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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

PRADEEP PAL et al.,

Plaintiffs and Respondents,

v.

GREG GETTY,

Defendants and Appellants.

A128469

**(Alameda County
Super. Ct. No. RG05202910)**

The owners of a residential property filed an action for ejectment against occupants who refused to leave. Judgment was entered in favor of the owners following a court trial. Two purported occupants have appealed, arguing that the judgment is erroneous to the extent it applies to unnamed persons claiming an interest in the property, in addition to defendants actually named in the lawsuit. We affirm.

I. BACKGROUND

The record on appeal is incomplete, consisting of only a partial reporter's transcript from the court trial at issue and selected pleadings, motions and orders. We glean the following facts from the transcripts that have been provided:

Plaintiffs and respondents Pradeep Pal and Charanjit Rihal purchased a residential duplex in Oakland in December 2004. They paid approximately \$432,000 for the property in a trustee's sale approved by the bankruptcy court. Plaintiffs learned that people were living in the downstairs unit and asked them to vacate. In 2005, after the occupants refused to leave voluntarily, plaintiffs filed the current action for quiet title and ejectment against 40 Doe defendants. As the case proceeded, various parties were

substituted for Doe defendants and either answered the complaint or defaulted. Some of these individuals filed cross-complaints seeking relief against plaintiffs.

In July, August, and September 2007, settlements were reached between plaintiffs and three of the defendants, Joshua Davidson, Robert Burnett and Steven DeCaprio (none of whom is a party to this appeal). Those defendants agreed to vacate the premises and disclaim any interest in the property. Plaintiffs also agreed to allow two other occupants of the downstairs unit who were not part of the settlement (and whose names do not appear in the record provided) to move to the upstairs unit temporarily until they found another place to live. It is unclear whether those occupants are among the parties who appeared as defendants in the lawsuit or had defaults taken against them.

Plaintiffs decided to renovate the property and hired a contractor. In February 2008, they spoke to the two occupants living upstairs, who agreed to move out voluntarily within two or three weeks. Plaintiffs walked through the downstairs unit with their contractor on February 9 to determine the scope of work to be done, and checked it again on February 14. The downstairs unit appeared to be vacant on both of those dates.

On February 16, 2008, the occupants of the upstairs unit called plaintiff Pal and told him some people had broken into the downstairs unit. Pal went to the property and discovered that people had moved in and were living there. He asked them to leave but they refused. The two occupants of the upstairs unit moved out voluntarily as they had promised.

A court trial was held on plaintiffs' complaint, at which defendants Jake Sternberg, Keri Firmage, Aleksey Maromyguin and Greg Getty (all of whom had apparently been substituted for Doe defendants and had answered to the complaint) appeared in propria persona. After hearing testimony over three days, the court entered a judgment in favor of plaintiffs. The court found that defaults had been duly entered against defendants Eric Meyer, Pamela Ruiz, Jamie Jones, and Victor Moreno (none of whom appeared at trial), and that defendant Joshua Davidson had consented to the judgment by filing a stipulation to the effect that he had no interest in the property. The written judgment provided that plaintiffs "shall have and recover the possession of the

real property . . . from Defendants Jake Sternberg, Keri Firmage, Aleksey Maromyguin, Greg Getty, Eric Meyer, Pamela Ruiz, Jamie Jones, Joshua Davidson, and Victor Moreno, *and all unknown persons who claim any interest in the subject property.*” (Italics added.) The judgment directed the issuance of a writ of execution for possession of the property and awarded plaintiffs \$5,000 in damages against the four defendants who appeared at trial (Sternberg, Firmage, Maromyguin and Getty).¹

Defendant Greg Getty filed a notice of appeal from the judgment. A second notice of appeal from the judgment was filed by one “Matthew Dodt, in pro. per.,” though Dodt was not named as a defendant in the trial court. In an opening brief filed jointly by Getty and Dodt, Dodt is described as a resident of the property. The brief also states that Getty is not appealing his personal ejection from the property, but is, rather, appealing on behalf of “unnamed residents.”²

II. DISCUSSION

Getty and Dodt contend the judgment must be reversed because it purports to evict all unknown persons from the property. They argue that a writ of possession in an ejectment action may only be issued against parties who have been properly named as defendants. We reject their claim because the appellate record is incomplete, the briefing in this case fails to comply with the California Rules of Court, and neither “appellant” has standing to appeal.

¹ Though the basis for this award is unclear, plaintiff Pal testified at trial that the fair market monthly rental value of the lower unit was between \$2,000 to \$2,500.

² After the briefing was complete, Getty filed a “Motion to Add Unserved Occupants as Appellants,” in which he asked this court to add Armando Resendez, Barry Hendricks, Michael Cress, Michael Meadows and Ann McQuaid as parties to this appeal. We denied this motion on February 1, 2011. Armando Resendez and Barry Hendricks have been erroneously listed on the opening brief as “appellants” even though they are not parties to this appeal. At oral argument, several individuals sought to appear who were not parties to the action below, did not file notices of appeal, and who did not file any appellate briefing.

A. *Procedural Defects*

California Rules of Court, rule 8.204(a)(1)(C), requires that the briefs on appeal “[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. . . .” Moreover, the party challenging a judgment on appeal has the burden of providing an adequate record. (*Nielson v. Gibson* (2009) 178 Cal.App.4th 318, 324 (*Nielson*); *Hearn v. Howard* (2009) 177 Cal.App.4th 1193, 1200.) “Thus, an appellant must not only present an analysis of the facts and legal authority on each point made, but must also support arguments with appropriate citations to the material facts in the record. If he fails to do so, the argument is forfeited.” (*Nielson*, at p. 324.)

In their opening brief, Getty and Dodt make a number of factual assertions that are not accompanied by any citation to the record on appeal and do not appear, in any event, to be supported by the record. They argue, for example, that Dodt and others were living at the duplex and will become homeless by virtue of the judgment, but the transcripts provided are utterly devoid of any evidence supporting this assertion. The record and briefs are simply inadequate to present the claim that unnamed residents at the duplex have been ejected from the property by virtue of the challenged judgment.

B. *No Standing to Appeal*

Only a party aggrieved by a judgment or order may appeal from that judgment or order. (Code Civ. Proc., § 902; *Serrano v. Stefan Merli Plastering Co., Inc.* (2008) 162 Cal.App.4th 1014, 1026.) A party is aggrieved when the judgment or order “has an immediate, pecuniary, and substantial effect on his interests or rights.” (*Shaw v. Hughes Aircraft Co.* (2000) 83 Cal.App.4th 1336, 1342.) This appellate standing requirement is jurisdictional and cannot be waived, and it may be raised at any time by a party or by the court itself. (*Cummings v. Stanley* (2009) 177 Cal.App.4th 493, 501; see also *Marsh v. Mountain Zephyr, Inc.* (1996) 43 Cal.App.4th 289, 295 (*Marsh*).)

Getty does not have standing to appeal because he is not a party aggrieved by the judgment in favor of plaintiffs. He does not purport to challenge his own ejection from the property, and he raises no argument in the briefs that he was entitled to retain

possession. Nor does he challenge the court's award of monetary damages against him. Rather, he "appeals the ejection of unnamed residents" of the property "because of the impact such a dislocation would take on the community that generates resources for his survival." An alleged error that affects only nonappealing third parties does not confer standing. (*Bratcher v. Buckner* (2001) 90 Cal.App.4th 1177, 1184; *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1128.)

Dodt similarly lacks standing to appeal. Although the opening briefs assert that he lived in the duplex owned by plaintiffs, Dodt was never named as a defendant in the case below and never appeared as a party. Subject to certain exceptions not relevant here, a person appealing must be *both* a party of record *and* sufficiently aggrieved by the judgment or order that is challenged on appeal. (*Marsh, supra*, 43 Cal.App.4th at p. 295.) A third party may become a party of record and obtain the right to appeal by moving to vacate the judgment or order under Code of Civil Procedure section 663 (*County of Alameda v. Carleson* (1971) 5 Cal.3d 730, 736; *Marsh*, at p. 295), but the record in this case does not establish that Dodt ever filed a motion to vacate or otherwise attempted to set aside the judgment.

Nor does the appellate record establish that Dodt actually occupied the duplex on the plaintiffs' property, a fact essential to any claim that he is aggrieved by the trial court's order and thus has standing to appeal. The opening brief asserts that Dodt resides at the duplex, but we may not consider factual assertions in the briefs that are not supported by the appellate record. (*Mueller v. County of Los Angeles* (2009) 176 Cal.App.4th 809, 816, fn. 5.) Absent a showing that he possesses an interest in the property that is affected by the judgment, i.e., that he is, in fact, one of the "unknown persons who claim any interest in the subject property" under the terms of the judgment, Dodt cannot show that he is sufficiently aggrieved to pursue this appeal, even if he could overcome the rather substantial obstacle of having not been a party in the proceedings below. (See *Marsh, supra*, 43 Cal.App.4th at p. 295.)

III. *DISPOSITION*

The judgment is affirmed. Costs on appeal are awarded to respondents.

NEEDHAM, J.

We concur.

SIMONS, Acting P. J.

BRUINIERS, J.