury. We further conclude the trial court acted within its discretion in denying a continuance. We therefore affirm the judgment.

BACKGROUND

As this matter is before us on appeal from a judgment in favor of Cordero after a jury trial, we view the evidence in favor of the judgment. (*Roby v. McKesson Corp*. (2009) 47 Cal.4th 686, 694.)

I. Cordero's Employment

Catwalk to Sidewalk, Inc. (CTS), also known as "Robin K," manufacturers clothing. CTS is owned and operated by Kyong Won "Billy" Kang, its CEO (Mr. Kang), and his wife, Eunhee "Jenny" Kang, its president (Mrs. Kang). The company had 80 to 100 employees in 2015. It gave its full-time employees five days of paid vacation annually. Part-time employees received no vacation benefits.

CTS's employee handbook stated that employees would be paid by check every other Friday. In a section titled "Final Paycheck," the handbook stated: "Employees who are terminated involuntarily will be provided their final paycheck on the last day worked."

Cordero began employment with CTS in 2010. Her duties included dyeing fabric, buttons and zippers. Cordero would dye fabric by dipping a two-yard swath into a dye solution, lifting it from the tub, rinsing it by hand, then hanging it on a shelf to dry. A swath of wet fabric typically weighed five to 10 pounds, and occasionally more.

In 2012, Cordero suffered pain in her hand and noticed that she had developed a bump on her wrist. She informed Mrs. Kang and said she did not believe she could continue working. Mrs. Kang said such pain was normal for those who used their hands in a repetitive manner at work, and referred Cordero to Karen Keith, the company's head designer, who said the problem was likely the result of her squeezing the fabric she was dyeing. Keith instructed Cordero to perform those job duties she could and instruct others on how to dye fabrics.

Cordero stopped dyeing fabric for about a month, during which the pain never fully resolved but the lump on her wrist went away. After she resumed that work, Cordero continued to have pain in her wrists but declined to report it to CTS because she needed her job and was able to manage.

In April 2015, Cordero switched from full-time to part-time, working four 8-hour days per week.

In May 2015, Cordero reported worsening pain in her hands to her supervisors, and requested help. They told her they would consult Derek (or Derrick) Gaspar, CTS's Human Resources Manager, but Cordero never heard back from them.

Cordero then spoke directly to Mr. Kang about the pain in her hands and requested help. He told her that this was her job, and if she could not do it, she could no longer work for CTS.

Cordero then requested from Gaspar a copy of the employee handbook. He said he would consult Mr. Kang, but she never heard back from either of them.

On June 8, 2015, Cordero approached Mr. Kang a second time about the pain in her hands and wrists, and said she wanted to see a doctor. When Kang advised her to do so, Cordero told him she could not afford one. Kang told her not to worry about it, everything would be covered.

Medical professionals at the Vida Medical Group examined Cordero and ordered X-rays. On Friday, July 10, 2015, Joann Lister, a nurse practitioner with Vida Medical, suspected that Cordero's pain resulted from a repetitive-motion injury suffered at work. She issued Cordero written instructions recommending that she perform only light duties, with no lifting in excess of five to 10 pounds. The instructions included the statement, "Please refer to workers' comp."

When Cordero returned to work on Monday, July 13, 2015, she tried to give Lister's medical instructions to a supervisor, who told her to give it to Gaspar. Gaspar was unavailable that day, so on July 14, Cordero gave the instructions to Mr. Kang. He said, "Well, here, it says that you shouldn't lift five to ten pounds and you don't do that here. Therefore, you didn't get hurt yet."

Later that day, Gaspar asked Cordero to enroll in the company's health insurance plan. She declined to do so because she could not afford the plan's co-payments.

The next day, Wednesday, July 15, 2015, Mr. Kang directed Gaspar to ask Cordero to repay CTS a $700 advance she had received, at a rate of $50 per week.

Gaspar also told Cordero that Mr. and Mrs. Kang would not allow her days off to see a doctor, and had decided instead that

she needed a vacation. Because as a part-time employee she had no vacation time coming, Cordero asked, "Are you firing me?" Gaspar denied Cordero was being fired, but presented her with a notice, titled "Final Pay July 13-15, 2015," which stated, "this will serve[] as your final Pay for the Pay period July 13-15, 2015 . . . ." In a field titled "Reason," the notice stated, "The employee uses multiple excuses from the year 2014 up to current year 2015. The doctor recommends the employee to take a rest. Company decided to have the employee to take a time off until she is fully recovered."

Cordero told Gaspar she rejected CTS's offer to go on vacation and would show up to work the next day. Gaspar told her she could not because she was "no longer in the system." Cordero, feeling she had been fired, left the room crying.

In August 2015, Cordero filed a worker's compensation claim and retained an attorney to represent her in making a wrongful termination claim against CTS.

II. Lawsuit

In 2017, Cordero filed a complaint alleging CTS (1) discriminated against her based on her physical disability, (2) failed to offer reasonable accommodations, (3) failed to interact with her in good faith, (4) failed to prevent discrimination, (5) retaliated against her for exercising her rights under the California Fair Employment and Housing Act (Gov. Code, § 12900, et seq.; FEHA), and wrongfully terminated her in violation of public policy.[1] She sought noneconomic and punitive damages. Trial was scheduled for February 19, 2019, but pursuant to stipulation was continued to September 16, 2019.

[1] Undesignated statutory references will be to the Government Code.

A. Trial

On the day of trial, CTS's attorney answered "not ready" for trial and orally represented that a witness, Dr. John Cho, had undergone surgery and would be unavailable for six to eight weeks. The trial court denied a continuance, and the parties stipulated to admit a medical report Dr. Cho wrote after examining Cordero. At trial, Cordero, who speaks Spanish, testified through an interpreter to the facts outlined above. She testified that she dyed fabric at CTS "most of the day," and suffered her repetitive-motion injury as a result.

Joann Lister, the nurse practitioner who examined Cordero, testified that she instructed that Cordero be placed on light duty "with the hope that she would be able to continue working and be able to still provide." She stated Cordero "could still be able to function, just would not be able to carry the heavier stuff."

James Jang, a former CTS officer, testified that Mr. Kang disliked employee worker's compensation claims because they led to insurance rate increases.

CTS contended that it never fired Cordero, but merely provided, at her request, time off to recuperate from her injury.

Mr. Kang testified it was CTS's policy that an injured employee should report the injury to his or her supervisor, who would then report it to human resources, who would report it to the company's worker's compensation carrier. Its further policy was that to be granted medical leave, an employee had to produce documentation indicating the leave was necessary. He denied telling Jang that he disliked worker's compensation claims because they resulted in increased insurance costs. Mr. Kang

stated that Gaspar had no authority to fire anyone, and did not fire Cordero.

Mr. Kang testified that from 2013 to 2015, Cordero was late to work or left work early approximately 60 times, citing traffic delays, vehicle and public transportation problems, medical appointments, and personal issues. He stated it was "very rare" for her to dye fabrics as part of her job, as she did so only two or three times per month.

Mr. Kang testified that on July 15, 2015, Cordero told him that her doctor had told her to take some time off, and she needed to do so. He placed her on medical leave at her own request.

Mr. Kang testified that Gaspar gave Cordero her final paycheck on July 15, a Wednesday, because it was simply a normal payday: "[W]e pay employees biweekly. So let's say the employees work from Monday through Friday for two weeks, then on the third week, Monday and Tuesday, we will settle the account and on Wednesday, during the lunch time, they would be paid."

Mrs. Kang, however, testified that although CTS's current practice was to issue paychecks on Wednesdays, in 2015 it issued them on Fridays. When asked why the paycheck issued to Cordero on July 15, 2015 bore the "final" designation, she testified that meant only that it was the final check for the period between July 13 and July 15, 2015. Mrs. Kang testified that CTS never removed Cordero from its employment records system.

Mr. Kang testified that the timing of Cordero rejecting Gaspar's request to enroll in CTS's health insurance plan on July 14, 2015, the request to repay CTS $700 on July 15, and Cordero's separation from CTS that same day was all coincidental. He stated CTS had no contact with Cordero after

her departure, but the next month she filed a worker's compensation claim and made a wrongful termination claim through her attorney.

On September 11, 2015, two months after Cordero's departure from CTS, Dr. Cho examined her and determined that her injury required that she be placed on "temporary total disability." Cho indicated in his report that Cordero was "currently working for her pre-injury employer," i.e., still working for CTS. At the conclusion of the report, Dr. Cho stated that the preliminary history portion of the report, which contained the statement concerning Cordero's employment status, was based on Cordero's responses on an intake form. Dr. Cho stated Cordero filled out the form "when necessary with the assistance of an interpreter who has been identified in the initial portion of this report," but the report identified no interpreter.

B. Verdict and Postjudgment Motions

The jury found for Cordero on all six causes of action and awarded $160,000 in past noneconomic damages and $0 for future noneconomic damages. The jury found CTS acted with malice or oppression committed by one or more officers, directors or managing agents, and awarded Cordero $50,000 in punitive damages.

The trial court denied CTS's motions for judgment notwithstanding the verdict and new trial, as well as its motion to vacate the judgment, and awarded Cordero $29,337.05 in costs and $227,796.15 in attorney fees.

DISCUSSION

I. Wrongful Discharge Based on Disability

The jury found CTS discharged Cordero because she suffered a work-related injury. CTS does not contest the nature

of Cordero's injury, nor that on July 15, 2015, she was separated from the company without pay, but contends insufficient evidence supported the jury's conclusion that she was fired. On the contrary, CTS argues, the evidence established that CTS placed Cordero on temporary medical or personal leave at her own request.

A. Legal Principles

"It is an unlawful employment practice . . . [¶] [f]or an employer, because of the . . . physical disability [or] . . . medical condition . . . of any person . . . to bar or to discharge the person from employment." (§ 12940, subd. (a).) This does not prohibit an employer from discharging an employee who, because of a disability or medical condition, "is unable to perform the employee's essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger the employee's health or safety . . . even with reasonable accommodations." (§ 12940, subd. (a)(1) & (2).)

Providing a leave of absence for a disabled employee "who needs time to recuperate or heal is in itself a form of reasonable accommodation and may be all that is required where it appears likely that the employee will be able to return to an existing position at some time in the foreseeable future." (*Jensen v. Wells Fargo Bank* (2000) 85 Cal.App.4th 245, 263.)

" 'We will reverse a jury's verdict only if it is unsupported by any substantial evidence, meaning to prevail on appeal defendants must show that the evidence was such as would justify a directed verdict in their favor. [Citation.] When applying the substantial evidence test, "we resolve 'all conflicts in the evidence and all legitimate and reasonable inferences that may arise therefrom in favor of the jury's findings and the

verdict.' " [Citation.] We do not reweigh the evidence or judge the credibility of witnesses. [Citation.] The "power of the appellate court is limited to a determination of whether there is any substantial evidence, contradicted or uncontradicted, that will support the verdict." ' " (*Kim v. TWA Construction, Inc.* (2022) 78 Cal.App.5th 808, 837.) The testimony of a single witness is sufficient to support a verdict, even if other evidence would support a contrary finding. (*Mazik v. Geico General Ins. Co*. (2019) 35 Cal.App.5th 455, 463, fn. 2.)

B. Application

Each of Cordero's six claims against CTS—discrimination and failure to prevent discrimination, failure to offer reasonable accommodations or interact in good faith, retaliation, and wrongful termination—was based on her termination. The sole issue is whether Cordero's separation from CTS without pay constituted a "bar or . . . discharge" within the meaning of section 12940.

Substantial evidence supported the jury's conclusion that it did.

First, Cordero testified that on July 15, 2015, she was separated from CTS involuntarily and told she would not be allowed to return to work because she was "no longer in the system." She told Gaspar she rejected the separation and left the room in tears. Mr. Kang testified that CTS had no contact with Cordero until the next month, when her attorney informed CTS that she claimed she had been wrongfully terminated.

This evidence established that CTS knew the separation was involuntary and that it made no effort over the next month to determine when Cordero could return to work, which

supported the inference that CTS did not intend for Cordero to return because it had discharged her.

Second, CTS had a policy of paying ongoing employees biweekly on Fridays but giving involuntarily discharged employees their "final" pay on the last day worked. CTS paid Cordero on the day of her separation, a Wednesday, with a check bearing the designation "final pay." This evidence supported the inference that CTS paid Cordero on Wednesday, July 15, her last day, because she was being discharged, and contradicted CTS's claim that Cordero's separation was temporary.

Third, CTS had a further policy that to obtain a medical leave an employee had to produce a doctor's note indicating the leave was necessary. But CTS separated Cordero from employment with no medical documentation indicating a leave was necessary. This supported the inference that CTS's justification for separating Cordero from employment was a pretext. The jury was entitled to infer that if CTS gave a pretextual reason for taking an adverse employment action against Cordero, the concealed reason was legally detrimental to CTS.

Fourth, CTS had a policy that an injured person should report the injury to a supervisor, who would report it to human resources, who would invoke the worker's compensation system. It also had Lister's letter requesting that Cordero be referred to worker's compensation. Yet Cordero was never referred to worker's compensation despite having made several complaints. Jang testified that Mr. Kang was averse to worker's compensation. This testimony, and CTS's failure to invoke the worker's compensation system in response to Cordero's complaints despite its own policy and a nurse practitioner's

request, supported the inference that CTS discharged Cordero to avoid a worker's compensation claim.

Fifth, on the day Cordero complained about her injury, CTS invited her for the first time to enroll in its health plan, which would have shifted her medical costs out of the worker's compensation system and potentially saved CTS from increased premiums. CTS also issued Cordero a notice to repay CTS $700. This evidence supported the inference that CTS severed ties with Cordero to avoid a worker's compensation claim.

Finally, CTS stated on Cordero's last paystub that the reason for her discharge was that she made "multiple excuses" from 2014 to 2015, apparently a reference to Cordero's tardiness and absenteeism. This contradicted CTS's contention that Cordero was placed on medical or personal leave, because an employer generally responds to an employee's excessive tardiness and absenteeism with adverse employment actions, not by placing her on medical or personal leave.

From all this evidence a reasonable trier of fact could conclude that CTS barred or discharged Cordero from employment within the meaning of section 12940.

In its opening brief, CTS ignores all evidence at odds with its own theory of the case.

It makes no mention of its paying Cordero on the last day she worked, a Wednesday, as an involuntarily discharged employee would be paid, rather than biweekly on Fridays, as ongoing employees were paid. CTS ignores the evidence that its rationale for separating Cordero from employment for medical reasons contradicted its policy to first obtain a doctor's note indicating medical leave was necessary. It ignores Lister's letter, which said medical leave was not necessary. CTS ignores that it

never referred Cordero to the worker's compensation system despite a nurse practitioner's request and its own written policy. It ignores the evidence that on the day Cordero complained about her medical condition, CTS tried to move her into its health plan (and away from the worker's compensation system) and asked her to repay a $700 advance, then separated her from employment the next day. It ignores that it made no effort to contact Cordero after the separation to determine when she could return to work. It ignores Mr. Jang's testimony.

An appellant challenging the sufficiency of the evidence to support a jury's verdict must "cite the evidence in the record supporting the judgment and explain why such evidence is insufficient as a matter of law." (*Rayii v. Gatica* (2013) 218 Cal.App.4th 1402, 1408.) An appellant who "cites and discusses only evidence in her favor fails to demonstrate any error and waives the contention that the evidence is insufficient to support the judgment." (*Ibid.*; see also *In re Marriage of Fink* (1979) 25 Cal.3d 877, 887; *Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881; *Fortman v. Hemco, Inc.* (1989) 211 Cal.App.3d 241, 256, fn. 9.) In its opening brief, CTS discusses only the evidence in its favor, and neither cites evidence supporting the judgment nor explains why such evidence was insufficient as a matter of law. It therefore fails to demonstrate any error.

CTS does mention that Gaspar told Cordero she would not be allowed to return to work because she was no longer in "the system." But it does so not to explain why this exchange fails as evidence but to reassert its trial position that Cordero was never actually removed from CTS's "system." (CTS's counsel characterizes Cordero's recitation of this exchange as her

"contention," but it was actually her testimony. He invites us to question Cordero's credibility, but that was the jury's role.)

But it does not matter whether Cordero was actually removed from CTS's system—CTS need not even have a system. The jury could reasonably conclude Gaspar told Cordero that she was no longer in CTS's "system" not because it was true but to dissuade her from trying to come back to work. That Cordero was not in fact removed from CTS's system goes only to her credibility and the weight of the evidence, both of which we may not review on appeal. Our analysis concerns only whether Cordero's testimony about this exchange reasonably supported the jury's findings.

CTS reasserts the claims it made at trial and argues no substantial evidence supported the verdict because Cordero's evidence fails to "overcome" CTS's evidence, and CTS's evidence "undercuts" Cordero's.

For example, CTS argues that evidence that Cordero was fired does not rise to the level of substantial evidence because it fails to "overcome the evidence that she was merely given temporary leave."

CTS also argues that the full designation on Cordero's final check—"this will serve[] as your final Pay for the Pay period July 13-15, 2015"—as well as the notation stating Cordero was being given "time off until she is fully recovered," "undercuts any reasonable 'inference' " that she was fired.

CTS misapprehends the nature of appellate review. Whether some evidence "overcomes" or "undercuts" other evidence is a matter for a trier of fact. On appeal, we determine only whether sufficient evidence supported the verdict, even if contradicted by other evidence.

CTS argues it was "entirely reasonable" to provide Cordero with time off to recuperate, a recognized form of accommodation for a medical condition. Likely so. But the jury disagreed, finding rather that Cordero was not given time off to recuperate, she was fired.

CTS raises several further arguments for the first time in its reply brief but we deem them forfeited. (*In re Marriage of Fink* (1979) 25 Cal.3d 881, 887.) It would be unfair to permit a party who abrogates its appellate responsibility in its opening brief to cure the delict in its reply.

C. Punitive Damages

CTS contends the evidence was insufficient to support the jury's punitive damage award.

"In an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant. [¶] . . . An employer shall not be liable for damages pursuant to subdivision (a), based upon acts of an employee of the employer, unless the employer . . . authorized or ratified the wrongful conduct for which the damages are awarded or was personally guilty of oppression, fraud, or malice. With respect to a corporate employer, the . . . authorization, ratification or act of oppression, fraud, or malice must be on the part of an officer, director, or managing agent of the corporation." (Civ. Code, § 3294, subds. (a), (b).)

Malice is "conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the

rights or safety of others." (Civ. Code, § 3294, subd. (c)(1).) Oppression is "despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights." (Civ. Code, § 3294, subd. (c)(2).)

"Punitive damages are appropriate if the defendant's acts are reprehensible, fraudulent or in blatant violation of law or policy. The mere carelessness or ignorance of the defendant does not justify the imposition of punitive damages. . . . Punitive damages are proper only when the tortious conduct rises to levels of extreme indifference to the plaintiff's rights, a level which decent citizens should not have to tolerate." '" (*American Airlines, Inc. v. Sheppard, Mullin, Richter & Hampton* (2002) 96 Cal.App.4th 1017, 1050-1051.)

"Because punitive damages are imposed 'for the sake of example and by way of punishing the defendant' ([Civ. Code,]§ 3294, subd. (a)), they are typically awarded for intentional torts such as assault and battery, false imprisonment, intentional infliction of emotional distress, defamation, nuisance intentionally maintained, fraud, trespass, conversion, civil rights violations, insurer's breach of covenant of good faith, wrongful termination and job discrimination, and products liability cases." (*Lackner v. North* (2006) 135 Cal.App.4th 1188, 1212.)

In *Cloud v. Casey* (1999) 76 Cal.App.4th 895, for example, an employer passed over a female employee for promotion due to her gender then gave a false explanation for doing so. The court held the employer was liable for punitive damages. (*Id*. at p. 912.)

Our review is for sufficiency of the evidence. (*Colucci v. T-Mobile USA, Inc*. (2020) 48 Cal.App.5th 442.) "[W]hen presented with a challenge to the sufficiency of the evidence associated with

a finding requiring clear and convincing evidence, [we] must determine whether the record, viewed as a whole, contains substantial evidence from which a reasonable trier of fact could have made the finding of high probability demanded by this standard of proof." (*Conservatorship of O.B.* (2020) 9 Cal.5th 989, 1005 [266 Cal.Rptr.3d 329, 470 P.3d 41].)

Here, the evidence established that CTS failed to open a worker's compensation claim for Cordero, fired her the day after she presented Lister's note putting her on a lifting restriction, and fabricated the reason for the termination as being on doctor's orders.

It is reasonable to infer from this conduct that it was highly probable CTS intended to injure Cordero by making her pay for healthcare costs that would otherwise have been covered by the worker's compensation system. It is reasonable to conclude that CTS acted despicably when it discharged Cordero because the work it hired her to do, and from which it benefitted, left her temporarily disabled. A reasonable jury could infer that by firing Cordero the day after she presented a medical instruction placing her on limited duty, it is highly probable CTS disregarded her rights under FEHA willfully and consciously. And it is reasonable to infer that the pretext for the firing—that it was on doctor's orders even though the actual orders were to the contrary—was fraudulent. We conclude, therefore, that the evidence supporting the jury's finding that CTS's acts were reprehensible, fraudulent, and in blatant violation of law was supported by clear and convincing evidence. Punitive damages were therefore proper.

Relying on statements made at trial by Cordero and the court, CTS argues that the only possible basis for punitive

damages was Gaspar telling Cordero she could not see a doctor. It argues (1) Gaspar never said this, (2) he had no authority to say it, (3) his actions cannot bind CTS in any event because he was not an officer, director or manager, and (4) to the contrary, Mr. Kang, whose actions can bind the company, advised Cordero to see a doctor.

The argument fails on its false premise. Punitive damages are available in situations described above. Nothing said at trial by the court or Cordero limited Cordero's punitive damages theory.

CTS argues "there is no evidence–or even accusation–that CTS fabricated a basis for terminating Cordero."

As discussed above there is such evidence, CTS simply ignores it.

CTS relies on in *Scott v. Phoenix Schools, Inc*. (2009) 175 Cal.App.4th 702 (*Scott*), a wrongful termination case, in which the court stated, "wrongful termination, without more, will not sustain a finding of malice or oppression." (*Id*. at p. 717.)

Scott is readily distinguishable. There, the plaintiff was a preschool teacher tasked with enrolling children. She refused to enroll one child because she thought that to do so would violate the state mandated teacher-student ratio of one teacher for every 12 children. The school terminated her for this decision. (*Scott*, *supra*, 175 Cal.App.4th at p. 707.) The jury found it was wrong to terminate plaintiff for this reason and awarded punitive damages. (*Id*. at pp. 708, 715.) The Court of Appeal affirmed the judgment but reversed the award of punitive damages, explaining that the school's conduct did not rise to the level of malice or oppression: "[W]rongful termination, without more, will not sustain a finding of malice or oppression. There was no

evidence [the school] attempted to hide the reason it terminated Scott. It admitted to terminating her because she would not enroll the [particular] child. Likewise, there was no evidence [the school] engaged in a program of unwarranted criticism to justify her termination." (*Id*. at p. 717.)

Thus in *Scott*, the employer was forthright about terminating the plaintiff for nonperformance of her duties, but the reason itself was improper because it would violate a state policy protecting children. (*Scott*, *supra*, 175 Cal.App.4th at pp. 714-715.) In contrast, here the evidence established that CTS terminated Cordero because she suffered a work-related disability, falsely claimed she was simply being put on leave, and gave a false justification for the leave.

D. Continuance

CTS contends the trial court abused its discretion in denying its request to continue the trial because one of its witnesses, Dr. Cho, was unable to testify. We disagree.

The decision to grant or deny a requested continuance is committed to the discretion of the trial court. (*Thurman v. Bayshore Transit Management, Inc*. (2012) 203 Cal.App.4th 1112, 1126 (*Thurman*).)

California Rules of Court, rule 3.1332 governs motions for continuance of a trial. In pertinent part, the rule provides that trial continuances are "disfavored," and "[t]he court may grant a continuance only on an affirmative showing of good cause requiring the continuance." (Rule 3.1332(c).) Good cause may be established by the unavailability of an essential witness due to illness. (Rule 3.1332(c)(1).) A motion for continuance must be supported by "an affirmative factual showing in a declaration containing competent testimony based on personal knowledge of

irreparable harm, immediate danger, or any other statutory basis for granting relief ex parte." (Rule 3.1202(c).)

Other factors a court must consider include the proximity of the trial date; whether there had been a previous continuance or delay; whether the claimed evidentiary deficit can be addressed without a continuance. (Cal. Rules of Court, rule 3.1332(d).)

We review the denial of a continuance for abuse of discretion and will uphold the decision if it is "based on a reasoned judgment and complies with legal principles and policies appropriate to the case before the court." (*Thurman*, *supra*, 203 Cal.App.4th at p. 1126.) A trial court is not obligated to overlook a failure to comply with the California Rules of Court requirements for seeking a continuance. (*Mahoney v. Southland Mental Health Associates Medical Group* (1990) 223 Cal.App.3d 167, 170-172.)

Here, CTS orally sought a continuance on the first day of trial, its attorney representing that Dr. Cho was unavailable. There had been a prior continuance, and the parties stipulated to allow Dr. Cho's September 11, 2015 medical report into evidence.

CTS failed to ask for a continuance until the day of trial, and one previous continuance had been granted. Under these circumstances alone, the trial court was entitled to conclude a second continuance was unnecessary.

We therefore conclude the court acted within its discretion in denying a continuance.

DISPOSITION

The judgment is affirmed. Respondent is to receive costs on appeal.

NOT TO BE PUBLISHED

CHANEY, J.

We concur:

BENDIX, Acting P. J.

WEINGART, J.