

SUPREME COURT OF CALIFORNIA

Kurwa v. Kislinger

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

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