

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Pulido v. City of El Segundo

259 F. App'x 973 (9th Cir. 2007) · Decided December 18, 2007

SUMMARY

The Ninth Circuit held that the district court abused its discretion by denying Pulido leave to amend his complaint to add a California Civil Code section 3342 strict-liability claim without stating a justification. It also held that the district court erred in dismissing Pulido’s negligence claim for failure to designate an expert, concluding that expert testimony was not required at that stage in the dog-bite case. The court reversed and remanded, and dismissed the cross-appeal as moot.

CASE DETAILS

COURT	United States Court of Appeals for the Ninth Circuit
WRITING FOR THE COURT	Bowman; Brunetti; Bybee
JURISDICTION	Federal
DECIDED	December 18, 2007
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from orders denying Pulido leave to amend his complaint to add a California dog-bite strict-liability claim and dismissing his negligence claims for failure to designate an expert witness. A cross-appeal was also before the court.
STANDARD OF REVIEW	Denial of leave to amend is reviewed for abuse of discretion. A federal district court's interpretation of state law is reviewed de novo.
PRECEDENTIAL VALUE	Nonprecedential unpublished memorandum disposition under 9th Cir. R. 36-3
PARTIES	Pulido v. City of El Segundo, Appellees

TOPICS

- motion to amend
- negligence
- expert testimony
- appellate procedure
- standard of review

PRACTICE AREAS

- Civil procedure
- Torts
- Evidence
- Municipal law
- Appellate procedure

QUESTIONS PRESENTED

1. Whether the district court abused its discretion by denying Pulido leave to amend his complaint to add a California Civil Code section 3342 strict-liability claim without providing a justifying reason.
2. Whether California law required Pulido to designate an expert witness to pursue negligence claims arising from the conduct of a police-trained dog.

HOLDINGS

1. The district court abused its discretion by denying Pulido leave to amend his complaint to add a California Civil Code section 3342 strict-liability claim without explicitly providing a justifying reason.
2. California law did not require Pulido to designate an expert witness to pursue his negligence claim arising from the alleged conduct of a police-trained dog.

KEY QUOTATIONS

“The district court should not have denied the motion for leave to amend a complaint solely as punishment for perceived wrongdoings in other aspects of the case.” (at 975)

“We think that a jury may, without expert testimony, infer that police-trained dogs are not trained to bite non-suspects and then not release despite efforts by the handler to call off the dog.” (at 975)

FACTUAL BACKGROUND

The case involved claims arising from an incident involving a police-trained dog. Pulido sought to amend his complaint to add a strict-liability claim under California Civil Code section 3342 and pursued negligence claims concerning the dog's conduct. The district court denied the amendment and dismissed the negligence claims because Pulido had not designated an expert witness.

PROCEDURAL HISTORY

The district court denied Pulido's motion for leave to amend his complaint to add a claim under California Civil Code section 3342 and dismissed his negligence claims after finding that he could not establish negligence without designating an expert witness. The Ninth Circuit reversed both orders, remanded with instructions to permit the amendment and allow Pulido to proceed with his negligence claim without designating an expert, and dismissed the cross-appeal as moot.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The district court was instructed to allow Pulido to amend his complaint and to permit him to proceed with his negligence claim without designating an expert. The cross-appeal was dismissed as moot.

CASES CITED

- *Howey v. United States*, 481 F.2d 1187, 1190 (9th Cir. 1973)
- *Foman v. Davis*, 371 U.S. 178, 182 (1962)
- *Paulson v. City of San Diego*, 294 F.3d 1124, 1128 (9th Cir. 2002) (en banc)
- *Bromme v. Pavitt*, 5 Cal. App. 4th 1487, 1498, 7 Cal. Rptr. 2d 608 (1992)
- *Sinz v. Owens*, 33 Cal. 2d 749, 205 P.2d 3, 5 (1949)
- *Hutchinson v. United States*, 838 F.2d 390, 392 (9th Cir. 1988)

OPINION

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PER CURIAM.

MEMORANDUM **

The facts and procedural posture of the case are known to the parties, and we do not repeat them here. The denial of a motion for leave to amend is reviewed for abuse of discretion. See *Howey v. United States*, 481 F.2d 1187, 1190 (9th Cir.1973). Nevertheless, “outright refusal to grant the leave without any justifying reason appearing for the denial is not an exercise of discretion; it is merely abuse of that discretion and inconsistent with the spirit of the Federal Rules.” *Foman v. Davis*, 371 U.S. 178, 182, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962). “The Supreme Court has instructed the lower federal courts to heed carefully the command of [Fed.R.Civ.P. 15(a)], by freely granting leave to amend when justice so requires.” *Howey*, 481 F.2d at 1190. The district court abused its discretion when it denied *Pulido*’s motion for leave to amend his complaint to add the Cal. Civ.Code § 3342 strict liability claim. *975The district court did not explicitly provide any reasons for refusing to allow *Pulido* to add the § 3342 claim. Appellees now argue that one possible explanation is the court’s concern with *Pulido*’s forum shopping. Although this argument may bear some relationship to *Pulido*’s attempt to drop his § 1983 claim, it bears no apparent relevance to the attempt to add the § 3342 claim. The district court should not have denied the motion for leave to amend a complaint solely as punishment for perceived wrongdoings in other aspects of the case. The district court also erred in dismissing *Pulido*’s negligence claim when it found, as a matter of state law, that *Pulido* could not establish negligence because he had not designated an expert. A federal district court’s interpretation of state law is reviewed de novo. *Paulson v. City of San Diego*, 294 F.3d 1124, 1128 (9th Cir. 2002) (en banc). Nothing in either the Federal Rules of Evidence or California law mandates the designation of an expert witness in this case. Federal Rule of Evidence 702 provides: “[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto_____” This rule permits, but does not require, expert testimony. Furthermore, the California cases cited by Appellees that require expert testimony to establish a necessary element of a legal claim all involve medical expert testimony. See *Bromme v. Pavitt*, 5 Cal.App.4th 1487, 1498, 7 Cal.Rptr.2d 608 (1992) (holding that competent expert testimony is required to prove medical causation in a

personal injury action); *Sinz v. Owens*, 33 Cal.2d 749, 205 P.2d 3, 5 (1949) (explaining that “[t]he standard of care against which the acts of a physician are to be measured is a matter peculiarly within the knowledge of experts”); *Hutchinson v. United States*, 838 F.2d 390, 392 (9th Cir. 1988) (explaining that in California, the standard of care of medical personnel can be proven only by expert testimony). We can find no evidence that California law requires expert testimony in a dog-bite case. We think that a jury may, without expert testimony, infer that police-trained dogs are not trained to bite non-suspects and then not release despite efforts by the handler to call off the dog. It is possible that Pulido will not ultimately prevail on his negligence claim without an expert witness, but he may present his case. In light of our ruling on these issues, Pulido’s arguments concerning the Pretrial Conference Order and Appellees’ arguments for attorneys’ fees are moot. The district court’s order denying Pulido’s motion for leave to amend his complaint to add the § 3342 claim is REVERSED. The district court’s order dismissing Pulido’s negligence claims for failure to designate an expert witness is REVERSED. The case is REMANDED to the district court with instructions to allow Pulido to amend his complaint and to permit Pulido to proceed with his negligence claim without designating an expert. The cross-appeal is DISMISSED as moot. This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.