Filed 6/29/23 Jones v. City of Firebaugh CA5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

DAQUAN JONES,

Plaintiff and Respondent,

v.

CITY OF FIREBAUGH,

Defendant and Appellant.

F083759

(Super. Ct. No. 18CECG04044)

OPINION

APPEAL from a judgment of the Superior Court of Fresno County. Rosemary T. McGuire, Judge.

Suzanne M. Nicholson; Litigation Engineered and Chester E. Walls for Defendant and Appellant.

Miles, Sears & Eanni, Richard C. Watters and Lyndsie N. Russell for Plaintiff and Respondent.

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Defendant and appellant City of Firebaugh (City) appeals from a November 19, 2021 postjudgment order of the Fresno County Superior Court. We reverse the order.

BACKGROUND[1]

Plaintiff and respondent Daquan Jones brought a tort action against City and Hiller Aircraft Corporation, among others. Trial commenced April 12, 2021. On May 4, 2021, the jury returned a special verdict in favor of Jones. In an "**AMENDED JUDGMENT ON SPECIAL VERDICT**" filed June 22, 2021, the court adjudged City and Hiller Aircraft Corporation jointly and severally liable for $5,743,907.51 in economic damages and City severally liable for $750,000 in noneconomic damages.

As of April 8, 2021, four days before trial commenced, workers' compensation insurance payments in the amount of $1,253,884.43 were paid on behalf of plaintiff by workers' compensation insurer, QBE Americas, Inc. Postverdict, on July 9, 2021, City moved for reduction of judgment pursuant to Government Code section 985,[2] identifying QBE Americas, Inc., a "private workers' compensation insurer," as the "sole collateral source." In a declaration filed October 22, 2021, City's counsel Chester Walls attested:

> "4. On October 7, 2021, I corresponded with Jeffrey Sotland, Esq., counsel for the sole lienholder in this matter, Sedgwick on behalf of QBE Americas, Inc., which provided Workers' Compensation insurance benefits to Plaintiff DAQUAN JONES. Mr. Sotland advised that his principle [*sic*] received $191,088.07 from Plaintiff's counsel, Richard Watters, Esq. As of October 7, 2021, QBE Americas, Inc., has made additional payments totaling $41,992.25 since trial commenced for medical treatment and temporary disability for the benefit of Plaintiff DAQUAN

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[1] On September 19, 2022, City filed a request for judicial notice of (1) this court's February 16, 2022 order denying plaintiff's motion to consolidate the appeal in case No. F083331 with this appeal and (2) of City's opening brief in case No. F083331. We deferred our ruling pending consideration of this appeal on its merits. We now grant the request.

[2] Subsequent statutory citations refer to the Government Code unless indicated otherwise.

JONES, but a final resolution has not been reached for the workers' compensation claim.

"5. On October 22, 2021, I spoke with Mr. Sotland . . . . Mr. Sotland advised that the workers' compensation claim of Plaintiff remains open and not likely to resolve in the foreseeable future due to ongoing medical care."

Walls also attached the declaration of Daniel Redlin dated April 8, 2021. Redlin, a Sedgwick employee and the "custodian of records for Workers' Compensation claims records," attested "the Worker's Compensation lien for Daquan Jones' medical treatment and temporary disability payments total[ed] $1,253,884.43 . . . ."

A motion hearing was held on November 17, 2021. In a tentative ruling, the court pronounced:

"Here, the City of Firebaugh has provided evidence indicating that, as of April 8, 2021, there was a workers' compensation lien for plaintiff's medical treatment and temporary disability payments in the amount of $1,253,884.43. [Citation.] Defense counsel also states that counsel for the sole lienholder, QBE Americas, Inc., told him that they had already received $191,088.07 from plaintiff, and that as of October 7, 2021, QBE has made additional payments of $41,922.25. [Citation.] However, defense counsel also stated that a final resolution of the workers' compensation claim has not yet been made. [Citation.] The workers' compensation claim remains open and is not likely to be resolved in the foreseeable future due to ongoing medical care. [Citation.]

"Thus, the City has not met its burden of presenting sufficient evidence of the amount of the lien that it proposes to use to reduce the amount of the judgment, as the total amount of the lien has not yet been determined and will continue to grow as plaintiff incurs more medical expenses. Indeed, defense counsel admits that the workers' compensation claim has not been closed, and is not likely to be closed in the foreseeable future because of plaintiff's ongoing medical needs. He also admits that the original lien amount of $1,253,884.43 has changed, since $41,922.25 in additional payments have been made on plaintiff's behalf since the date of the first lien statement in April of 2021, and a payment of $191,088.07 has been made against the lien by plaintiff's counsel. More importantly, since the workers' compensation claim remains open, the amount of the lien will continue to grow as more payments are made.

> "As a result, it is not clear what the exact amount of the lien is, or how much of a reduction of the judgment defendant is actually entitled to. Consequently, it is not possible for the court to make a reasoned calculation of the amount of any reduction under Government Code section 985. It is within the court's discretion to deny a motion for reduction of a judgment where the public entity has not provided sufficient evidence of the amounts paid from a collateral source and what is still owed under the lien. [Citation.] This is a particular concern here, where payments continue to be made for plaintiff's medical care, and thus the lien will continue to grow, yet an order under section 985 would have the effect of terminating the lienholder's right to seek compensation for future payments. [Citation.] Therefore, the court intends to deny the motion for a reduction of the judgment, as the City has not provided sufficient evidence of the amounts paid by the collateral source or what plaintiff owes under the lien."

The court adopted the tentative ruling via a November 19, 2021 minute order.

DISCUSSION

Section 985, subdivision (b), provides that a public entity may bring a posttrial motion to reduce a judgment against it by the amount a collateral source has paid, or is obligated to pay, for services or benefits provided to plaintiff prior to the commencement of trial. (*Ibid.*; *Garcia v. County of Sacramento* (2002) 103 Cal.App.4th 67, 72-73.)

A " '[c]ollateral source payment' " includes "[m]onetary payments paid or obligated to be paid for services or benefits that were provided" on behalf of the plaintiff by "private medical programs, health maintenance organizations, state disability, unemployment insurance, private disability insurance, or other [similar] sources of compensation . . . ." (§ 985, subds. (a)(1)(B), (f)(2).)

At the hearing on the posttrial motion, "the trial court shall, in its discretion and on terms as may be just, make a final determination as to any pending lien and subrogation rights, and, subject to [section 985, subdivision (f) paragraphs] (1) to (3), inclusive, determine what portion of collateral source payments should be reimbursed from the judgment to the provider of a collateral source payment, deducted from the verdict, or accrue to the benefit of the plaintiff." (§ 985, subd. (f).)

We review the court's ruling for abuse of discretion. (See *Joyce v. Simi Valley Unified School Dist.* (2003) 110 Cal.App.4th 292, 308; *Garcia v. County of Sacramento, supra,* 103 Cal.App.4th at pp. 81-82.) "A trial court abuses its discretion when it applies the wrong legal standards applicable to the issue at hand." (*Paterno v. State of California* (1999) 74 Cal.App.4th 68, 85.)

Walls presented the declaration of Daniel Redlin specifying the amount of the pretrial worker's compensation payments made for plaintiff's medical treatment and temporary disability. But he also presented his own declaration which contained information relating to payments made after the commencement of trial. That declaration stated not only that the lienholder had recouped $191,088.07, but also that—as of October 7, 2021—QBE Americas, Inc. had made additional payments totaling $41,992.25. Wall's declaration asserted a final resolution had not been reached for the workers' compensation claim, that the claim "remains open," and that it is "not likely to resolve in the foreseeable future due to ongoing medical care."

The trial court concluded "it [wa]s not possible" "to make a reasoned calculation of the amount of any reduction" because (1) the workers' compensation claim "has not been closed" and "is not likely to be closed in the foreseeable future because of plaintiff's ongoing medical needs"; (2) "since the workers' compensation claim remains open, the amount of the lien will continue to grow as more payments are made"; and (3) "the total amount of the lien has not yet been determined." The court expressed concern "an order under section 985 would have the effect of terminating the lienholder's right to seek compensation for future payments."

The language of section 985 limits the inquiry to payments made "prior to the commencement of trial." (See *California State University, Fresno Assn., Inc. v. County of Fresno* (2017) 9 Cal.App.5th 250, 266 [" 'If there is no ambiguity in the language, we presume the Legislature meant what it said and the plain meaning of the statute governs.' "].)

The trial court's order evinces the mistaken belief that a motion under section 985 reaches payments made for services or benefits provided after the commencement of trial. Since it applied the wrong legal standard, we find an abuse of discretion.

"We are not, however, prepared to say that [granting City's motion] necessarily is proper. Although the trial court may conclude [granting the motion] is appropriate after eliminating the improper criteria and erroneous assumptions from consideration, upon a fresh look it may discern valid reasons for denying [City]'s . . . motion." (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 448-449; see, e.g., *Garcia v. County of Sacramento, supra,* 103 Cal.App.4th at pp. 81-82 [no abuse of discretion where trial court concluded reimbursement of Medi-Cal lien would result in undue financial hardship to the plaintiff].)

DISPOSITION

The postjudgment order is reversed. On remand, the trial court shall reconsider the motion for reduction in judgment pursuant to section 985 in accordance with the proper legal standard.

DETJEN, Acting P. J.

WE CONCUR:

SMITH, J.

DE SANTOS, J.