No. D083677

IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION ONE

ANTWOINE BEALER,

Plaintiff-Appellant,

v.

COUNTY OF SAN DIEGO et al.,

Defendant-Respondent.

On Appeal from the Superior Court
for the County of San Diego
Honorable Richard S. Whitney
Case No. 37-2021-00030001-CU-WM-CTL

RESPONDENT'S BRIEF

Michael P. Masterson (Bar. No. 239246)
Office of County Counsel, County of San Diego
1600 Pacific Highway, Room 355
San Diego, California 92101
Telephone: (619) 929-4633
Facsimile: (619) 531-6005

Counsel for Defendant-Respondent
COUNTY OF SAN DIEGO

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

TABLE OF AUTHORITIES
(Continued)

Page(s)

TABLE OF AUTHORITIES
(Continued)

Page(s)

Statutes

INTRODUCTION

Appellant Antwoine Bealer ("Appellant") brought this action pursuant to the California Public Records Act, Government Code section 7920.000 *et seq.* ("PRA"), to compel production of the County of San Diego's District Attorney's Office and Sheriff's Department (collectively, "Respondent" or "County") records of a 2004 event. However, in a prior action (S.D. Superior Ct. Case No. 37-2018-00018104-CU-WM-CTL) (the "2018 Action"), it was already agreed and determined that the County has produced all such records. As a result, the trial court properly sustained the County's demurrer to the Petition on grounds of res judicata.

On Appeal, Appellant fails to show any error in the trial court's finding that res judicata applies because: "The prior decision was on the merits, the same causes of action are alleged, and the parties are the same." (Clerk's Transcript, Vol. 1 of 1 ["CT"] 224 [Minute Order dated 05/12/2023].)

In addition, Appellant fails to show that any exception to res judicata or the finality of judgments applies here. Instead, no "injustice" or "public policy" exception applies, because the claims Appellant asserts in this case were already adequately litigated in the prior 2018 Action. In fact, Appellant's counsel in the 2018 Action repeatedly stipulated that the County's production of the documents was "satisfactory." Appellant's claims are thus an improper collateral attack on the finality of the 2018 Action judgment.

As a result, the County requests that the Court affirm the trial court's judgment of dismissal after sustaining the demurrer to Appellant's Petition without leave to amend.

STATEMENT OF FACTS AND PROCEDURE

Appellant seeks documents and records relating to his October 15, 2004 stop, detention, and arrest. (CT 9 [Petition, ¶2]; CT 74 [Points and Authorities in support of Demurrer, p. 2].) In particular, Appellant seeks information related to a Computer Aided Dispatch (CAD) system, including dispatcher recordings and the location of the deputy sheriff at the time of the stop. (CT 15–16 [Petition, pp. 7–8]; Appellant's Opening Brief ["AOB"], pp. 7–8, 11–13.)

On April 10, 2018, Appellant filed the 2018 Action, seeking the same documents and records relating to the 2004 stop, detention, and arrest. (CT 9–10, 15 [Petition in this Action, ¶¶3, 10, p. 7]; *see also* 1 CT 92 [2018 Action Petition, Demurrer RJN Ex. 2].) Appellant prevailed on the merits in the 2018 Action, and the County was ordered to comply with the PRA. (CT 105–06 [2018 Action Minute Order dated 11/24/2020, Demurrer RJN Ex. 3, pp. 3–4].) The trial court in the 2018 Action then ordered the parties to meet and confer regarding the production and narrow the records that are in dispute. (*Id.*) It was then agreed and determined that the County's court-ordered document production was "**satisfactory**."

Specifically, Appellant's counsel in the 2018 Action represented to the court: "the parties have agreed that the production is satisfactory, so we don't need any more assistance from the court as to the production." (CT 110 [2018 Action Reporter's Transcript dated 03/05/2021, Demurrer RJN Ex. 4, p. 3].) The court then issued a Minute Order stating, "[t]he issue with production of documents has been satisfied." (CT 114 [2018 Action Minute Order dated 03/05/2021, Demurrer RJN Ex. 5].) Subsequently, Appellant and the County again

stipulated that "the County's production of records was mutually satisfactory. As such, no additional hearings are contemplated regarding the production of records in this action." (CT 117 [2018 Action Stipulation and Order dated 03/30/2021, Demurrer RJN Ex. 6, p. 2].) Accordingly, the parties stipulated that "the final hearing related to production of records" had taken place on March 5, 2021. (*Id.*)

On July 13, 2021, Appellant filed his Petition in this action. (CT 9.) The Petition alleges that the County "failed to fully comply with the request for documents and records" in the 2018 Action, and that "documents are still being withheld." (CT 9, 10 [Petition, ¶¶3–4, 12].) The Petition alleges that the County "did not disclose all disclosable records during litigation" in the 2018 Action. (CT 11 [*Id.*, ¶17].)

On January 6, 2023, the County filed with the trial court in this action a Declaration in Support of Automatic 30-Day Extension of Responsive Pleading Deadline (C.C.P. §430.41). (CT 65.) The Declaration states that the parties made a good-faith attempt to meet and confer regarding the County's demurrer to Appellant's Petition, but were unable to complete the process by the deadline. (CT 66–67 [Declaration, ¶¶3–6].) Accordingly, the County was granted an automatic 30-day extension of time within which to file its demurrer, pursuant to Code of Civil Procedure section 430.41(a)(2). (*Id.*)

On February 7, 2023, the County filed its demurrer to the Petition, which was heard by the trial court on May 12, 2023. (CT 70 [Demurrer]; CT 223 [Minute Order dated 05/12/2023].) The trial court's demurrer minute order states: "The Court has reviewed Petitioner's previous petition, the court's ruling on the previous petition, and the current petition. The Court concludes res judicata applies. The prior

decision was final and on the merits, the same causes of action are alleged, and the parties are the same." (CT 224 [Minute Order dated 05/12/2023].)

On May 31, 2023, the trial court entered Judgment of dismissal after sustaining of demurrer without leave to amend. (CT 225.) Petitioner filed his notice of appeal on October 30, 2023. (CT 227.)

STANDARD OF REVIEW ON APPEAL

"In order to prevail on appeal from an order sustaining a demurrer, the appellant must affirmatively demonstrate error. Specifically, the appellant must show that the facts pleaded are sufficient to . . . overcome all legal grounds on which the trial court sustained the demurrer." *Sonoma Luxury Resort LLC v. California Reg'l Water Quality Control Bd.*, 96 Cal. App. 5th 935, 940–41 (2023). The most fundamental tenet of appellate review is the presumption of correctness — an appealed judgment is presumed to be correct. *Kim v. The True Church Members of Holy Hill Cmty. Church*, 236 Cal. App. 4th 1435, 1444 (2015). "We will indulge all intendments and presumptions to support the judgment on matters as to which the record is silent and prejudicial error must be affirmatively shown." *Id.* (citations omitted). The Appellant bears the burden of overcoming the presumption of correctness, and must affirmatively show reversible error, on the basis of the appellate record. *Jameson v. Desta*, 5 Cal. 5th 594, 609 (2018).

On appeal from an order of dismissal after an order sustaining a demurrer, the standard of review is de novo: the Court exercises its independent judgment about whether the Petition states a cause of action as a matter of law. *Villafana v. Cnty. of San Diego*, 57 Cal. App.

5th 1012, 1016 (2020). In reviewing the Petition, the Court must "assume the truth of all facts properly pleaded by the plaintiffs, as well as those that are judicially noticeable." *Travelers Indem. Co. of Connecticut v. Navigators Specialty Ins. Co.*, 70 Cal. App. 5th 341, 353 (2021). The reviewing Court does not, however, assume the truth of contentions, deductions or conclusions of law. *Lewis v. Safeway, Inc.*, 235 Cal. App. 4th 385, 391 (2015).

A general demurrer will lie where the Petition includes allegations that clearly disclose some defense or bar to recovery. *Cnty. of San Bernardino v. Superior Ct.*, 77 Cal. App. 5th 1100, 1107 (2022). In addition, Courts ruling on a demurrer "may properly take judicial notice of . . . established facts from both the same case and other cases." *Pinto Lake MHP LLC v. Cnty. of Santa Cruz*, 56 Cal. App. 5th 1006, 1013 (2020); *see also California Water Impact Network v. Newhall County Water Dist.*, 161 Cal. App. 4th 1464, 1476 (2008) (A defendant is entitled to judgment when it appears from the face of the Petition (or on those matters judicially noticed) that the Petition is barred as a matter of law).

In addition, the Court reviews the trial court's refusal to grant leave to amend under the abuse of discretion standard. *Villafana*, 57 Cal. App. 5th at 1017. When a trial court has sustained a demurrer without leave to amend, the Court decides "whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm." *Crestwood Behav. Health, Inc. v. Baass*, 91 Cal. App. 5th 1, 16 (2023) (citing *Blank v. Kirwan*, 39 Cal. 3d 311, 318 (1985)). "The burden of proving such

reasonable possibility is squarely on the plaintiff." *Id.* "[W]here the nature of the plaintiff's claim is clear, and under the substantive law no liability exists, a court should deny leave to amend because no amendment could change the result." *Save Lafayette Trees v. E. Bay Reg'l Park Dist.*, 66 Cal. App. 5th 21, 49 (2021).

DISCUSSION

1. The 2018 Action bars this action by res judicata

"Res judicata," or claim preclusion, prevents relitigation of the same cause of action in a second suit. *Hi-Desert Med. Ctr. v. Douglas*, 239 Cal. App. 4th 717, 731 (2015) (citation). As the trial court found, res judicata applies when "**(1)** the decision in the prior proceeding is final and on the merits; **(2)** the present proceeding is on the same cause of action as the prior proceeding; and **(3)** the parties in the present proceeding or parties in privity with them were parties to the prior proceeding." (CT 223; citing *Plan. & Conservation League v. Castaic Lake Water Agency*, 180 Cal. App. 4th 210, 226 (2009).) The County's demurrer showed that Appellant's action is barred based on each of these elements. (CT 77–78.) As a result, the trial court concluded that res judicata applies and sustained the demurrer. (CT 224.)

On appeal, Appellant fails to show any error. *See Roe v. Hesperia Unified Sch. Dist.*, 85 Cal. App. 5th 13, 24 (2022) ("The appellant has the burden to identify specific facts showing the complaint can be amended to state a viable cause of action."). As to the **first** res judicata element, Appellant "disputes whether the first lawsuit resulted in a final judgment since he never received a signed final judgment." (AOB, p. 19.) However, the signed final judgment that Appellant claims he did not receive is the judgment in this action, not the 2018 Action. (*Id.*) As

a result, there is no dispute that the 2018 Action resulted in a final judgment on the merits. (CT 77–78 [demurrer]; CT 224 [minute order on demurrer].)

As to the **second** res judicata element, Appellant fails to show that this action involves a different cause of action from the 2018 Action. California courts apply the "primary rights" theory to determine whether two proceedings involve the same cause of action for purposes of claim preclusion. *Boeken v. Philip Morris USA, Inc.*, 48 Cal. 4th 788, 797 (2010). The "cause of action" is the right to obtain redress for a harm suffered, regardless of the specific remedy sought or the legal theory advanced. *Boeken*, 48 Cal. 4th at 798. The violation of a single primary right gives rise to but a single cause of action. *Colebrook v. CIT Bank, N.A.*, 64 Cal. App. 5th 259, 263 (2021). Here, as shown above, the right at issue in this case is Appellant's right to documents and records related to the 2004 arrest, which is the same primary right asserted in the 2018 Action. (*See supra*, Statement of Facts and Procedure; *see also* AOB, p. 16 ["The causes of action are the release of the correct GPS, [CAD] transcripts and all discovery information withheld that were ordered by the court to be released . . . ."].)

Nonetheless, Appellant attempts to avoid claim preclusion by improperly "splitting" this primary right. "Hence the rule is that the prior judgment is res judicata on matters which were raised or could have been raised, on matters litigated or litigable." *Villacres v. ABM Indus. Inc.*, 189 Cal. App. 4th 562, 576 (2010) (citation omitted). "The reason for this is manifest. A party cannot by negligence or design withhold issues and litigate them in consecutive actions." (*Id.*)

Appellant claims this action is "not relitigating but correction of a continuous wrong," *i.e.*, County's alleged failure to "comply in full" with the 2018 Action order to comply with the PRA. (AOB, pp. 5, 10, 16, 19.) Appellant states this action is "an enforcement" of the 2018 Action. (AOB, p. 19.) However, Appellant should have raised these issues in the 2018 Action. *City of Santa Paula v. Narula*, 114 Cal. App. 4th 485, 490–91 (2003). Because he did not do that, and did not appeal the judgment in that action, he may not challenge these issues in this action. (*Id.*) As Appellant concedes, where a second action "would nullify the initial judgment or would impair rights established in the initial action," claim preclusion applies, whether the second action is deemed an "enforcement" action or a "collateral attack" on the prior judgment. (AOB, pp. 24–25.)

In short, it has already been conclusively agreed and determined that the County's production of the 2004 arrest records was "satisfactory." Because Appellant now seeks to challenge this determination, the trial court correctly determined that the present action is barred by res judicata.

Finally, as to the **third**, res judicata element, Appellant concedes that "[t]he parties are the same." (AOB, p. 20.) As a result, the trial court correctly found that res judicata applies to bar this action.

2. No exception to res judicata applies

Appellant fails to show that any exception to res judicata applies. (*See* AOB, pp. 20, 23, 25 [citing "injustice" and "public policy" exceptions].) "In rare circumstances, a final judgment may be denied preclusive effect when to do so would result in manifest injustice." *F.E.V. v. City of Anaheim*, 15 Cal. App. 5th 462, 465, 474 (2017);

Arcadia Unified School Dist. v. State Dept. of Education, 2 Cal. 4th 251, 259 (1992) ("The public interest exception is an extremely narrow one; we emphasize that it is the exception, not the rule, and is only to be applied in exceptional circumstances.").

First, Appellant is precluded from arguing any res judicata exception. Arguments not asserted in the trial court are waived and will not be considered for the first time on appeal. *Discovery Builders, Inc. v. City of Oakland*, 92 Cal. App. 5th 799, 816 (2023). Here, Appellant never argued any exception to res judicata in the trial court. (CT 169–74 [Appellant's demurrer opposition].) In addition, when an appellant raises an issue "but fails to support it with reasoned argument and citations to authority, we treat the point as forfeited." *Crestwood Behav. Health, Inc.*, 91 Cal. App. 5th at 20 n.9, 22. Here, other than citing the general principle, Appellant "fails to reference any authority to support [his] argument that either of the exceptions applies in this case." *Consumer Advoc. Grp., Inc. v. ExxonMobil Corp.*, 168 Cal. App. 4th 675, 694 (2008).

Second, an exception only applies when the issue presented is one of law and not of fact. *City of Sacramento v. State of California*, 50 Cal. 3d 51, 64 (1990). Here, the issue barred by res judicata is whether the County "satisfactorily" produced all records related to the 2004 event. This is a question of fact that is not subject to any res judicata exception.

Third, in any event, Appellant cannot show any res judicata exception in this case. Where claims asserted in the present case "were commendably advanced during negotiation and [approval of a] settlement agreement" in a prior litigation, courts have discerned "no

public policy reason for refusing to invoke the doctrine of res judicata." *Villacres*, 189 Cal. App. 4th at 592. Here, Appellant's counsel in the 2018 Action voluntarily stipulated on multiple occasions that the County's document production was "satisfactory." (CT 110, 114, 117.)

Appellant claims that his attorneys did not know that the record production was allegedly incomplete. (AOB, pp. 13, 20.) However, it is presumed that the attorneys had the proper authority to make these representations. *Kallman v. Henderson*, 234 Cal. App. 2d 91, 98 (1965). A judgment may not be impeached collaterally on the ground that an attorney had no authority to act on his behalf. *Gagnon Co. v. Nevada Desert Inn*, 45 Cal. 2d 448 465 (1955). Furthermore, even if he or his counsel made a "mistake" in the 2018 Action, res judicata applies regardless of whether the original order was erroneously decided. *Moffat v. Moffat*, 27 Cal. 3d 645, 654 (1980).

Appellant also implies misconduct on the part of the County, without citation to the record or any authority. (*See* AOB, p. 10.) However, without evidence of any impropriety, Appellant's comments fail. "It is well established that all presumptions of law are in favor of the good faith of public officials [citation]." *Cnty of Mono v. City of Los Angeles*, 81 Cal. App. 5th 657, 677 (2022); citing Evid. Code § 664 ("It is presumed that official duty has been regularly performed.").

Appellant also cannot establish any extraordinary injustice sufficient to warrant an exception merely because he is a *pro se* litigant. "We treat a party who represents himself on appeal as we would any other party or attorney." *Denny v. Arntz*, 55 Cal. App. 5th 914, 920 (2020); *see also Severson & Werson, P.C. v. Sepehry-Fard*, 37 Cal. App. 5th 938, 952 (2019) ("self-represented parties must follow correct rules

of procedure and failure to do so can result in waiver of challenges on appeal."). In any event, Appellant was not self-represented in the 2018 Action.

Finally, Appellant argues that the trial court erred because the County's demurrer was untimely. (AOB, pp. 30–31.) However, the demurrer was not untimely, because the County obtained an automatic 30-day extension of time to file the demurrer, in order to complete the meet-and-confer process, pursuant to Code of Civil Procedure section 430.41. (CT 65–67.) Appellant fails to affirmatively show any error, which is his burden. *Kim*, 236 Cal. App. 4th at 1444.

In short, Appellant fails to demonstrate any error in the trial court finding that res judicata bars this case. Appellant also fails to demonstrate that any "exceptional circumstances" warrant application of the "extremely narrow" exceptions to the res judicata doctrine. *Arcadia Unified School Dist.*, 2 Cal. 4th at 259.

CONCLUSION

Based on the foregoing, the County respectfully requests that the Court affirm the trial court's judgment of dismissal after sustaining the demurrer to Appellant's Petition without leave to amend.

DATED: June 12, 2024

Respectfully submitted,

CLAUDIA G. SILVA, County Counsel

By Michael Masterson
Michael P. Masterson, Senior Deputy

Attorneys for Defendant-Respondent,
COUNTY OF SAN DIEGO

CERTIFICATE OF WORD COUNT

Pursuant to Rule 8.204(c) of the California Rules of Court, and in reliance on the word count of the computer program used to prepare this brief, counsel certifies that the number of words in this Respondent's Brief, including footnotes but excluding matters that may be omitted under Rule 8.204(c), is 3,070 words.

DATED: June 12, 2024

Respectfully submitted,

CLAUDIA G. SILVA, County Counsel

By Michael Masterson
Michael P. Masterson, Senior Deputy

Attorneys for Defendant-Respondent,
COUNTY OF SAN DIEGO