

Case No. _____

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Filed 9/14/20 Thompson v. JPMorgan Chase Bank CA1/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

BRADFORD THOMPSON,

Plaintiff and Appellant,

v.

**JPMORGAN CHASE BANK et
al.,**

Defendant and
Respondent.

A158005

(San Mateo County
Super. Ct. No. CIV536879)

Bradfield Thompson, acting in propria persona, appeals from an order declining to reconsider his unsuccessful motion to set aside a default dismissal due to mistake, surprise or excusable neglect. Dismissal of the appeal is compelled by Thompson's inadequate written arguments.

Jo Anne Thompson, Thompson's mother, sued JPMorgan Chase Bank, N.A., (Chase) and others in January 2016. Following her death in 2017, plaintiff's counsel informed Chase that a family member would substitute into the case as successor-in-interest.

Following a number of continuances, on July 2, 2018 the court granted defendants' motion to dismiss the case with prejudice for delay in prosecution. On July 12, 2018, Chase served Thompson with notice of entry of the order. Over six months later, on January 15, 2019,

Thompson moved to set aside the dismissal under Code of Civil Procedure section 473. On February 27, 2019 the court denied the motion because (1) Thompson, as a non-party to the action, had no standing to bring it; (2) the motion was untimely, so the court lacked jurisdiction to consider it; and (3) it lacked substantive merit, because Thompson failed to identify any mistake, inadvertence or excusable neglect that resulted in the dismissal.

On June 24, 2019, Thompson moved for reconsideration of the February 27 order. The court denied this motion as well. “Non-party Bradfield Thompson’s Motion for Reconsideration of the Court’s March 7, 2019 Order is Denied. Mr. Thompson has failed to present any ‘new or different facts, circumstances, or law’ to warrant reconsideration.”

Based on the opening brief, we must dismiss Thompson’s appeal. The trial court’s judgment is presumed to be correct on appeal, and it is the burden of the party challenging it to affirmatively demonstrate prejudicial error. (*Bianco v. California Highway Patrol* (1994) 24 Cal.App.4th 1113, 1125) “The reviewing court is not required to make an independent, unassisted study of the record in search of error or grounds to support the judgment. It is entitled to the assistance of counsel [or the litigant if, as here, the litigant chooses to represent himself]. Accordingly every brief should contain a legal argument with citation of authorities on the points made. If none is furnished on a particular point, the court may treat it as waived, and pass it without consideration.’ [Citation.]” (*Sprague v. Equifax, Inc.* (1985) 166 Cal.App.3d 1012, 1050.) An appellant’s failure to articulate intelligible legal arguments in the opening brief may be deemed an abandonment of the appeal justifying dismissal. (*Berger v. Godden* (1985) 163 Cal.App.3d 1113, 1119.) Likewise, a failure to present arguments with adequate and comprehensible references to the record on appeal and citation to legal authority can result in forfeiture of any contention

that could have been raised on appeal. (Cal. Rules of Court, rule 8.204(a)(1)(B) &(C); *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246 (*Nwosu*).)

Thompson has failed to carry his burden. His brief primarily consists of a disjointed and incomplete recitation of the action's procedural history. It asks this court to set aside the dismissal, but presents *no* legal argument directed to the trial court's denial of his motion for reconsideration or its rulings on standing, timeliness, or the merits of his motion to set aside the dismissal. We are sympathetic to the fact that Thompson is representing himself without the benefit of an attorney, but his status as a self-represented litigant does not exempt him from the rules of appellate procedure or relieve his obligation to present intelligible argument supported by the record and legal authority. (*Nwosu, supra*, 122 Cal.App.4th at pp. 1246–1247.) In this case, Thompson's failure to articulate relevant legal argument supported by adequate references to the record and pertinent law requires dismissal of the appeal.

As a final matter, we note that Thompson filed a request for oral argument in response to a notice sent by the clerk of this court after the appeal was fully briefed. A party's right to oral argument exists in any appeal considered *on the merits* and decided by written opinion. (See *Moles v. Regents of University of California* (1982) 32 Cal.3d 867, 871; accord, *Lewis v. Superior Court* (1999) 19 Cal.4th 1232, 1254.) Because we are dismissing this appeal without reaching the merits, Thompson does not have a right to oral argument, and we consider it unnecessary to our procedural ruling.

DISPOSITION

The appeal is dismissed.

Siggins, P.J.

WE CONCUR:

Fujisaki, J.

Jackson, J.

Thompson v. JPMorgan Chase et al., A158005

COURT OF APPEAL, FIRST APPELLATE DISTRICT
350 MCALLISTER STREET
SAN FRANCISCO, CA 94102
DIVISION 3

BRADFIELD THOMPSON,
Plaintiff and Appellant,
v.
JP MORGAN CHASE N.A.,
Defendant and Respondent.

A158005
San Mateo County Super. Ct. No. CIV536879

BY THE COURT:

The petition for rehearing is denied.

Date: 10/15/2020

Siggins, P.J.

P.J.

PRESIDING JUSTICE

AFFIDAVIT OF TRANSMITTAL

I am a citizen of the United States, over 18 years of age, and not a party to the within action; that my business address is 350 McAllister Street, San Francisco, CA 94102; that I electronically served a copy of the attached material to those persons noted below using the email addresses of record kept by this office.

Those persons without email addresses were served a copy of the attached material via U.S. Postal Service in envelopes addressed as noted below. Said envelopes were sealed and postage fully paid thereon, and thereafter sent from San Francisco, CA 94102 or, alternatively, served via inter-office mail.

I certify under penalty of perjury that the foregoing is true and correct.

Charles D. Johnson, Clerk of the Court

G. King

October 15, 2020

Deputy Clerk

Date

CASE NUMBER: A158005

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SUPERIOR COURT OF SAN MATEO COUNTY

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Minute Order

JO ANNE THOMPSON, ET AL VS. JPMORGAN CHASE

CIV536879

07/05/2019 9:00 AM

Motion for Reconsideration

Hearing Result: Held

Judicial Officer: Davis, III, Leland

Location: Courtroom 4C

Courtroom Clerk: Sarai Goulart

Courtroom Reporter: Annette Jaycox

Parties Present

Exhibits

Minutes

Journals

- 9:03 a.m. matter called.

No appearance by any parties herein or their counsel of record.

Case Events

**- Tentative ruling adopted and becomes order;
NON-PARTY BRADFIELD THOMPSON'S MOTION FOR RECONSIDERATION.**

Non-party BRADFIELD THOMPSON's Motion for Reconsideration of the Court's March 7, 2019 Order is DENIED. Mr. Thompson has failed to present any "new or different facts, circumstances, or law" to warrant reconsideration. Code Civ. Proc. 1008.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Defendant shall prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to California Rules of Court, Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court.

Others

Comments:

Future Hearings and Vacated Hearings

FILED
SAN MATEO COUNTY

MAR 08 2019

Clerk of the Superior Court
By M. Egy
DEPUTY CLERK

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CIV536879
 ORD
 Order
 1696666



8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 SAN MATEO COUNTY

10 JO ANNE THOMPSON,

Case No. CIV536879

11 Plaintiff,

12 **[PROPOSED] ORDER DENYING NON-
 13 PARTY BRADFIELD THOMPSON'S
 14 MOTION TO SET ASIDE DEFAULT
 15 DISMISSAL**

16 JPMORGAN CHASE BANK, N.A., et al.,

17 Defendants.

Action Filed: January 11, 2016

18 The Motion of Non-Party Bradfield Thompson to Set Aside Default ("Motion") came on
 19 for hearing on February 27, 2019. The Court, having considered all the papers submitted in
 20 support of and in opposition to the Motion, and good cause appearing therefor, the Motion is
 DENIED for the reasons set forth in the Court's uncontested Tentative Ruling, as follows:

21 Non-party BRADFIELD THOMPSON's Motion to Set Aside Default Dismissal is
 22 DENIED. Mr. Thompson, having failed to bring a motion to continue this action as deceased
 23 Plaintiff JO ANNE THOMPSON's personal representative or successor in interest pursuant to
 24 Code Civ. Proc. § 377.31, has no standing to bring the instant motion. Moreover, the motion is
 25 untimely pursuant to Code Civ. Proc. § 473(b), and the Court has no jurisdiction to consider it.
 26 *Manson, Iver & York v. Black* (2009) 176 Cal.App.4th 36.

27 Even if Mr. Thompson had standing and the motion was timely, it would be denied for
 28 lack of merit. Mr. Thompson provides no explanation as to what "mistake, inadvertence, surprise

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1 or excusable neglect" resulted in entry of the Court's July 2, 2018 Order dismissing this action for
2 delay in prosecution pursuant to Code Civ. Proc. § 583.410. Accordingly, the motion is DENIED.

3 IT IS SO ORDERED.

4 Date: MAR 07 2019
5


Hon. Leland Davis, III

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SUPREME COURT
FILED

Court of Appeal, First Appellate District, Division Three - No. A158005

DEC 30 2020

Jorge Navarrete Clerk

S265270

Deputy

IN THE SUPREME COURT OF CALIFORNIA

En Banc

BRADFIELD THOMPSON, Plaintiff and Appellant,

v.

JPMORGAN CHASE BANK et al., Defendants and Respondents.

The petition for review is denied.

CANTIL-SAKAUYE

Chief Justice

**Additional material
from this filing is
available in the
Clerk's Office.**