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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

JAMES MACKAY, Plaintiff and Appellant, v. DESERT HOT SPRINGS REAL PROPERTIES, INC. et al., Defendants and Respondents.	E079157 (Super.Ct.No. CVPS2000505) OPINION

APPEAL from the Superior Court of Riverside County. Kira L. Klatchko, Judge. Affirmed.

James Mackay, in pro. per., for Plaintiff and Appellant.

Lewis Brisbois Bisgaard & Smith, Barry G. Kaiman, Tracy D. Forbath, and Suzanne L. Schmidt for Defendants and Respondents.

Plaintiff and appellant James Mackay, representing himself in propria persona,[1] sued defendants and respondents Desert Hot Springs Real Properties, Inc. (dba DHS Spa Hotel), Lynn M. Brynes, and Michael Bickford for injuries sustained in an incident that occurred while Mackay was visiting Desert Hot Springs Spa Hotel (hotel). The incident involved hotel employees' attempts to escort Mackay off the premises due to his intoxication and belligerence. Defendants successfully moved for summary judgment and Mackay appeals. We affirm.

I. PROCEDURAL BACKGROUND AND FACTS

On September 19, 2020, Mackay purchased a day pass to the hotel. He arrived at approximately 9:30 a.m. He consumed alcoholic beverages on the premises and became intoxicated. At approximately 3:30 p.m., hotel employees asked him to leave, but he refused and threw a cup at an employee. When they attempted to escort him off the premises, he acted aggressively and was injured.

On December 22, 2020, Mackay sued defendants for negligence, breach of contract, mental anguish, posttraumatic stress, and assault. Defendants filed a general denial and propounded request for admissions (RFAs). When Mackay failed to respond to the RFAs, defendants moved for an order deeming the RFAs admitted. Mackay offered no opposition, and the trial court granted the motion.

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[1] We treat in propria persona parties the same as represented parties, i.e., uniformly applying the procedural and substantive rules of appellate review. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247.)

On January 13, 2022, defendants moved for summary judgment on the grounds the undisputed material facts establish there are no triable issues as to any cause of action alleged in the complaint. Defendants relied on Mackay's deemed admissions that unequivocally established (1) they did not cause MacKay's injuries, (2) they did not breach any duty owed to him, (3) they did not act with the intent to harm him, (4) they never entered into a contract with him, and (5) no employee involved in the incident was unfit and/or incompetent to complete the work he or she was hired to perform. Mackay did not oppose the motion, and it was granted on March 28, 2022. Judgment was entered on April 18, 2022.

II. DISCUSSION

A. Appellant's Burden on Appeal.

Contrary to Mackay's claim that because he is self-represented, he is "allowed a little leeway," the rules of appellate procedure apply to parties even though they are representing themselves on appeal. (*Leslie v. Board of Medical Quality Assurance* (1991) 234 Cal.App.3d 117, 121.) We treat such party like any other party, and he or she "'is entitled to the same, but no greater consideration than other litigants and attorneys.'" (*Nwosu v. Uba*, *supra*, 122 Cal.App.4th at p. 1247.) Thus, Mackay has the same burden to demonstrate reversible error as he would if he were represented by counsel. "'A fundamental principle of appellate practice is that an appellant "'must affirmatively show error by an adequate record. . . . "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."'"'" (*IIG Wireless, Inc. v. Yi* (2018) 22 Cal.App.5th 630, 639;

see *Nielsen v. Gibson* (2009) 178 Cal.App.4th 318, 324 [An appellant has the burden of overcoming the presumption that a judgment is correct by presenting "an analysis of the facts and legal authority on each point made"; failure to do so forfeits the argument.].)

Here, Mackay has filed an 11-page opening brief, which is devoid of coherent legal arguments and woefully deficient. He requests this court reverse the order granting summary judgment on the grounds the trial judge was biased, discovery was incomplete, and the evidence shows he was "brutally attacked at the defendants' place of business." However, his brief fails to comply with California Rules of Court, rule 8.204(a)(1)(B), which requires a party's brief to "[s]tate each point under a separate heading or subheading summarizing the point, and support each point by argument and, if possible, by citation of authority." "Failure to provide proper headings forfeits issues that may be discussed in the brief but are not clearly identified by a heading." (*Pizarro v. Reynoso* (2017) 10 Cal.App.5th 172, 179.) "'[A]n appellate court is not required to examine undeveloped claims, nor to make arguments for parties.'" (*Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975, 984.) The court's "role is to evaluate '"legal argument with citation of authorities on the points made."'" (*Id.*, at p. 985.)

Also, Mackay has failed to provide an adequate record for review. He asks this court to reverse the order granting summary judgment; however, he has not provided the operative pleadings or the motion for summary judgment. Rather, defendants provided these documents by augmenting the record. As the appellant, Mackay bears the burden of providing an adequate record, citations to the record, and legal authority and argument to demonstrate error because the judgment or order is presumed correct. (*Ketchum v.*

Moses (2001) 24 Cal.4th 1122, 1140-1141.) Consequently, this court indulges all intendments and presumptions to support the order on matters where the record is silent. (*Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 631 ["We must accept as true all evidence and all reasonable inferences from the evidence tending to establish the correctness of the trial court's findings and decision, resolving every conflict in favor of the judgment."].)

B. Analysis.

With these principles and rules in mind, we turn to Mackay's challenges to the trial court's order granting defendants' motion for summary judgment.

As noted *ante*, Mackay's opening brief suffers from many fatal defects, the biggest of which is the failure to provide his complaint and the motion we are tasked with reviewing de novo. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 860.) In conducting our de novo review, "'we follow the traditional three-step analysis. "We first identify the issues framed by the pleadings, since it is these allegations to which the motion must respond. Secondly, we determine whether the moving party has established facts which negate the opponents' claim and justify a judgment in the movant's favor. Finally, if the summary judgment motion prima facie justifies a judgment, we determine whether the opposition demonstrates the existence of a triable, material factual issue."'" (*Kaney v. Custance* (2022) 74 Cal.App.5th 201, 213.) Although defendants provided the relevant documents, Mackay fails to comply with the rules of appellate procedure to aid this court in analyzing whether a triable issue of material fact exists. We, therefore, deem his assertions of error waived.

Assuming, arguendo, that Mackay's opening brief is not materially deficient, and he has not forfeited his issues on appeal, there is nothing in the record before us to suggest any error in granting summary judgment for defendants. The trial court granted defendants' motion based on the undisputed material facts established by Mackay's admissions. (*Jack v. Wood* (1968) 258 Cal.App.2d 639, 644 [failure to answer a request for admissions is deemed an admission of matters contained in the request].) The undisputed material facts include the following: Mackay never entered into a contract with any defendant on or around the date of the incident; no defendant assaulted him; he was intoxicated and refused to leave the premises when asked; he acted aggressively toward hotel employees, who used reasonable force to protect themselves when attempting to control and escort him off the premises; no defendant intended to harm him; his injuries were proximately caused by his own actions; no defendant breached any legal duty owed to him; and he has no evidence that any hotel employee was negligent, or was unfit/incompetent for his or her job. Nothing in Mackay's brief challenges these undisputed facts or demonstrates the existence of a triable, material factual issue. Thus, we must affirm.

III. DISPOSITION

The judgment is affirmed. Defendants shall recover their costs on appeal.

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McKINSTER
Acting P. J.

We concur:

MILLER
J.

CODRINGTON
J.