

Benevolent had assets of \$20 million in 2007, but the documents produced that morning showed de minimis assets. Johnson's personal balance sheet as of May 2008 did not show any ownership interest in Benevolent or any of the similarly named partnerships that plaintiffs had discovered through website searches. It omitted an entire category of assets that had been shown on his balance sheet in 2006. Johnson's balance sheet showed that he owed his father \$1.3 million and another individual \$1.6 million, and therefore, his net worth was negative \$1.6 million. Plaintiffs argued that it was not a credible financial picture for an individual who had testified that he controlled an investment fund of \$20 million, including several million of Johnson's personal net worth. The trial court found the financial records produced by Johnson were so inadequate on their face as to completely frustrate the purpose of the proceeding and did not even approximate a good faith attempt to comply with the court's order. Although the subpoena was not effective until after the jury rendered its verdict, Johnson and his counsel were on notice to have the information available at the end of the trial and had a duty to gather the documents.

Johnson objected to the timeliness of the subpoena. The trial court overruled the objection because there was no written objection on the grounds of timeliness, despite having been served with the subpoena several days prior. Johnson argued that the documents were not identified in the subpoena with particularity, but the court found the subpoena requested basic financial information, information for 2007 was missing entirely, and the documents that had been produced were not credible. In addition, there were no written objections based on overbreadth. Plaintiffs requested that Johnson be prohibited from testifying as to his financial condition as well, in light of his incomplete disclosure. Plaintiffs noted they had inquired about Johnson's net worth at his deposition, but he had refused to respond based on privacy rights.

The trial court found that plaintiffs were relieved of their burden to show Johnson's financial condition, Johnson was prohibited from introducing additional evidence, and the issue of punitive damages would be decided based on the testimony at trial.

Although plaintiffs suggested in their closing argument that the jury award punitive damages of \$9.75 million, the jury assessed punitive damages of \$1.75 million. On July 16, 2008, the trial court entered its judgment on the jury's special verdicts. Johnson and Benevolent filed a timely notice of appeal.

DISCUSSION

Trial Court's Examination of Johnson

Defendants contend the trial court committed judicial misconduct in questioning Johnson during trial. However, we conclude that defendants failed to object on this ground to any of the court's questions, and therefore, the contention has been forfeited.

"A trial judge may examine witnesses to elicit or clarify testimony [citations]. Indeed, 'it is the right and duty of a judge to conduct a trial in such a manner that the truth will be established in accordance with the rules of evidence.' [Citation.] The trial judge, however, must not become an advocate for either party or under the guide of examining witnesses comment on the evidence or cast aspersions or ridicule on a witness. [Citations.]" (*People v. Rigney* (1961) 55 Cal.2d 236, 241.)

To preserve a judicial misconduct claim for review on appeal, however, a party must object to the trial court's conduct during the trial and provide an opportunity for a curative instruction to the jury. (*People v. McWhorter* (2009) 47 Cal.4th 318, 373 ["because defendant raised no objection below on the grounds asserted in this claim, and did not seek a jury admonition regarding any of the alleged instances of judicial intemperance, he has failed to preserve the issue for appellate review"]);