CALIFORNIA COURTS OF APPEAL

Mendly, et al., v. County of Los Angeles, et al.,

23 Cal. App. 4th 1193,
94 D.A.R. 4034,
No. B073226 (Mar. 25, 1994).

Legislature May Set Aside Court-Approved Stipulated Judgment

In December 1990, three individual plaintiffs, on behalf of themselves and all those similarly situated, filed a complaint against defendants for injunctive, declaratory, and monetary relief, and in the alternative, for peremptory writ of mandate, challenging the adequacy of the County's general relief grant of $312 per month, which they had been receiving since June 1, 1989. Among other things, the complaint alleged that no evidence was presented to the County in 1989 or 1990 to support the maintenance of the $312 per month grant level, which had not changed since 1988; representatives of plaintiffs' class had presented evidence that the grant for a single person should be increased to at least $420 per month; the County arbitrarily and capriciously declined to adjust the monthly grant allowances in 1989 and 1990, failed to conduct any study or survey, and failed to make any accurate, objective, or factual determinations as to the actual costs of minimum subsistence in the County; the County's failure to increase the monthly grant constituted a violation of mandatory duties under Welfare and Institutions Code section 17000; and the County's failure to provide an adequate monthly allowance for shelter has rendered and continues to render many general relief recipients homeless.

In June 1991, the parties executed a stipulation for settlement and entry of judgment; on July 24, 1991, the Los Angeles County Superior Court approved the settlement agreement, and on July 30, 1991, the court ordered entry of the stipulated judgment. Among other things, the agreement provided that for each fiscal year from July 1, 1991, through June 30, 1996, the general relief monthly cash grant for a single-person household shall be the greater of $341 per month or the monthly amount for a single-person household under the Aid to Families with Dependent Children (AFDC) program. As part of the agreement, the plaintiffs waived their rights to receive retroactive general relief benefits for the fiscal years 1989–90 and 1990–91. The agreement also provided that nothing in the agreement "shall prohibit defendants from implementing any other policies or practices relating to the general relief program required by changes in state or federal law. In the event that the California State Legislature abolishes all obligations under Welfare and Institutions Code, section 17000, or takes control of or otherwise assumes the County's obligations under Welfare and Institutions Code, section 17000, the terms of this judgment will automatically expire."

On August 19, 1992, just days before the end of the legislative session, the legislature completely revised AB 2883—which previously had nothing to do with the subject of welfare entitlements—to provide that the legislature finds and declares "that there is a fiscal emergency that affects the ability of counties to provide welfare services in the state." AB 2883 authorized "specified counties to reduce respective levels of general assistance in accordance with the relative cost of housing in the counties." Also, the bill declared "that the provisions of any agreement, including a court-ordered stipulated judgment, requiring a county to provide general assistance grants above the levels required under a specified provision, are null and void." No member or committee of the Assembly is listed as the author of those amendments; Governor Wilson signed the urgency measure on September 14, 1992.

In October 1992, plaintiffs filed motions to enforce the stipulated judgment and for a permanent injunction; plaintiffs alleged that defendants, in reliance on AB 2883, proposed cutting the single-person general grant from $341 to $299. Plaintiffs contended that the terms of the stipulated judgment should be enforced without regard to AB 2883, which they alleged was unconstitutional as applied to the judgment on the grounds that the statute violated the separation of powers clause of the California Constitution, and the prohibition against impairment of contracts in the federal and state constitutions. On December 14, 1992, the trial court denied plaintiffs' motions.

On appeal, the Second District Court of Appeal rejected both of plaintiffs' contentions. Regarding the impairment of contract claim, the court acknowledged that, in a stipulated judgment, litigants voluntarily terminate a lawsuit by assenting to specified terms, which the court agrees to enforce as a judgment, and that stipulated judgments bear the earmarks both of judgments entered after litigation and contracts derived through mutual agreement. However, the court that decided that "[b]oth prior to and after the stipulated judgment in this case, there was no statutorily authorized contractual relationship between the plaintiffs and defendants." Further, the court held that even if the judgment did constitute a contract within the constitutional contract clauses, no obligation therein can be deemed to have been impaired by AB 2883 because of the language in the stipulated judgment which provided that the terms in the judgment "will automatically expire" in the event that the legislature "takes control of or otherwise assumes the County's obligations under Welfare and Institutions Code, section 17000." According to the Second District, by enacting AB 2883, the legislature took control of the County's general relief obligations, thus expiring the terms of the stipulated judgment.

Plaintiffs also contended that AB 2883 "represents an impermissible legislative encroachment upon judicial authority in contravention of the separation of powers doctrine under the California Constitution," because the legislation discarded "a final judgment of the court." Plaintiffs argued that under *Mandel v. Myers*, 29 Cal. 3d 531, 547 (1981), the state constitution assigns the resolution of specific controversies to the judicial branch of government and provides the legislature with no authority to set itself above the judiciary by discarding the outcome or readjudicating the merits of statutes which have secured final passage by the legislature; in the words of the California Supreme Court, "[j]ust as the courts may not reevaluate the wisdom or merits of statutes which have secured final passage by the legislature, the legislature enjoys no constitutional prerogative to disregard the authority of final court judgments resolving specific controversies within the judiciary's domain."

Faced with this language, the Second District announced that plaintiffs "fail[ed] to establish that the instant stipulated judgment constituted a 'final judgment' for purposes of the separation of powers doctrine." Instead, the court decided that "the judicial authority embodied in the stipulated judgment was the authority to enforce a particular statute," and held that the court must be free to modify the terms of a consent decree when a change in law brings those terms in conflict with statutory objectives. Accordingly, the Second District affirmed the trial court's order.

In a strong dissent, Justice Earl Johnson stated that, "[i]n my opinion, what happened here is an affront to the integrity and independence of the judicial branch of government as much as it is a breach of faith with the destitute citizens who put their trust in a contract with Los Angeles County. In a single stroke, the county and

state government managed to violate two fundamental constitutional provisions—separation of powers and the contract clause." Justice Johnson did not hesitate to find that the stipulated agreement constituted a contract between the County government and plaintiffs for purposes of the contracts clause, stating that the settlement and judgment constituted a contract to pay money; specifically, the County agreed to pay a sum equal to $341 a month (or the AFDC payment level if it is higher) times the number of eligible general relief recipients for a five-year period in order to avoid the imposition of an injunction requiring it to conduct subsistence studies and adjust grant levels upward during those same five years. Justice Johnson also explained how all of the required elements of a contract are present: the agreement represented a meeting of two or more minds; both sides provided sufficient consideration; and the agreement called for the parties "to do or not to do certain acts." Justice Johnson further opined that "[i]f there ever was a judgment which was the substantial equivalent of a settlement agreement—and a contract within the meaning of the contract clause—this is the one."

Johnson also agreed that the legislation declaring the existing judicial judgment null and void is unconstitutional as a violation of separation of powers. According to Johnson, "[t]he ink was barely dry on the judgment incorporating the settlement agreement between the county and appellant welfare recipients when the county began lobbying the state legislature to get it out of the promises it made in that agreement. Lobbyists for the same board of supervisors which had authorized and participated in the negotiations that produced the agreement sat down with legislators and their staffs and devised legislation which declared that the agreement was 'null and void.'" According to Johnson, legislation purporting to nullify an existing court judgment violates separation of powers and is itself null and void.

Johnson concluded his powerful dissent by opining that "this is neither a difficult nor a close case. If the contract clause means anything, it means government cannot settle litigation with promises of future payments and then enact legislation reneging on those promises. And if separation of powers means anything it means the legislature may not declare the judicial branch's existing judgments to be 'null and void.'"

McDonald v. Superior Court of San Diego County, Bechtel Construction Company, et al., Real Parties in Interest,

22 Cal. App. 4th 364,
94 D.A.R. 1735,
No. D019854 (Feb. 9, 1994).

Court Must Consider Litigants' Financial Condition Before Referring Discovery Disputes to Paid Referees

In this proceeding, the Fourth District Court of Appeal considered whether the trial court abused its discretion when it ordered all discovery disputes in a pending case to be heard by a private referee with the parties to split the fees equally. Plaintiff contended that the trial court abused its discretion by failing to consider the financial impact of its reference order on her; alternatively, plaintiff argued that even if the court considered her financial status, it erred in allocating payment of any fees to her because, in her opinion, she was equivalent to an *in forma pauperis* plaintiff.

Initially, the court found that, for whatever reason, plaintiff chose not to proceed in the litigation in *in forma pauperis* status; according to the court, plaintiff cannot now claim that she should be entitled to the treatment afforded to *in forma pauperis* plaintiffs.

Next, the Fourth District considered whether the trial court was required to consider plaintiff's financial condition as set forth in her declaration in making its decision and, if so, whether it did consider her financial condition. The Fourth District found that the initial order referring discovery matters to Judicial Arbitration & Mediation Services, Inc. (JAMS) for resolution, with costs to be borne equally by the parties, was made on the court's own motion apparently without information on plaintiff's financial status. By way of a declaration under penalty of perjury, plaintiff then informed the court of her financial condition and its impact upon her ability to pursue the litigation if she were required to pay referee fees. After reviewing the evidence presented by plaintiff, the Fourth District concluded that the trial court abused its discretion by its apparent failure to consider plaintiff's declaration in determining how discovery disputes should be handled. Thus, the Fourth District held that "whenever the issue of economic hardship is raised before the commencement of the referee's work, the referring court must determine a fair and reasonable apportionment of reference costs before issuing its order."

The appellate court explained that the legislature, by providing for discovery disputes to be referred to paid referees, intended to reduce the extensive burden on trial courts occasioned by discovery disputes. However, the court found that "the interests of the court must be balanced against the economic hardship imposed on litigants. It was therefore incumbent upon the trial court to consider the financial impact of a reference on [plaintiff] in determining how fees should be paid in a fair and reasonable manner" consistent with statutory provisions.

North County Parents Organization for Children With Special Needs v. California Department of Education,

23 Cal. App. 4th 144,
94 D.A.R. 3224,
No. D016698 (Mar. 10, 1994).

Agency May Recover Only the Direct Costs of Duplication in Providing Copies of Public Documents

Pursuant to the California Public Records Act, Government Code section 6250 *et seq.*, appellant—a nonprofit group which provides advisory services to parents of children with disabilities—requested that respondent Department of Education (DOE) provide it with copies of all decisions rendered in the preceding two-year period. DOE charged $0.25 per page for furnishing the copies, rendering a total bill of $126.50; this charge covered not only the cost of duplicating the documents, but also reimbursed DOE for staff time involved in searching the records, reviewing records for information exempt from disclosure under law, and deleting such exempt information. DOE refused to reduce or waive the charge, contending that it was not authorized to do so; appellant paid the fee and brought this action. The trial court found for DOE, finding that Government Code section 6257 permits DOE to charge "the full direct costs of duplication," and that DOE's charge of $0.25 per copy "was not in contravention of section 6257." The trial court also held that DOE had discretion to waive fees but did not err by refusing to consider a waiver in this case.

On appeal, the Fourth District Court of Appeal found fault with both of the trial court's holdings. The court noted that section 6257 provides that one who requests copies of public documents must pay the statutory fee for same, if there is one; lacking a statutory fee, as in this case, the

cost chargeable is a fee covering the direct costs of duplication. According to the court, "[t]here seems to be little dispute as to what 'duplicate' means. It means just what we thought it did, before looking it up: to make a copy." Since a statute is to be interpreted according to the usual, ordinary import of the language employed in framing it, the court concluded that "the cost chargeable by the Department for furnishing these copies is the cost of copying them." The court further explained that because the statute provides for the "direct cost" of duplication, the legislature obviously excluded the "indirect" costs of duplication, "which presumably would cover the types of costs the Department would like to fold into the charge." Thus, the court concluded that the "direct cost of duplication is the cost of running the copy machine, and conceivably also the expense of the person operating it. 'Direct cost' does not include the ancillary tasks necessarily associated with the retrieval, inspection and handling of the file from which the copy is extracted."

Turning to the waiver issue, the Fourth District agreed with the trial court's finding that an agency is authorized to waive or reduce its fees. However, the trial court found no obligation to reduce the fee, and thus found no actionable wrong by DOE. The Fourth District took exception to this ruling, noting that DOE declined to exercise discretion, contending it had none. According to the appellate court, "[h]ad the Department been aware that it was vested with discretion to reduce the fee, it might have done so." Accordingly, the Fourth District, ordered that the matter be remanded to DOE "with instructions to consider (but not necessarily to grant) the request for fee waiver."

The California Supreme Court denied DOE's petition for review on May 19.

Powers v. City of Richmond,

23 Cal. App. 4th 787,
94 D.A.R. 3839,
No. A056310 (Mar. 23, 1994).

Constitutionally Provided 'Appellate Jurisdiction' Does Not Prevent Legislature From Limiting Review to An Extraordinary Writ

In this proceeding, the First District Court of Appeal considered the constitutionality of a provision in the California Public Records Act, Government Code section 6250 *et seq.*, which limits appellate review of cases brought under the Act to an extraordinary writ. Section 6259(c) of the Act provides that, in actions "filed on or after January 1, 1991, an order of the court, either directing disclosure by a public official or supporting the decision of the public official refusing disclosure, is not a final judgment or order within the meaning of section 904.1 of the Code of Civil Procedure from which an appeal may be taken, but shall be immediately reviewable by petition to the appellate court for the issuance of an extraordinary writ." Appellants contended that section 6259(c)'s preclusion of appeal violates Article VI, section 11 of the California Constitution, which provides in part that "courts of appeal have appellate jurisdiction when superior courts have original jurisdiction and in other causes prescribed by statute." Article VI, section 10, provides in part that courts of appeal have original jurisdiction in proceedings for extraordinary relief "in the nature of mandamus, certiorari, and prohibition."

According to the First District, the question turns on whether investing the courts of appeal with "appellate jurisdiction" provides a right to "appeal," or only permits appellate review in the mode specified by the legislature. After tracing the history of Article VI, section 11, the court concluded that the term "appellate jurisdiction," as it is used in Article VI, section 11, "does not provide a right to appeal and exclude review by extraordinary writ. Consistent with section 11, review may be limited to extraordinary writ if the legislature so provides." At this writing, the California Supreme Court is considering Powers' petition for review.

Hi-Top Steel Corporation, et al., v. Lehrer, et al.,

24 Cal. App. 4th 570,
94 D.A.R. 5795,
No. B075022 (Apr. 28, 1994).

Competitor's False Statements to Public Agencies to Delay Plaintiff's Entry Into Same Market Are Actionable

In this proceeding, plaintiffs—scrap steel exporters who sought to expand their business to automobile body shredding—alleged antitrust violations against defendants—employees of an auto wrecking yard with which plaintiffs' new business would compete, claiming that defendants took a series of actions which "were designed to delay plaintiffs' entry into the automobile body shredding business and disrupt plaintiffs' business by saddling them with onerous regulatory and administrative costs and burdens." According to the court, defendants made false statements to the public and public officials regarding plaintiffs' proposed automobile body shredding facility; knew their statements about the increased environmental impacts of plaintiffs' proposed facility were groundless, based upon their own plans to install a shredder; and instituted a baseless appeal of plaintiffs' precise plan of design, prosecuting it without regard to its merits. In the trial court, defendants asserted immunity from antitrust liability under the Noerr-Pennington doctrine; the trial court granted defendants' motion for judgment on the pleadings.

The Second District reversed. Under the Noerr-Pennington doctrine, there is no antitrust liability under the Sherman Act for efforts to influence government which are protected by the first amendment right to petition for redress of grievances, even if the motive behind the efforts is anticompetitive. However, an exception to the doctrine arises when efforts to influence government are merely a sham; such efforts are not protected by the Noerr-Pennington doctrine and are subject to antitrust liability. The Second District examined the sham exception, which has been applied to "situations in which a publicity campaign, ostensibly directed toward influencing governmental action, is a mere sham to cover what is actually nothing more than an attempt to interfere directly with the business relationships of a competitor and the application of the Sherman Act would be justified." According to U.S. Supreme Court precedent, the sham exception "encompasses situations in which persons use the governmental process—as opposed to the outcome of that process—as an anticompetitive weapon."

The Second District noted that the trial court "expressed concern that California courts had never actually applied the sham exception but only discussed it in dicta." The Second District had no such hesitation, however, holding that it saw "no impediment to applying the sham exception in California; it is not inconsistent with the California Constitution." According to the court, "defendants should not be protected from liability for their torts if they are not engaged in a genuine exercise of their constitutional rights but merely 'shamming' exercise of those rights in order to injure their competitors." Accordingly, the court held the sham exception to the Noerr-Pennington doctrine is applicable in California. Further, the court rejected defendants' argument that the sham exception only applies in the adjudicatory setting, holding that the U.S. Supreme Court has never limited its application to that setting. As a result, the Second District held that the trial court erred in granting defendants judgment on the pleadings.