

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Carolyn D. Callahan v. Brookdale Senior Living Communities, Inc.

No. 20-55603, 20-55761, United States Court of Appeals for the Ninth Circuit (July 29, 2022)

SUMMARY

The Ninth Circuit held that a proposed intervenor in a Private Attorneys General Act (PAGA) action who shares an identical interest with the existing plaintiff—to recover civil penalties on behalf of the state—must make a compelling showing of inadequate representation to intervene as of right under Rule 24(a)(2), and that a district court does not abuse its discretion in denying permissive intervention under Rule 24(b) when the intervenor would not contribute to factual development. The court further held that a non-party who is properly denied intervention has no right to appeal the approval of a PAGA settlement, dismissing the appeal under the rule that only parties may appeal an adverse judgment.

CASE DETAILS

COURT	United States Court of Appeals for the Ninth Circuit
WRITING FOR THE COURT	Eduardo C. Robreno; Milan D. Smith, Jr.; John B. Owens
JURISDICTION	Federal
DECIDED	July 29, 2022
DOCKET	20-55603, 20-55761
DISPOSITION	Affirmed as to the denial of intervention; dismissed as to the appeal of settlement approval.
PROCEDURAL POSTURE	Appeal from the United States District Court for the Central District of California, Virginia A. Phillips, Chief District Judge, Presiding. The district court denied Neverson's motion to intervene and approved the PAGA settlement. Neverson appealed both orders.
STANDARD OF REVIEW	De novo for denial of intervention as of right (except timeliness reviewed for abuse of discretion); abuse of discretion for permissive intervention and settlement approval.
PRECEDENTIAL VALUE	Published
PARTIES	Mishelle Neverson v. Carolyn D. Callahan; Brookdale Senior Living Communities, Inc.

TOPICS

civil procedure

intervention

appellate procedure

appellate jurisdiction

standard of review

PRACTICE AREAS

Civil Procedure

Employment Law

QUESTIONS PRESENTED

1. Whether Neverson was entitled to intervene as a matter of right under Rule 24(a)(2)
2. Whether the district court abused its discretion in denying permissive intervention under Rule 24(b)
3. Whether Neverson, as a non-party, has the right to appeal the approval of the PAGA settlement

HOLDINGS

1. Neverson's motion to intervene as of right fails at the fourth prong of the Wilderness Society test because her interest is identical to that of Callahan, and she failed to make a compelling showing that Callahan inadequately represented her interests.
2. The district court did not abuse its discretion in denying permissive intervention because the discretionary factors, including the identity of interest and lack of significant contribution to factual development, weighed strongly against intervention.
3. Because Neverson's motion to intervene was properly denied, she never became a party to the action and therefore has no right to appeal the settlement approval.

KEY QUOTATIONS

“When the proposed intervenor’s interest is ‘identical to that of one of the present parties, a compelling showing should be required to demonstrate inadequate representation.’” (at 16)

“The rule that only parties to a lawsuit, or those that properly become parties, may appeal an adverse judgment, is well settled.” (at 21)

FACTUAL BACKGROUND

Brookdale owns and operates senior living communities. Callahan worked for Brookdale as a concierge from approximately February 2006 to February 2018. On November 26, 2018, she sent the LWDA notice of alleged Labor Code violations. She filed a class action in state court, which was removed to federal court. The class claims were dismissed, and she filed an amended complaint asserting a PAGA claim. After mediation, Callahan and Brookdale agreed to a settlement of \$920,000. Neverson, who had a separate PAGA action against Brookdale, moved to intervene to object to the settlement.

PROCEDURAL HISTORY

Callahan filed a PAGA action against Brookdale. After mediation, the parties agreed to a settlement. Neverson, who had a separate overlapping PAGA action against Brookdale, moved to intervene to object to the settlement. The district court denied intervention and approved the settlement. Neverson appealed.

DISPOSITION

Affirmed as to the denial of intervention; dismissed as to the appeal of settlement approval.

CASES CITED

- Wilderness Soc'y v. U.S. Forest Serv., 630 F.3d 1173 (9th Cir. 2011)
- Arakaki v. Cayetano, 324 F.3d 1078 (9th Cir. 2003)
- League of United Latin Am. Citizens v. Wilson, 131 F.3d 1297 (9th Cir. 1997)
- Spangler v. Pasadena City Bd. of Educ., 552 F.2d 1326 (9th Cir. 1977)
- Saucillo v. Peck, 25 F.4th 1118 (9th Cir. 2022)
- Magadia v. Wal-Mart Associates, Inc., 999 F.3d 668 (9th Cir. 2021)
- Turrieta v. Lyft, Inc., 284 Cal. Rptr. 3d 767 (Ct. App. 2021)
- Uribe v. Crown Bldg. Maint., 285 Cal. Rptr. 3d 759 (Ct. App. 2021)
- Moniz v. Adecco USA, Inc., 287 Cal. Rptr. 3d 107 (Ct. App. 2021)
- Robert Ito Farm, Inc. v. Cnty. of Maui, 842 F.3d 681 (9th Cir. 2016)
- United States ex rel. Alexander Volkhoff, LLC v. Janssen Pharmaceutica N.V., 945 F.3d 1237 (9th Cir. 2020)
- Berger v. North Carolina State Conference of the NAACP, 142 S. Ct. 2191 (2022)