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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

COURT OF APPEAL - SECOND DIST.

DIVISION THREE

FILED

MAR 19 2020

JOSE MUNOZ et al.,

B295516

Plaintiffs and Respondents,

DANIEL P. POTTER Clerk

v.

Los Angeles County
Super. Ct. No. BS172763

Deputy Clerk

A-1 SOCCER WAREHOUSE, INC.,

Defendant and Appellant.

APPEAL from an order of dismissal of the Superior Court of Los Angeles County, Edward B. Moreton, Jr., Judge. Affirmed.

Gutierrez, Preciado & House, Calvin House and Nicholas Weiss for Defendant and Appellant.

Law Office of Eugene Lee and Eugene D. Lee for Plaintiffs and Respondents.

INTRODUCTION

Defendant A-1 Soccer Warehouse, Inc. (A1) appeals from the superior court's dismissal of its appeals from separate Labor Commissioner awards totaling more than \$500,000 in favor of 13 of its employees. The superior court dismissed the consolidated appeals after finding A1 failed to post with the court the undertaking required by Labor Code section 98.2, subdivision (b).¹ That section requires the appealing employer—as a condition to filing the appeal—to “first post an undertaking with the reviewing court in the amount of the . . . award.” (§ 98.2, subd. (b).) The undertaking must be an appeal bond issued by a licensed surety or a cash deposit with the court. (*Ibid.*) Instead, A1 posted appeal bonds (for two of its appeals) with the Labor Commissioner, posted cashier's checks with and payable to the Labor Commissioner (for six of its appeals), and attempted to post personal and business checks with the superior court (for five of its appeals).

We conclude the trial court did not err in finding A1 did not post an undertaking with the court as required by section 98.2 and affirm.

FACTS AND PROCEDURAL BACKGROUND

In 2018, the Labor Commissioner issued separate monetary awards to 13 of A1's employees, finding A1 liable for various Labor Code violations, including unpaid overtime, denied meal and rest breaks, and penalties. The awards ranged from \$5,137.64 to \$145,367.90, totaling \$506,420.60. A1 timely filed notices of appeal in the superior court from each of the

¹ All statutory references are to the Labor Code unless noted otherwise.

13 awards.² Each appeal was assigned a separate case number, but the court ordered the 13 cases consolidated for all purposes under the lead case number BS172763.³

As a condition to filing its appeals under section 98.2, A1 first had to post undertakings with the superior court in the amount of each award. (§ 98.2, subd. (b).) The record reflects:

1. For its appeals from the awards to employees J. Munoz (BS172763 - \$29,988.44) and Chonay (BS172764 - \$85,658.78), A1 attached to its notices of appeal copies of corporate surety bonds issued by Great American Insurance Company in the respective award amounts. The bonds bear the caption and case numbers from Munoz's and Chonay's underlying cases filed with the Labor Commissioner. They state A1's principal "desire[s] to give an undertaking for an APPEAL as provided by Labor Code Section 98.2." Each bond is signed and dated June 7, 2018. Each also bears a seal, but the words on the seal are illegible.

2. For its appeals from the awards to employees Estrada (BS173870 - \$41,532.75), Rodriguez (BS173929 - \$8,074.38), D. Munoz (BS174005 - \$28,052.16), Alfaro (BS174101 - \$21,443.39), Moctezuma (BS174102 - \$6,017.27), and Cruz (BS174068 - \$145,367.90), A1 attached to its notices of appeal

² Under section 98.2, subdivision (a), a party may seek de novo review of a Labor Commissioner's order, decision, or award by filing an appeal to the superior court within 10 days after its service, or within 15 days if served by mail, as occurred here. (Code. Civ. Proc., § 1013, subd. (a).)

³ The original 13 superior court case numbers are: BS172763, BS172764, BS173870, BS173929, BS174005, BS174068, BS174101, BS174102, BS174244, BS174245, BS174246, BS174322, and BS174323.

copies of cashier's checks in the respective award amounts payable to the State of California Department of Industrial Relations (DIR) or to the Labor Commissioner State of California.

3. For its appeals from the awards to employees Hernandez (BS174244 - \$5,137.64), R. Salas (BS174245 - \$21,507.88), J. Salas (BS174246 - \$46,877.13), Zamudio (BS174322 - \$48,165.83), and Leiva (BS174323 - \$18,597.05), no copy of a check or bond or other undertaking was attached to the notices of appeal.

On November 26, 2018, the superior court held a hearing on whether the appeals should be dismissed for A1's failure to post undertakings with the court. The court received that day the parties' earlier filed briefs in support of and opposition to dismissal. As part of its opposition, A1's attorney declared that for each appeal from the Labor Commissioner's awards, "bond/undertaking[s] were filed." The declaration attached "evidence" of the filing of the "undertaking/bonds" in the form of copies of surety bonds, cashier's checks, and bank checks from A1's principal, as follows:

Case No.	Employee	Appeal Filed	Proof of Undertaking
BS172763	J. Munoz (award served 5/24/18)	6/8/18	copy of a corporate surety bond with Labor Commissioner case caption dated 6/7/18
BS172764	Chonay (award served 5/25/18)	6/8/18	copy of a corporate surety bond with Labor Commissioner case caption dated 6/7/18

Case No.	Employee	Appeal Filed	Proof of Undertaking
BS173870	Estrada (award served 5/24/18)	6/8/18	copy of a cashier's check payable to DIR dated 6/8/18; copy of a State of California (State) refund check to A1 issued 7/23/18 (not part of record on appeal); copy of a cashier's check payable to "LASC" dated 8/2/18
BS173929	Rodriguez (award served 5/24/18)	6/8/18	copy of a cashier's check payable to DIR dated 6/8/18; copy of a State refund check to A1 issued 7/23/18; copy of a cashier's check payable to "LASC" dated 8/2/18
BS174005	D. Munoz (award served 6/4/18)	6/14/18	copy of cashier's check payable to DIR dated 6/13/18; copy of a State refund check to A1 issued 7/23/18; copy of a cashier's check payable to "LASC" dated 8/2/18
BS174101	Alfaro (award served 6/14/18)	6/20/18	copy of a cashier's check payable to the Labor Commissioner dated 6/18/18; copy of a State refund check to A1 issued 7/23/18; copy of a cashier's check payable to "LASC" dated 8/2/18

Case No.	Employee	Appeal Filed	Proof of Undertaking
BS174102	Moctezuma (award served 6/14/18)	6/20/18	copy of a cashier's check payable to the Labor Commissioner dated 6/18/18; copy of a State refund check to A1 issued 7/23/18; copy of a cashier's check payable to "LASC" dated 8/2/18
BS174068	Cruz (award served 6/21/18)	6/29/18	copy of a cashier's check payable to DIR Labor Commissioner (\$145,367.90) dated 6/25/18; copies of two cashier's checks payable to "LASC" (\$45,367.90 and \$100,000) dated 7/10/18
BS174244	Hernandez (award served 7/3/18)	7/9/18	copy of bank check payable to "LA Superior Court" dated 7/9/18; copy of a cashier's check payable to "LASC" dated 7/20/18 (not part of record on appeal)
BS174245	R. Salas (award served 7/3/18)	7/9/18	copy of bank check payable to "LA Superior Court" dated 7/9/18; copy of a cashier's check payable to "LASC" dated 7/20/18

Case No.	Employee	Appeal Filed	Proof of Undertaking
BS174246	J. Salas (award served 7/3/18)	7/9/18	copy of bank check payable to "LA Superior Court" dated 7/9/18; copy of a cashier's check payable to "LASC" dated 7/20/18
BS174322	Zamudio (award served 7/3/18)	7/9/18	copy of bank check payable to "LA Superior Court" dated 7/9/18; copy of a cashier's check payable to "LASC" dated 7/20/18
BS174323	Leiva (award served 7/3/18)	7/9/18	copy of bank check payable to "LA Superior Court" dated 7/9/18; copy of a cashier's check payable to "LASC" dated 7/20/18

Although not part of its attorney's declaration, A1 argued that after the Labor Commissioner (or the DIR) returned the amounts A1 had deposited with it through cashier's checks—for its appeals from the awards to employees Estrada, Rodriguez, D. Munoz, Alfaro, Moctezuma, and Cruz—it attempted to post cashier's checks payable to the superior court in the award amounts for those same appeals after the time to appeal and post an undertaking for each case had expired.⁴ A1 asserted

⁴ As to its appeal from the award to Cruz, A1 argued, "Upon discovery of error on who the [c]ashier's check was made payable to, the Clerk called the Defendants/Appellants [sic] Counsel to bring in a replacement check. On July 10, 2018, a replacement check made payable to LASC was given to the Court Clerk in exchange for the previously submitted check." A1's attorney's

the superior court's filing clerk refused to accept the cashier's checks without a court order, but when A1's counsel went to the department to obtain a court order, he was told to wait and raise the issue at the case management conference.

For its appeals from the awards to employees Hernandez, R. Salas, J. Salas, Zamudio, and Leiva, A1 argued it attempted to post the required undertakings when it filed the notices of appeal on July 9, 2018, through bank checks payable to the superior court, but the filing clerk would not accept personal checks. A1 asserted it returned (either through its principal or attorney)⁵ later that day with business checks, but the clerk would not accept them because the appeal had been filed and a court order was needed. A1 allegedly again returned on July 20, 2018—two days after the last day to file its notice of appeal and undertaking—and attempted to post cashier's checks payable to the superior court for those appeals, but again was told it needed a court order. The department told A1 to wait to raise the issue at the case management conference.

After the hearing, the court took the matter under submission and issued its ruling later that day. There is no reporter's transcript of the hearing. The court found that it lacked jurisdiction "because no undertaking was posted with

declaration does not include these facts, and nothing in the record on appeal reveals that the court accepted the replacement cashier's check. Also, A1 never argued it received a refund from the Labor Commissioner for Cruz.

⁵ Because A1's attorney's declaration does not include any of the facts surrounding A1's attempts to post checks with the superior court, it is unclear whether the opposition's reference to "I" refers to A1's principal or A1's attorney.

the court in any of the consolidated cases,” and dismissed the appeals.

On December 4, 2018, new counsel for A1 substituted into the case and moved the court to reconsider its order dismissing the consolidated cases. The motion asked the court to reconsider its ruling as to the appeals involving J. Munoz and Chonay because A1 posted surety bonds in those two cases. A1’s counsel argued that its former attorney may not have made the court aware that on June 7, 2018, A1 had posted undertakings of corporate surety through a licensed surety under section 98.2 obligating the surety to pay the stated amounts to those two employees. A1’s counsel attached to his declaration copies of the surety bonds and copies of the notices of appeal A1 had filed in those two cases that included the copies of the surety bonds. J. Munoz opposed the motion on the ground no new facts or circumstances warranted reconsideration as A1 already had brought to the court’s attention the two undertakings filed with the Labor Commissioner.

On December 31, 2018, the court heard and denied the motion for reconsideration. There is no reporter’s transcript of the hearing. The court then signed the order dismissing the consolidated actions with prejudice. A1 filed a timely notice of appeal.

DISCUSSION

A1 contends the court erred when it dismissed its consolidated appeals because A1 complied with the undertaking requirement of section 98.2 when it “provided instruments that obligated it to pay the amount of the awards if its appeals were unsuccessful.”

1. *Standard of review*

A1 contends our standard of review is de novo because its appeal raises an issue of statutory interpretation—whether the

instruments it provided satisfied section 98.2, subdivision (b)'s requirement that it "first post an undertaking with the reviewing court in the amount of the order, decision, or award." (§ 98.2, subd. (b).) Employees argue the substantial evidence standard of review applies because there is a factual dispute as to whether A1 "ever attempted to post any of the alleged instruments with the Labor Commissioner and/or the trial court, as well as to their authenticity."

Generally, we review the trial court's factual findings for substantial evidence and its interpretation of a statute de novo. (*In re Marriage of Turkanis & Price* (2013) 213 Cal.App.4th 332, 345; *SFPP v. Burlington Northern & Santa Fe Ry. Co.* (2004) 121 Cal.App.4th 452, 461.) "When we interpret a statute, '[o]ur fundamental task . . . is to determine the Legislature's intent so as to effectuate the law's purpose. We first examine the statutory language, giving it a plain and commonsense meaning. We do not examine that language in isolation, but in the context of the statutory framework as a whole in order to determine its scope and purpose and to harmonize the various parts of the enactment. If the language is clear, courts must generally follow its plain meaning unless a literal interpretation would result in absurd consequences the Legislature did not intend. If the statutory language permits more than one reasonable interpretation, courts may consider other aids, such as the statute's purpose, legislative history, and public policy.' " (*Sierra Club v. Superior Court* (2013) 57 Cal.4th 157, 165-166.)

"Appealed judgments and orders are presumed correct, and error must be affirmatively shown. [Citation.] Consequently, appellant has the burden of providing an adequate record. [Citations.] Failure to provide an adequate record on an issue requires that the issue be resolved against appellant. [Citation.] Without a record, either by transcript or settled statement,

a reviewing court must make all presumptions in favor of the validity of the judgment.” (*Randall v. Mousseau* (2016) 2 Cal.App.5th 929, 935.) “The effect of this rule is that an appellant who attacks a judgment but supplies no reporter’s transcript will be precluded from raising an argument as to the sufficiency of the evidence.” (*Estate of Fain* (1999) 75 Cal.App.4th 973, 992.)

2. *Applicable law*

“If an employer fails to pay wages as required by statute or contract, an employee may . . . seek administrative relief by filing a wage claim” with the Labor Commissioner under the statutory scheme set forth in section 98 et seq. (*Palagin v. Paniagua Construction, Inc.* (2013) 222 Cal.App.4th 124, 129 (*Palagin*)). The Labor Commissioner may then hold a hearing conducted by a deputy commissioner. (*Ibid.*) After the hearing, the Labor Commissioner files and serves its order, decision, or award (award) on the parties. (*Ibid.*) Within 10 days of service of the notice of the award, extended by five days if service is by mail, “the parties may file a notice of appeal in the superior court, ‘where the appeal shall be heard de novo.’” (*Id.* at pp. 129-130; § 98.2, subd. (a); Code Civ. Proc., § 1013, subd. (a).) “[T]he filing of the notice of appeal vests jurisdiction in the superior court to conduct the trial de novo.” (*Palagin*, at p. 132.) If no notice of appeal is filed within the statutory deadline, the commissioner’s award is the final order. (§ 98.2, subd. (d).)

If an employer files a notice of appeal, however, it “shall first post an undertaking with the reviewing court in the amount of the . . . award.” (§ 98.2, subd. (b).) The “immediate purpose” of this undertaking requirement “is to provide assurance that a judgment in favor of the employee will be satisfied.” (*Palagin, supra*, 222 Cal.App.4th at p. 130.) The “broader purpose of this provision . . . is to ‘discourage employers from filing frivolous

appeals and from hiding assets in order to avoid enforcement of the judgment.’” (*Ibid.*)

Because this undertaking requirement is “a condition to filing an appeal,” the requirement is mandatory and jurisdictional. (§ 98.2, subd. (b); *Palagin, supra*, 222 Cal.App.4th at pp. 126, 132, 140.) Thus, the statutory deadline for an employer to post an undertaking—that is, before the time to file a notice of appeal expires—“is a jurisdictional deadline that cannot be extended by the trial court.” (*Palagin*, at p. 126.)

Generally, the posting or filing of statutorily required bonds and undertakings is governed by the Bond and Undertaking Law, codified at Code of Civil Procedure section 995.010 et seq. (*Lewin v. Anselmo* (1997) 56 Cal.App.4th 694, 698.) “[T]he statutory scheme applies to any ‘bond or undertaking executed, filed, posted, furnished, or otherwise given as security pursuant to any statute of this state, *except to the extent the statute prescribes a different rule or is inconsistent.*’” (*Ibid.*, quoting Code Civ. Proc., § 995.020, subd. (a) (italics added).)

As employees note, section 98.2 prescribes some different rules. The Bond and Undertaking Law defines “court” as “the court in which the action or proceeding is pending,” and requires a statutory bond to be filed “with the court unless the statute providing for the bond requires that the bond be given to another person.” (Code. Civ. Proc., §§ 995.150, 995.340, subd. (a).) Under section 98.2, subdivision (b), however, an appealing employer must post its undertaking “with the reviewing court.” The statute explicitly states the superior court is the reviewing court. (§ 98.2, subd. (a).) The Bond and Undertaking Law also lists various types of deposits that may be made “without prior court approval” in lieu of giving a bond, “[e]xcept . . . to the extent [a] statute . . . limits the form of deposit.” (Code Civ. Proc.,

§ 995.710, subd. (a).) Section 98.2 limits the form of acceptable deposit. It plainly requires the employer to post an undertaking in one of two specified forms: *either* “an appeal bond issued by a licensed surety *or* a cash deposit” in the amount of the award. (§ 98.2, subd. (b), italics added.)

We find these express requirements of section 98.2 clear and unambiguous. We thus apply the plain language of the statute to the facts before us.

3. Analysis

A1 attempted three types of undertakings: (1) surety appeal bonds; (2) cashier’s checks payable to the Labor Commissioner; and (3) personal or business checks payable to the superior court. We consider whether these attempts satisfied section 98.2, subdivision (b) in reverse order.

a. Personal/business checks

For its appeals from the awards to Hernandez, R. Salas, J. Salas, Zamudio, and Leiva, A1 presented no competent evidence to the trial court that before or at the time it filed its notices of appeal, it first posted with the superior court either “an appeal bond issued by a licensed surety or a cash deposit.” (§ 98.2, subd. (b).) A1 provided the court with copies of bank checks from its principal dated the same date as it filed its notices of appeal in those cases. A personal or business check is not a “cash deposit,” however. Nor would such a check serve “the immediate purpose” of the undertaking requirement— “to provide assurance that a judgment in favor of the employee will be satisfied.” (*Palagin, supra*, 222 Cal.App.4th at p. 130.) There is no guarantee that an employer’s personal or business account has sufficient funds to cover a personal or business check whereas a cash deposit obviously would.

Not even the general Bond and Undertaking Law provides for deposit by personal or business check in lieu of giving a bond.

Section 995.710 of the Code of Civil Procedure permits cashier's checks to be deposited in lieu of a bond, but does not include personal or business checks. (Code Civ. Proc., § 995.710, subd. (a)(1) [allowing the deposit of "[l]awful money of the United States or a cashier's check, made payable to the officer"].) The checks A1 allegedly attempted to post with the superior court for these five appeals on July 9, 2018, neither satisfied the plain language nor the purpose of the undertaking requirement.

A1's alleged attempts to post cashier's checks payable to the superior court after its personal/business checks were rejected also do not satisfy section 98.2. First, although the Bond and Undertaking Law allows the deposit of a cashier's check in lieu of a bond, because section 98.2, subdivision (b) expressly limits the permissible form of undertaking an employer can make to an appeal bond or a cash deposit, its limits control. (Code Civ. Proc., § 995.710 [listed alternate forms of deposit permitted unless a statute limits the form of deposit].) Second, even if a cashier's check satisfied section 98.2's cash deposit requirement, according to its opposition filed with the superior court, A1 admits it did not attempt to deposit cashier's checks with the superior court for those five appeals until July 20, 2018—two days *after* the last day to file a notice of appeal and post the required undertaking. The Labor Commissioner served its awards for Hernandez, R. Salas, J. Salas, Zamudio, and Leiva by mail on July 3, 2018. Thus, A1 had until July 18, 2018, to file undertakings that met the requirements of section 98.2. It did not. Any request for an order to file the cashier's checks would have been futile, therefore, as the jurisdictional deadline had passed, and the court had no authority to extend it. (*Palagin, supra*, 222 Cal.App.4th at p. 140.)

A1 tries to blame the court clerk for its failure to post proper undertakings. A1 asserts it submitted personal checks

to the superior court for these five appeals six days before the deadline leaving “plenty of time to provide an alternate form of undertaking.” It argues that because the clerk’s office accepted its filing and then told A1’s counsel that a judicial order was necessary for the clerk to accept another form of undertaking, the clerk’s office made it impossible for A1 to timely file an alternate form of undertaking.

It was A1’s responsibility to file the proper form of undertaking in the first instance. Moreover, based on the appellate record, there was no competent evidence before the court proving A1’s attorney filed, deposited, or posted the personal checks on the same day it filed these five notices of appeal and that the clerk initially accepted them, or that its attorney was not informed it needed a different form of undertaking until after the jurisdictional deadline had passed. A1’s attorney declared the copies of the bank checks dated July 9, 2018, and copies of the cashier’s checks dated July 20, 2018, were evidence of A1’s undertakings, but did not declare he posted the bank checks with the notices of appeal or what conversations he had with the clerk—or when he had them—or provide any other evidence of the clerk’s communication about the required form of undertaking to demonstrate A1 was prevented from timely filing a proper undertaking by an action or communication from the court clerk. We thus presume the court rejected A1’s argument as lacking an evidentiary basis and do not consider it. (See *Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 188 [reviewing court can neither reevaluate the credibility of witnesses nor reweigh the evidence].)

b. *Cashier’s checks*

A1’s notices of appeal from the awards to Estrada, Rodriguez, D. Munoz, Alfaro, Moctezuma, and Cruz attached copies of cashier’s checks payable to the Labor Commissioner

(or the DIR) dated on or before the date A1 filed its notices of appeal. A1's attorney also attached copies of the Labor Commissioner's checks returning those funds to A1 (except for Cruz) after the jurisdictional deadline and copies of cashier's checks payable to the superior court dated after the jurisdictional deadline.⁶ A1 argues its deposit of cashier's checks with the Labor Commissioner instead of the superior court satisfied section 98.2 because the checks served the purpose of the statute and demonstrated A1's "good faith" because it had "put[] the funds necessary to pay those awards in the hands of a neutral third party . . . making it impossible to hide or transfer that money." In essence, A1 contends that its timely deposit of funds with the Labor Commissioner, sufficient to cover payment of the appealed-from awards, excuses it from complying with the express mandate of section 98.2, subdivision (b) to post an appeal bond or make a cash deposit with the reviewing court.

As we have said, the Bond and Undertaking Law permits the deposit of a cashier's check in lieu of posting a bond, *except* when the statute requiring the bond limits the form of deposit. Section 98.2, subdivision (b) expressly limits the alternate form of deposit to a "cash deposit." As A1 notes, payment by cashier's check generally has the same effect as payment by cash. (See U. Com. Code, § 3310, subd. (a) [acceptance of cashier's check discharges debt to same extent as acceptance of cash]; *California Golf, L.L.C. v. Cooper* (2008) 163 Cal.App.4th 1053, 1069 ["when cashier[']s checks are submitted as payment, the funds are

⁶ A1 had to post its undertaking by June 8, 2018 for its appeals from the awards to Estrada and Rodriguez, by June 19, 2018 for its appeal from the award to D. Munoz, by June 29, 2018 for its appeal from the awards to Alfaro and Moctezuma, and by July 6, 2018 for its appeal from the award to Cruz. (See § 98.2, subd. (a).)

immediately available”].) Nevertheless, in our view, had the Legislature intended for a cashier’s check to be an acceptable form of undertaking under section 98.2, it would have expressly included it as a form of payment in the statute as it did in the Bond and Undertaking Law (Code Civ. Proc., § 995.710, subd. (a)(1)) and in other statutes (e.g., *Cooper*, at pp. 1067-1068 [Civil Code § 2924h, subd. (b), governing bidding at trustee’s sale, states trustee may require bidder to show evidence of ability to deposit bid “in cash, a cashier’s check . . . , a check . . . , or a cash equivalent”]).⁷ And, A1’s deposit of its cashier’s checks with the Labor Commissioner decidedly was not with the reviewing court.

c. *Appeal bonds*

A1 argues its posting of the original surety appeal bonds with the Labor Commissioner instead of the superior court for its appeals from the awards to J. Munoz and Chonay “did not diminish the protection for the employees’ interests established by the statute.” As the bonds served the purpose of the statute, A1 contends this Court should deem it to have complied with section 98.2’s undertaking requirement.

We need not decide whether posting of original bonds with the Labor Commissioner and copies with the superior court complies with section 98.2. As employees note, there is a factual dispute as to the authenticity of the appeal bonds or whether they were “posted.” The Bond and Undertaking Law provides that a certified copy of a recorded bond “may be admitted in evidence in an action or proceeding with the same effect as the original, without further proof.” (Code Civ. Proc., § 995.260.) A1 filed copies of its appeal bonds bearing the captions from the underlying Labor Commissioner cases with its notices of appeal,

⁷ Moreover, a cashier’s check is a “negotiable instrument.” (U. Com. Code, § 3104, subds. (c), (f).)

and its attorney attached copies to his declaration. The copies were not certified, however. Nor do they bear any indication, such as a dated file stamp, that they were posted or filed with the Labor Commissioner.

A1 contends the certified copy “requirement” is merely technical, not jurisdictional. But, in the absence of a reporter’s transcript, we can infer only that the trial court found the uncertified copies of the corporate surety bonds, without an accompanying declaration from A1’s attorney or principal that it posted the originals with the Labor Commissioner,⁸ insufficient proof that A1 indeed posted the required bonds. Having failed to provide an adequate record, A1 cannot argue on appeal that its evidence was sufficient. (*Estate of Fain, supra*, 75 Cal.App.4th at p. 992.)

Finally, we cannot deem A1 to have posted the required undertaking for any of the consolidated cases within the statutory deadline. We acknowledge the “ ‘strong public policy’ ” A1 cites “ ‘in favor of hearing appeals on the merits operates against depriving an aggrieved party or attorney of a right to appeal because of noncompliance with technical requirements.’ ” (*Department of Industrial Relations v. Nielsen Construction Co.* (1996) 51 Cal.App.4th 1016, 1023-1024 [deeming agency’s notice of appeal timely filed where agency filed a request to prepare transcripts on appeal that indicated its notice of appeal from a specified judgment within required period].) The undertaking requirement set forth in section 98.2, subdivision (b) is not a technical requirement, however. The statute *conditions* the filing of the employer’s appeal on its posting of an undertaking *with*

⁸ A1’s attorney’s declaration merely states, “At the time of filing each (trial de nova [*sic*]) appeal that arises from Labor Commissioner Order, Decision or Award against Defendant’s [*sic*] in favor of Plaintiff bond/undertaking were filed.”

the reviewing court and requires that undertaking to be in the form of an appeal bond or a cash deposit. Just as “neither mistake, surprise, nor excusable neglect will excuse” the late filing of a notice of appeal from a Labor Commissioner’s award, we cannot conclude mistake or inadvertence will excuse the jurisdictional requirement that an undertaking through an appeal bond or cash deposit be made with the superior court within the required timeframe. (Pressler v. Donald L. Bren Co. (1982) 32 Cal.3d 831, 837-838 [court may not consider appeal from Labor Commissioner’s award filed outside statutory period]; Palagin, supra, 222 Cal.App.4th at p. 139 [no notice of appeal can be filed or, if filed, is invalidated, if employer fails to comply with the requirement to post an undertaking]; see also Burkes v. Robertson (2018) 26 Cal.App.5th 334, 340, 347-348 (Burkes) [affirming dismissal of employer’s appeal where employer failed to move for relief from undertaking requirement based on financial hardship before the deadline to file the notice of appeal].)

The dismissal of A1’s appeal to the superior court has not deprived A1 of a full and fair opportunity to be heard on its employees’ wage claims. (*Palagin, supra*, 222 Cal.App.4th at p. 138; *Burkes, supra*, 26 Cal.App.5th at p. 347.) As the court in *Palagin* explained, “The primary process for deciding wage claims is *not* the trial de novo reflected in section 98.2, but the administrative procedure reflected in section 98; requiring a timely bond for a trial de novo does nothing to minimize the employer’s ability to make its case during the administrative process. A jurisdictional undertaking requirement therefore poses no barrier to a fair adjudication of the wage claim, but merely conditions the availability of a further trial de novo process that the Legislature does not have to provide at all.” (*Palagin*, at p. 138; *Burkes*, at p. 347.)

DISPOSITION

The order of dismissal is affirmed. Respondent employees are to recover their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EGERTON, J.

We concur:

EDMON, P.J.

LAVIN, J.