

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF FRESNO

CENTRAL DIVISION

Before the Honorable Noelle Pebet, Commissioner

Department 404

MEL WAPNER,

Plaintiff,

VS.

JULIA DUDLEY and
LENNICE NAJIEB,

Defendants.

Case No. 17CECL00648

REPORTER'S TRANSCRIPT OF
RECORDED PROCEEDINGS

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Fresno, California

September 3, 2019

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A P P E A R A N C E S:

FOR THE PLAINTIFF: DAVID EVANS

FOR THE DEFENDANTS: IN PROPRIA PERSONA

**CERTIFIED
TRANSCRIPT**

CERTIFIED:
TRANSCRIBED BY:

MARY E. MARTINUSEN, CSR, RPR, CRR
Certificate No. 7601

1 SEPTEMBER 3, 2019 - MORNING SESSION
2 (Thereupon the following proceedings
3 were held in open court in the presence
4 of the Court, and the Defendants:)

5 THE COURT: All right. So just for the record,
6 recalling case ending 0648, Mel Wapner versus Lennice Najieb
7 and Julia Dudley. Lennice Najieb and Julie Dudley are
8 present at counsel table. And I will call out again -- good
9 morning, sir.

10 MR. EVANS: Yes, my name is David Evans. Mel Wapner is
11 not able to make it. He had surgery and he is not able to
12 make it.

13 THE COURT: And when did he have surgery, Mr. Evans?

14 MR. EVANS: I'm sorry?

15 THE COURT: When did he have surgery, Mr. Evans?

16 MR. EVANS: He had surgery a couple weeks ago. He made
17 an agreement with the defendant --

18 THE COURT: Hold on, Mr. Evans. Why is he not present?
19 Because he had surgery three weeks ago?

20 MR. EVANS: Because he is recuperating from his
21 surgery.

22 THE COURT: What kind of surgery was it, sir?

23 MR. EVANS: Hip surgery.

24 THE COURT: When can he be available?

25 MR. EVANS: I'm sorry?

26 THE COURT: When can he be available?

1 MR. EVANS: Uh, I would say a couple of weeks.

2 THE COURT: All right. So, Ms. Dudley and Mr. Najieb,
3 is there any reason why we should not or cannot continue this
4 matter a few weeks in order to have Mr. Wapner be present?

5 MR. NAJIEB: Well, we are facing eviction tomorrow.
6 We're going to be --

7 THE COURT: On this --

8 MR. NAJIEB: On this --

9 MS. DUDLEY: Lockout.

10 MR. NAJIEB: We have a lockout scheduled tomorrow --

11 THE COURT: Okay.

12 MR. NAJIEB: -- at noon.

13 THE COURT: Here is what we are going to do with that.
14 Because, Mr. Evans, although you cannot be present here for
15 Mr. Wapner, what I will inform you is that I have read all
16 the paperwork in this case. I have gone back through the
17 original Complaint and I noted that the judgment was based on
18 a First Amended Complaint. In that First Amended Complaint
19 you adjusted the three-day notice, and when you did, you had
20 done so after the case was already filed. Therefore, the
21 three-day notice could not run before the filing of the case.
22 So your judgment is defective.

23 MR. EVANS: Your Honor, if you can trail it over until
24 this afternoon I will have an attorney appear for Mr. Wapner

25 THE COURT: Sir, you cannot even be present now. So I
26 will continue it for Mr. Wapner, but we are going to stay the

1 execution of the lockout. Well, the problem with that is
2 that we're past the 40-day. All right. Mr. Wapner is not
3 present. I understand he is unable to be present. However,
4 he had surgery several weeks ago and has had ample
5 opportunity within the last few days when this case was filed
6 in order to make other arrangements for him to be present.

7 The Court has reviewed the paperwork regarding this
8 particular matter. What is concerning to the Court is as
9 follows: The case was originally filed on January 26th,
10 2017. It was based on a three-day notice that was to have
11 been served on January 5th, 2017. After the case was filed
12 in January, a first amended Complaint was filed on March 7th,
13 2017. At that time, it also amended or changed the three-day
14 notice to pay rent or quit. It added an additional month,
15 the month of March of 2017. The issue with that is that the
16 case had already been filed. You cannot file a case until
17 after the three days has lapsed or run. Given the fact that
18 the three-day notice in the First Amended Complaint is
19 defective, the judgment that is based upon the First Amended
20 Complaint is defective as well. So the Court is going to
21 vacate or set aside the default judgment.

22 I will, Mr. Evans, for Mr. Wapner's sake, continue this
23 out for an unlawful detainer dismissal hearing. If he so
24 chooses to file an at-issue memorandum he can. I have
25 already laid out for you what this Court's issue is going to
26 be. So with that, the judgment has now been set aside,

1 therefore, the motion to stay is moot. We'll set an unlawful
2 detainer dismissal hearing for October 1st. And that will be
3 the order. Thank you.

4 Oh, Mr. Najieb and Ms. Dudley, you have five days with
5 which to respond to the Complaint. So you have until the end
6 of the day of Monday, the 9th of September. All right?

7 MS. DUDLEY: Thank you, Your Honor.

8 THE COURT: Thank you.

9 -o0o-

10 COUNTY OF FRESNO)
11 STATE OF CALIFORNIA) ss.
12)

13 I, MARY E. MARTINUSEN, Official Certified Shorthand
14 Reporter of the State of California, County of Fresno, do
15 hereby certify that the foregoing transcript, pages 1 through
16 5, inclusive, is a complete, true and correct transcription
17 to the best of my ability of the recorded proceedings in the
18 above-entitled matter.

19 Dated this 24th day of September, 2019.

20
21 

22 _____
23 MARY E. MARTINUSEN, CSR, RPR, CRR
24 Certificate No. 7601
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26

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