The California Supreme Court Addresses a Split of Opinion within the Courts of Appeal and Promotes Judicial Economy

Audra Ibarra

At the beginning of this year, California Governor Jerry Brown proposed an increase in funding to state courts of more $100 million.[1] However, this is merely a nod to the financial crisis in our courts. Last year, the courts absorbed a cut of nearly a half billion dollars.[2] In fact, because of budget cuts since 2010, 51 courthouses and 205 courtrooms have closed, over 2,000 court employees have been laid off, and 36 courts no longer provide court reporters in civil, family, and probate matters.[3]

The California court system is the largest in the world, serving more than 38 million people.[4] The system is not perfect, but it is a good one. Although not all of our court rules promote efficiency, many do, including the one final judgment rule. Recently, the California Supreme Court addressed a split of opinion within the courts of appeal and reinforced that rule.

In *Kurwa v. Kislinger*, plaintiff and defendant were ophthalmologists. (2013) 57 Cal. 4th 1097, 1100. They formed a corporation to provide medical services for a health maintenance organization. When plaintiff's license to practice medicine was suspended, defendant notified the organization, and the organization exclusively contracted with defendant for services. Plaintiff sued defendant for breach of fiduciary duty and defamation. Defendant cross-complained for defamation. The court ruled for defendant in pretrial motions finding the parties owed no fiduciary duty to each other. Consequently, the court dismissed plaintiff's breach of fiduciary duty count with prejudice. In addition, the parties agreed to dismiss their respective defamation claims without prejudice and to waive the applicable statute of limitations. The plaintiff told the court the purpose of the agreement was to "preserve" both defamation claims "for such time as [the] case may come back from appeal." *Id.* at 1101. The trial court entered judgment in favor of defendant, and plaintiff appealed.

Division Five of the Second District Court of Appeal reversed on the merits. More importantly, however, before it reversed, the court of appeal held the judgment was final and appealable. The court explained the trial court had no jurisdiction to proceed on any claims, because all the claims had been dismissed.

The California Supreme Court's headquarters in San Francisco at the Earl Warren Building and Courthouse.

The California Supreme Court reversed on the issue of appealability and never reached the merits of the case.

A Party Cannot Appeal if There Is an Agreement Preserving a Dismissed Cause of Action for Future Litigation

The California Supreme Court held that a party cannot appeal if there is an agreement preserving a dismissed cause of action for future litigation. Writing for a unanimous court, Justice Kathryn M. Werdegar explained under the one final judgment rule, "a judgment that fails to dispose of all the causes of action pending between parties is generally not appealable."[5] *Id.* at 1100 (cite omitted). The reason for the rule is "piecemeal disposition and multiple appeals in a single action would be oppressive and costly, and that a review of intermediate rulings should await the final disposition of the case." *Id.* at 1101 (cite omitted). When parties agree to waive or toll the statute of limitations, or otherwise preserve dismissed counts for potential litigation after appeal from judgment, the judgment "fails to complete the disposition of all the causes of action between the parties," the causes of action "remain 'legally alive' in substance and effect," and the judgment is not appealable. *Id.* at 1105 (cite omitted). To hold otherwise "elevates form over substance . . . permits parties to evade the one final judgment rule," and manipulates appellate jurisdiction. *Id.* The court found this is true irrespective of whether the parties' agreement to preserve the dismissed count is incorporated into the judgment. The fact that the agreement exists, regardless of where, makes the judgment unappealable. The court acknowledged that other than the court in this case, most courts of appeal (First District, Division One of the Second District, Fourth District, Fifth District) have held similarly.

A Party May Appeal Where a Cause of Action Is Simply Dismissed without Prejudice

The California Supreme Court confirmed however that a party may still appeal if he or she voluntarily dismisses a cause of action "unaccompanied by any agreement for future litigation." *Id.* The court found this is true even if the party hopes to relitigate the dismissed count in the future. The court explained the party has the right to appeal the judgment in that case, because the party faces "the very real risk that an applicable statute of limitations will run." *Id.* at 1106. However, a party who dismisses a cause of action with an agreement waiving or tolling the statute of limitations has no right to appeal, because the party is generally guaranteed the ability to revive the claim at a later date.

A Party May Petition for Writ of Mandate if a Cause of Action Is Pending

The California Supreme Court reiterated that a party may petition for writ of mandate if a cause of action is still pending. In that case, review is discretionary, because the party has no right to appeal as his or her case is still pending in the trial court. However, "'unusual' circumstances that would result in 'hardship and inconvenience'" if review were delayed until all causes of action were resolved

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"could serve to justify review." *Id.* at 1102. The court explained the petition for writ of mandate is an "efficient avenue for obtaining a preliminary determination whether unusual circumstances make appellate review of an interlocutory judgment appropriate and, if the determination is affirmative, obtaining review itself." *Id.* Thus, if a party wants appellate review of an error but does not want to run the risk of voluntarily dismissing a count and not being able to resurrect it at a later date, his or her only option is to file a petition for writ of mandate.

Significance

Kurwa settles an important question of law and strengthens the one final judgment rule. Litigants can no longer tax an overburdened court system and create appellate jurisdiction where there is none by dismissing a cause of action with an agreement that preserves it for future litigation. The opinion promotes judicial economy by reducing the number of appeals. In addition, as the California Supreme Court explained about the one final judgment rule generally, the opinion avoids "delay in the trial courts," allows a trial court to "completely obviate an appeal" by correcting a ruling, ensures an appellate court has a complete record from which to decide whether there was error or prejudice, and gives an appellate court the ability to tailor a specific remedy within a completely adjudicated case. *Id.* at 1106.

So much for efficiency; now if our courts could only get the funding they need . . . .

Audra Ibarra is a civil and white-collar appellate attorney. She has a solo practice and is also of counsel to California Appellate Law Group. She serves as a commissioner for the Judicial Nominees Evaluation Commission for the State Bar of California and judge pro tempore for California Superior Court. She is a former supervising assistant U.S. attorney, deputy district attorney, and litigator at a large national law firm. For more information, please go to www.aiappeals.com and www.calapplaw.com.

Notes

1. See "Chief Justice Says Gov. Jerry Brown's Budget for Courts Inadequate," by Patrick McGreevy, www.latimes.com/local/political/la-me-pc-supreme-court-justice-calls-for-more-funds-for-court-system-20140114,0,4921755.story#axzz2qMIi5TOi (as of January 14, 2014).
2. See "InFocus: Judicial Branch Budget Crisis," www.courts.ca.gov/partners/courtsbudget.htm#ad-image-0 (as of January 14, 2014).
3. See "Impacts," www.courts.ca.gov/partners/1494.htm (as of January 14, 2014).
4. See "InFocus: Judicial Branch Budget Crisis," www.courts.ca.gov/partners/courtsbudget.htm#ad-image-0 (as of January 14, 2014).
5. The one final judgment rule is codified in subdivision (a) of section 904.1 of the California Code of Civil Procedure.