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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

AMERICA ANGEL
TRANSPORTATION, INC., et al.,

Plaintiffs and Appellants,

v.

WAYNE WALZ,

Defendant and Respondent.

G056422

(Super. Ct. No. 30-2014-00743516)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Randall
J. Sherman, Judge. Affirmed.

Russo & Duckworth and J. Scott Russo for Plaintiffs and Appellants.

Law Offices of David Brand and David Brand for Defendant and
Respondent.

* * *

This appeal arises from the trial court's granting of defendant Wayne Walz's motion for judgment pursuant to Code of Civil Procedure section 631.8,¹ following the presentation of evidence by plaintiffs Angel Errands, Inc. (Errands), and America Angel Transportation, Inc. (Angel Transportation; collectively plaintiffs) at a court trial. The trial court granted the motion, finding plaintiffs had not met their burden to prove causation of damages. Plaintiffs contend the trial court erred because sufficient evidence sustained their burden of proof on the issue. But plaintiffs do not discuss all of the material trial evidence regarding the issue and have not provided this court with the evidence relied upon by the trial court when it granted defendant's motion. Based upon the record, we find substantial evidence supported the trial court's determination. We affirm the judgment.

I

FACTS AND PROCEDURAL HISTORY

A. Contracts for billing and collection services

For most of the time period at issue in this case, Milad Demetry was the president and principal actor for both plaintiffs Errands and Angel Transportation. In 2012, Errands entered into a business relationship with defendant, wherein Errands would transport individuals claiming workers' compensation benefits (applicants) to and from their medical appointments. In 2013, Angel Transportation effectively became the successor of Errands, with respect to its business dealings with defendant.

In 2012 and 2013, respectively, plaintiffs entered written contracts with defendant, titled the "Billing & Collections Agreement" (collectively the Agreements),

¹ All further undesignated statutory references are to the Code of Civil Procedure.

which contained the same substantive terms.² Relevant to this case, the Agreements stated defendant would “provide authorization, billing & collections services” to plaintiffs, “in a manner that [defendant] in its sole discretion, deem[ed] most appropriate.” Defendant was responsible for negotiating and securing payments from the workers’ compensation insurers (or their third party administrators) connected to the applicants transported by plaintiffs.³ Defendant was to be paid 20 percent of the actual payments collected for plaintiffs and, even in the event either or both of the Agreements was terminated, defendant was obligated to continue to perform its billing and collection services for plaintiffs.

Plaintiffs provided transportation services to applicants based upon defendant’s requests, typically ranging between 10 to 50 requests per day. Mostly, transportation would start at an applicant’s home and many would involve trips to multiple appointments — such as a radiological examination and chiropractic treatment — including a trip to defendant’s medical facilities in Santa Ana. Each trip would be documented in a “trip sheet” filled out by a driver and later given to plaintiffs, who would then submit the sheets to defendant. Then a billing service company acting on behalf of defendant would attach a generic insurance billing form to the sheets and send them to the appropriate insurers for payments.

Insurers would issue payment checks naming plaintiffs as payees but would deliver them to defendant’s office. For most of the time period at issue, Demetry, as president of plaintiffs, would periodically go to defendant’s office to collect the payment checks and simultaneously pay defendant its 20 percent of the amounts received. Insurers would initially respond by either paying the entire amount billed, paying

² The Agreements were signed by Errands in 2012 and Angel Transportation in 2013.

³ Not material to this case, an employer may also be self-insured and administer workers’ compensation benefits directly. (Lab. Code, § 3700.)

nothing, or making a partial payment. If no payment or only partial payment was received, it was defendant's policy to send an initial request for additional payment and then wait until the underlying workers' compensation claim settled, before again requesting payment from the insurer.

In some cases, defendant would send a representative to the Workers' Compensation Appeals Board (WCAB) — where workers' compensation claims are formally adjudicated — to settle payments owed to plaintiffs. In at least one case, when an insurer did not pay a billed amount, defendant filed a lien at the WCAB for the underlying claim and then subsequently received payment in full from the insurer.

By July 2014, Demetry had brought in an investor who became president of Angel Transportation. In July and September 2014, lawsuits by Errands and Angel Transportation, respectively, were filed and later consolidated.

B. Court trial

Plaintiffs filed their lawsuits against defendant as well as individual doctors, alleging seven causes of action. Relevant here, plaintiffs alleged that because of the conduct and omissions of defendant, over \$1.2 million in billed trips went unpaid by insurers and became uncollectible.⁴ The case proceeded to a court trial bifurcated between liability and damages issues. With respect to defendant's liability, plaintiffs' argument at trial focused on a theory that defendant had breached the Agreements by failing to obtain authorizations for plaintiffs' trips ahead of time from insurers and by failing to file liens at the WCAB so that plaintiffs' rights to payment for their billed trips could be formally adjudicated by the WCAB in the event an insurer refused to pay.

⁴ Plaintiffs' respective causes of action were the same: (1) breach of contract (oral and written terms); (2) breach of contract (the written Agreements); (3) negligence; (4) goods and services rendered; (5) open book account; (6) account stated; and (7) quantum meruit.

Plaintiffs presented evidence that, for the approximately 270 workers' compensation applicant claims at issue in this case, defendant had not obtained any authorizations for plaintiffs and had filed liens for only 13 claims. Plaintiffs contrasted the claims where defendant had filed liens, which plaintiffs claimed were all paid by an insurer, with claims in which liens were not filed and large unpaid balances for trips remained unpaid.

C. Motion for judgment and plaintiffs' opportunity to present additional evidence

At the close of plaintiffs' evidence, defendant and the doctors both made motions for judgment pursuant to section 631.8.⁵ Among other things, defendant argued plaintiffs had failed to prove causation of their claimed damages. At the initial hearing on the motion, the trial court asked plaintiffs whether they could identify any settled workers' compensation claims where defendant did not file a lien and the plaintiff who had provided transportation services was not paid. The court contrasted its hypothetical situation with circumstances it found repeatedly documented in the evidence: claims where no lien had been filed but payment had been received anyway. The court reasoned that an actual claim matching its hypothetical circumstances would demonstrate actual (as opposed to merely theoretical) causation.

After hearing initial arguments from all parties, the court gave plaintiffs' an opportunity to prepare and present additional evidence responsive to the court's inquiry, to demonstrate proof of causation of damages. Two days later, plaintiffs presented further testimony by their expert, Kent Donnelly, as well as Demetry. Through these two witnesses, plaintiffs proffered 10 representative claims where, according to plaintiffs, liens had not been filed and multiple trips had not been paid. Among other things, Donnelly testified about a workers' compensation statutory amendment that went into effect in 2013 (Lab. Code § 4903.5, Stats. 2012, ch. 363, § 68), which created a time limit

⁵ Issues unique to the doctors' motion are not discussed here because Plaintiffs and the doctors settled before the trial court made any decision on that motion.

for service providers to file liens at the WCAB so they could adjudicate their rights to payments for past services.⁶ Donnelly testified that as a result of this statutory time limit going into effect, defendant's failure to file liens for the claims at issue resulted in a waiver of plaintiffs' rights to request an adjudication of whether an insurer was obligated to pay for the trips billed but unpaid.

Demetry was then recalled and testified about the unpaid status of the representative claims. On cross-examination, defendant confronted Demetry with several payment summary exhibits which had been previously admitted into evidence. Defendant asserted that the exhibits showed plaintiffs had actually received payments for at least some of the representative claims and at least one unpaid balance alleged by plaintiffs was false. In other words, defendant asserted on cross-examination that prior trial exhibits – the majority of them admitted as defendant's exhibits — contradicted plaintiffs' theory of causation by demonstrating at least some instances within plaintiffs' representative claims where insurers had paid even though defendant had not obtained an authorization or filed a lien.

The court heard final arguments on the motion for judgment and found that plaintiffs had not demonstrated the causation necessary for plaintiffs to prevail on their lawsuit. Specifically, the court first stated plaintiffs' expert had conceded that a failure to obtain an authorization was not fatal to plaintiffs' ability to secure payment because it could be cured by subsequently filing a lien. Then, regarding filing liens, the court cited the same representative claims defendant had focused on in the cross-examination of Demetry — corresponding to claims for applicants named Pedro C. and Maria M. — as

⁶ Pursuant to Labor Code section 4903.05, subd. (d)(2), starting January 1, 2013, a service provider's ability to file a lien at the WCAB became time limited. For dates of service before July 1, 2013, a lien had to be filed within three years of service and for dates of service on July 1, 2013 and after, a lien had to be filed within 18 months of service. (Lab. Code, § 4903.5, subd. (a).)

evidence showing payments could be received for a claim even though defendant had not obtained an authorization nor filed a lien.

Judgment was entered in favor of defendant and plaintiffs timely appealed. There is no indication in the record that a statement of decision was requested. More importantly, plaintiffs do not discuss the claim of Pedro C. or Maria M. in their appellate briefs, nor have they included in their appendices on appeal the related trial exhibits that defendant used during his cross-examination of Demetry.

II

DISCUSSION

A. Standard of review and relevant rules

An appeal of a judgment is generally subject “to three fundamental principles of appellate review: (1) a judgment is presumed correct; (2) all intendments and presumptions are indulged in favor of correctness; and (3) the appellant bears the burden of providing an adequate record affirmatively proving error.” (*Acquire II, Ltd. v. Colton Real Estate Group* (2013) 213 Cal.App.4th 959, 970.) Four corollary rules are relevant to this case. First, issues not raised and supported by argument are deemed waived. (*Jones v. Superior Court* (1994) 26 Cal.App.4th 92, 99.) Second, if appellants contends “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.) Third, if an appellant fails to supply a reviewing court with necessary transcripts or exhibits to resolve an insufficiency of the evidence argument on appeal, the issue may be deemed waived. (See Cal. Rules of Court, rule 8 .124(b)(1)(B); see also *Aguilar v. Avis Rent A Car System, Inc.* (1999) 21 Cal.4th 121, 132 [defendants’ election not to provide a reporter’s transcript of the trial proceedings resulted in the rejection of two evidentiary issues].) Fourth, if a party fails to request a

statement of decision when one is available, “the party waives any objection to the trial court’s failure to make all findings necessary to support its decision” and we apply the “doctrine of implied findings and presume[] the trial court made all necessary findings supported by substantial evidence.” (*Acquire II, Ltd. v. Colton Real Estate Group, supra*, 213 Cal.App.4th at p. 970.)

When an appeal challenges a trier of fact’s resolution of factual questions, the substantial evidence standard of review requires an appellate court to review the record, draw any reasonable inferences in a light most favorable to the judgment, and, traditionally, uphold the judgment where the record contains substantial evidence to support it. (*US Ecology, Inc. v. State of California* (2005) 129 Cal.App.4th 887, 908.) In performing this analysis, an appellate court accepts a trier of fact’s resolution of conflicting inferences (*In re Providian Credit Card Cases* (2002) 96 Cal.App.4th 292, 301) and does not reweigh the evidence. (*Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 630-631.) Indeed, a judgment supported by substantial evidence must be affirmed even if substantial evidence to the contrary also exists. (*Ibid.*)

In a court trial of a civil action, after the presentation of a party’s evidence, an opposing party can make a motion for judgment pursuant to section 631.8, where the moving party can be excused from having to present evidence ““if the court concludes that the [presenting party] failed to sustain its burden of proof.”” (*Kinney v. Overton* (2007) 153 Cal.App.4th 482, 487.) ““In making the ruling, the trial court assesses witness credibility and resolves conflicts in the evidence.”” (*Ibid.*) Accordingly, ““the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law. [Citations.] Specifically, the question becomes whether the appellant’s evidence was (1) “uncontradicted and unimpeached” and (2) “of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding.””” (*Eriksson v. Nunnink* (2015) 233 Cal.App.4th 708, 733, citing *Shaw v. County of Santa Cruz* (2008) 170 Cal.App.4th 229, 279.)

B. Plaintiffs fail to discuss all material evidence and provide trial exhibits

Plaintiffs argue on appeal that the trial court committed reversible error in granting defendant's motion for judgment because the evidence sustained plaintiffs' burden of proof as to whether defendant's breach of contract caused plaintiffs' claimed damages. Based upon plaintiffs' appellate briefs, their breach of contract theory is the sole theory of liability at issue on appeal because plaintiffs raise no argument as to their other causes of action they pleaded in their operative complaints. (*Jones v. Superior Court, supra*, 26 Cal.App.4th at p. 99.)

A finding of causation in a breach of contract action is based upon whether the breach was a substantial factor in causing the damages (*US Ecology, Inc. v. State of California, supra*, 129 Cal.App.4th at p. 909), which typically requires a resolution of factual questions, as the motion for judgment in this case did. As discussed above, plaintiffs presented documentary evidence at trial showing many instances where bills for trips provided to applicants were not paid by insurers. In response to defendant's motion for judgment and the trial court's specific inquiry regarding proof of causation of damages, plaintiffs presented 10 representative workers' compensation claims and recalled their expert witness Donnelly to support their argument that defendant's failure to file liens for the at issue claims amounted to a waiver of plaintiffs' rights to payments for those claims. The reporter's transcript shows the trial court disagreed with plaintiffs at least partially based upon the court's finding that evidence of payments received for some of the representative claims, where no authorizations had been obtained and no liens had been filed, demonstrated that plaintiffs had failed to sustain their burden of proof as to causation of damages.

On appeal, plaintiffs contend the trial court committed error in granting defendant's motion for judgment because there was in fact sufficient evidence of causation presented at trial. However, plaintiffs do not discuss in their briefs the evidence focused on by the trial court in its grant of defendant's motion for judgment:

the representative claims of Pedro C. and Maria M. That is, although plaintiffs generally discuss the presentation of their 10 representative claims at trial, plaintiffs do not address the trial court's finding that the claims of Pedro C. and Maria M. demonstrated a lack of proof of causation. In contrast, defendant references the claim of Pedro C. in his respondent's brief, to support defendant's argument that the grant of its motion for judgment should be affirmed. Yet, in their reply brief, plaintiffs only attack defendant's characterization of the trial court's findings and again do not discuss the claims of either Pedro C. or Maria M.

Based upon plaintiffs' failure to discuss the claims the trial court relied upon in its grant of defendant's motion for judgment, we find the error claimed by plaintiffs — that the trial court should have found sufficient evidence of causation — to be waived for failure to discuss all material evidence on the issue. (*Foreman & Clark Corp. v. Fallon, supra*, 3 Cal.3d at p. 881.) Further, this conclusion is necessitated in this case by the fact that plaintiffs' appellate appendices do not contain the trial exhibits defendant used to challenge plaintiffs' evidence of causation during the cross-examination of Demetry, particularly regarding the claims of Pedro C. and Maria M. As a result, even if we did not deem plaintiffs' argument waived for a failure to provide and discuss the exhibits, we would nevertheless have no way of determining whether plaintiffs' evidence was ““uncontradicted and unimpeached,”” nor ““of such a character and weight as to leave no room for a judicial determination that”” plaintiffs had failed to sustain their burden of proof as to causation of their claimed damages. (*Eriksson v. Nunnink, supra*, 233 Cal.App.4th at p. 733.) Plaintiffs have not carried their burden to demonstrate reversible error under a substantial evidence standard of review.

III
DISPOSITION

The judgment is affirmed. Defendant is entitled to recover costs on appeal.

MOORE, J.

WE CONCUR:

O'LEARY, P. J.

THOMPSON, J.