

CALIFORNIA

ERICKSEN ARBUTHNOT PREVAILS ON APPEAL AS PLAINTIFF FAILS TO OVERCOME THE PRESUMPTION THAT THE TRIAL COURT'S ORDER TERMINATING HIS CASE WAS CORRECT



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Ericksen Arbuthnot's Appellate Practice Group has prevailed in a recent case decided by the California Court of Appeal, First Appellate District. (*Lam v. Kilpatrick* (2022) 2022 Cal. App. Unpub. LEXIS 141 (Lam).) In *Lam*, the trial court granted the Defendants' motion for terminating sanctions and dismissed Plaintiff's case with prejudice. On appeal, the self-represented Plaintiff did not carry his burden of showing that the trial court erred, so the Court of Appeal affirmed. As the *Lam* Court explained,

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.

(*Lam* at p. 3, citing *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564, original emphasis.) Thus, successful appellants must overcome this presumption of correctness in order to obtain a reversal on appeal. As the Court found here, however, the Plaintiff did not sustain his burden of affirmatively demonstrating error because he provided an inadequate record on appeal and a brief that failed to comply with the California Rules of Court.

With respect to the record, the *Lam* Court explained the fundamental rule that an appellant's failure to provide an adequate record ordinarily results in affirmance of the judgment. (See, e.g., *Gee v. American Realty & Construction, Inc.* (2002) 99 Cal.App.4th 1412, 1416.) In this case, the Plaintiff elected to provide the appellate record under rule 8.124(b)(1)(B), which requires that an appellant's

appendix must contain all documents that are "necessary for proper consideration of the issues, including ... any item that the appellant should reasonably assume the respondent will rely on." Rather than providing a record allowing for proper consideration of the issues, the Plaintiff provided "random, voluminous" documents which the Court found to be an inadequate substitute for compliance with rule 8.124(b)(1)(B). (*Lam* at pp. 3-4.)

The *Lam* Court further explained the fundamental rule that appellants must present legal analysis supported by authority and citations the record to demonstrate error:

To demonstrate error, appellant must present meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error. When a point is asserted without argument and authority for the proposition, it is deemed to be without foundation and requires no discussion by the reviewing court.

(*Lam* at p. 4, citing *In re S.C.* (2006) 138 Cal.App.4th 396, 408, internal citations omitted.) Here again, the Plaintiff did not present meaningful legal analysis to support his claim of error, resulting in the waiver of his arguments on appeal. (*Lam* at pp. 4-5; see also *In re Marriage of Brandes* (2015) 239 Cal.App.4th 1461, 1481 ["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."].)

Lastly, the Court acknowledged that Plaintiff's decision to represent

himself did not change the analysis, because "... his status as a self-represented litigant does not exempt him from the rules of appellate procedure or relieve him of his burden on appeal." (Lam at p. 5; see also *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247 [parties proceeding in propria persona are entitled to the same but no greater consideration than other litigants and attorneys].) Accordingly, all litigants, whether represented or not, should be aware that they must affirmatively show error in order to obtain a reversal and must comply with the rules of court or risk forfeiture of their arguments on appeal.

Gregory A. Mase, Esq., and Jesse A. Boyd, Esq. handled the appeal of this case. Mr. Mase is the Co-Chair of Ericksen Arbuthnot's Appellate Practice Group. Mr. Boyd is the Co-Chair of Ericksen Arbuthnot's Environment Group.



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