

SUPREME COURT OF CALIFORNIA

Kurwa v. Kislinger

4 Cal. 5th 109 (2018) · No. S234617 · Decided February 1, 2018

SUMMARY

The Supreme Court of California modified its December 18, 2017 opinion in Kurwa v. Kislinger concerning whether an interlocutory judgment became appealable after the plaintiff dismissed a remaining defamation claim. The court clarified that the 2010 judgment was not final because it disposed of fewer than all causes of action and that the dismissal did not retroactively make the judgment appealable; the modifications did not affect the judgment.

CASE DETAILS

COURT	Supreme Court of California
JURISDICTION	California
DECIDED	February 1, 2018
DOCKET	S234617
DISPOSITION	other
PROCEDURAL POSTURE	The California Supreme Court modified its previously filed opinion on its own motion. The modification addressed whether an interlocutory judgment became appealable after the plaintiff voluntarily dismissed a remaining cause of action.
STANDARD OF REVIEW	De novo review of appealability and finality under the judgment-finality rule.
PRECEDENTIAL VALUE	Published California Supreme Court opinion, as modified.
PARTIES	Badrudin Kurwa v. Mark B. Kislinger et al.

TOPICS

- final judgment rule
- appellate jurisdiction
- appellate procedure
- civil procedure

PRACTICE AREAS

- civil procedure
- appellate procedure

QUESTIONS PRESENTED

1. Whether a plaintiff's voluntary dismissal of a remaining cause of action transforms an earlier interlocutory judgment disposing of fewer than all causes of action into an appealable final judgment.
2. Whether the time to appeal the 2010 judgment was delayed until the later dismissal of the defamation claim.

HOLDINGS

1. A voluntary dismissal of a remaining cause of action did not transform the 2010 interlocutory judgment, which disposed of fewer than all causes of action, into an appealable final judgment.
2. The later dismissal did not delay the time for appealing the 2010 judgment; even assuming the dismissal could have altered the judgment's character, the deadline to appeal had already expired.

KEY QUOTATIONS

“The 2010 interlocutory judgment was not a final judgment because it disposed of less than all of the causes of action.” (115)

“And even if Kurwa’s dismissal with prejudice could have retroactively altered the character of the trial court’s 2010 interlocutory judgment, the Court of Appeal is correct that the time for appealing that judgment has long since expired.” (115)

FACTUAL BACKGROUND

The trial court entered a 2010 judgment resolving fiduciary duty claims but leaving a defamation cause of action unresolved. Kurwa subsequently dismissed the defamation claim with prejudice and sought to appeal from the 2010 judgment. The Supreme Court explained that the dismissal did not retroactively convert the earlier interlocutory judgment into a final judgment.

PROCEDURAL HISTORY

The superior court entered a 2010 interlocutory judgment concerning fiduciary duty claims while a defamation cause of action remained pending. Kurwa later dismissed the defamation claim with prejudice and appealed. The Court of Appeal concluded that the 2010 judgment was not appealable, and the Supreme Court's modification clarified that the dismissal did not transform the interlocutory judgment into a final appealable judgment; the modification did not affect the judgment.

DISPOSITION

other

CASES CITED

- Sullivan v. Delta Air Lines, Inc., 15 Cal. 4th 288, 304 (1997)
- U.S. Financial v. Sullivan, 37 Cal. App. 3d 5, 11 (1974)

OPINION

PER CURIAM.

Filed 1/31/18 IN THE SUPREME COURT OF CALIFORNIA) BADRUDIN KURWA,))
Plaintiff and Appellant,)) S234617 v.)) Ct.App. 2/5 B264641 MARK B. KISLINGER et al.,))
Los Angeles County Defendants and Respondents.) Super. Ct. No. KC045216
_____)

ORDER MODIFYING OPINION ON THE
COURT'S OWN MOTION THE COURT: The opinion in this matter, which was filed December 18, 2017, and appears at 4 Cal.5th 109, is modified as follows: The second full paragraph on page 115, beginning "Ultimately, we have no occasion," is deleted and the following paragraph is inserted in its place: Ultimately, we have no occasion to resolve the tension between the approaches taken in Hill and Vedanta Society because Kurwa's appeal from the 2010 interlocutory judgment fails for a more basic reason: Kurwa's dismissal of his defamation cause of action did not transform the 2010 interlocutory judgment into an appealable final judgment and Kurwa has not argued or attempted to explain why the appellate court should have treated the voluntary dismissal as though it were itself an appealable final order.

The 2010 interlocutory judgment was not a final judgment because it disposed of less than 1 all of the causes of action. (Sullivan v. Delta Air Lines, Inc. (1997) 15 Cal. 4th 288, 304 [" 'A judgment is final "when it terminates the litigation between the parties on the merits of the case and leaves nothing to be done but to enforce by execution what has been determined." ' [Citations.] [¶] Finality in this sense not only makes a judicial determination a judgment, it also makes that judgment appealable."]; U.S. Financial v. Sullivan (1974) 37 Cal. App.

3d 5, 11 [it is improper for the trial court to enter a judgment of dismissal if some causes of action remain pending].) The third full paragraph on page 115, beginning "Kurwa's dismissal with prejudice," is deleted and the following paragraph is inserted in its place: In appealing from that order, Kurwa does not explain how the dismissal of his defamation claim could have retroactively transformed the 2010 interlocutory judgment concerning the fiduciary duty claims into one that finally disposed of all issues between the parties.

And even if Kurwa's dismissal with prejudice could have retroactively altered the character of the trial court's 2010 interlocutory judgment, the Court of Appeal is correct that the time for appealing that judgment has long since expired. (Cal. Rules of Court, rule 8.104(a)(1) [a notice of appeal from a superior court judgment must be filed within 60 days of the notice of entry of judgment or 180 days after judgment, whichever is earlier].)

To accept Kurwa's argument would therefore require us to hold that his dismissal of the defamation claim with prejudice not only changed the character of the trial court's 2010 interlocutory judgment, but also delayed the rendering of that judgment until 2015. These modifications do not affect the judgment. 2

