Long v. Hauser, 52 Cal. App. 3d 490 (Copy citation)

Court of Appeal of California, Fourth Appellate District, Division One
October 27, 1975
Civ. No. 14183

Reporter: 52 Cal. App. 3d 490 | 125 Cal. Rptr. 125 | 1975 Cal. App. LEXIS 1479

EVELYN LONG et al., Plaintiffs and Appellants, v. THOMAS W. HAUSER, Defendant and Respondent; GOVERNMENT EMPLOYEES INSURANCE COMPANY, Real Party in Interest and Respondent

Prior History: Superior Court of San Diego County, No. 352599, William A. Yale, Judge.

Disposition: Judgment affirmed.

Core Terms

superior court, discovery matter, arbitration, prerogative writ, personal physician, court reporter, discovery, extraordinary circumstances, extraordinary nature, pretrial examination, use of a discovery, immediate relief, judicial process, trial court, trial level, disfavor, pretrial, attend, hazard, lax

Case Summary

Procedural Posture
Plaintiff victim challenged an order of the Superior Court of San Diego County (California), which rejected her request for a writ of mandate to countermand defendant arbiter's order to allow defendant insurer's doctor to examine her without her doctor being present in relation to her suit as to a policyholder's negligence.

Overview
Plaintiff victim filed suit against defendant insurer, in which she alleged that a man whom it insured injured her. The parties later agreed to have defendant arbiter arbitrate the claim. The trial court denied plaintiff's request for a writ of mandate to countermand defendant arbiter's order to submit to an exam by defendant insurer's doctor without her physician being present. The court affirmed that denial on appeal. The court reasoned that defendant arbiter was serving the function of a trial court and that his ruling on a routine discovery matter should not have been challenged, if at all, until the arbitration ended and the award was confirmed. The court also concluded that the prerogative writs should only be used in discovery matters to review questions of first impression that were of general importance to the trial courts and the profession, and if general guidelines could have been laid down for future cases. The court further found that there was no precedent that would have given plaintiff an unqualified right to her physician's presence at the pretrial examination and that defendant arbiter properly exercised his discretion in denying that request.

Outcome
The court affirmed the denial of plaintiff victim's request for a writ of mandate to countermand defendant arbiter's order to allow an exam by defendant insurer's doctor as to her suit against defendant insurer. The court held that there was no basis for plaintiff's alleged unqualified right to her doctor attending a pretrial examination, and that appealing defendant arbiter's routine ruling before his award was confirmed was improper.

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Civil Procedure > Discovery & Disclosure > General Overview
Civil Procedure > ... > Discovery > Methods of Discovery > Mental & Physical Examinations
Civil Procedure > ... > Alternative Dispute Resolution > Judicial Review > General Overview
Civil Procedure > Appeals > Reviewability of Lower Court Decisions > Timing of Appeals

HN1 Except in extraordinary circumstances, discovery matters should remain at the trial level until the completion of the trial. This principle also applies to arbitration. *Shepardize* - Narrow by this Headnote

Civil Procedure > Discovery & Disclosure > General Overview
Civil Procedure > Remedies > Writs > General Overview
Civil Procedure > Appeals > Reviewability of Lower Court Decisions > Timing of Appeals

HN2 Too lax a view of the extraordinary nature of prerogative writs, rendering substantial pretrial appellate delay a hazard of the use of discovery, is likely to result in more harm to the judicial process than the denial of immediate relief from less significant errors. Accordingly, the appellate court should view with disfavor appeals from the decisions which the superior court renders in such discovery matters. *Shepardize* - Narrow by this Headnote

Headnotes/Syllabus Hide

Summary
CALIFORNIA OFFICIAL REPORTS SUMMARY

The trial court denied a petition for a writ of mandate countermanding an order of an arbitrator directing an injured party in a negligence matter before him to submit to a physical examination by a doctor acting for the other party without the accompaniment of her personal physician during any portion of the examination. (Superior Court of San Diego County, No. 352599, William A. Yale, Judge.)

The Court of Appeal affirmed, holding the arbitrator correctly interpreted decisional law on the subject and properly exercised his discretion. The court held no unqualified right to a personal physician's presence existed. Though the court stated the ruling of the arbitrator on such a routine discovery matter should not have been challenged, if at all, until the arbitration ended and the award confirmed, it noted the delay already encountered in disposing of the discovery question and it therefore resolved the merits of the petition. (Opinion by Brown (Gerald), P. J., with Ault and Cologne, JJ., concurring.)

Headnotes
CALIFORNIA OFFICIAL REPORTS HEADNOTES
Classified to California Digest of Official Reports, 3d Series

CA(1) (1)
Discovery and Depositions § 39 > Mandamus and Prohibition > Discovery Order in Arbitration Proceeding.

--Except in extraordinary circumstances, discovery matters should remain at the trial level until completion of the trial, which principle should also be applied to arbitration. The prerogative writs should only be used in such matters to review questions of first impression that are of general importance to the trial courts and the profession, and where general guidelines can be laid down for future cases.

CA(2) (2)
Discovery and Depositions § 26 > Right to Presence of Personal Physician at Examination.

--An arbitrator in a personal injury matter properly exercised his discretion in ordering plaintiff to submit to a physical examination by a doctor acting for defendant without the accompaniment of her personal physician during any portion of the examination. There is no unqualified right to the presence of a personal physician at such an examination, and the arbitrator correctly refused to enlarge a decision permitting the presence of the examinee's attorney.

Counsel: Jack Galen Whitney for Plaintiffs and Appellants.

Higgs, Fletcher & Mack and Donald H. Glaser for Defendant and Respondent and for Real Party in Interest and Respondent.

Judges: Opinion by Brown (Gerald), P. J., with Ault and Cologne, JJ., concurring.

Opinion by: BROWN

Opinion

[491] This appeal involves discovery. Plaintiffs Evelyn Long and John Long sued Government Employees Insurance Company (GEICO), alleging damages for personal injuries suffered by Evelyn resulting from Donald Hopster's negligence.

The parties agreed to arbitration, with Thomas W. Hauser as arbitrator.

By further agreement, Evelyn was to be physically examined by Howell E. Wiggins, M.D., a physician, acting for GEICO. Her attorney, **[492]** a court reporter, her husband and her personal physician accompanied her to Dr. Wiggins' offices on September 25, 1973. All were present without objection during Dr. Wiggins' preliminary questioning of Evelyn. Dr. Wiggins, however, forbad Evelyn's personal physician to be present during the physical examination which was to be conducted in another room. For this reason the examination did not take place.

On January 9, 1974, Hauser ordered Evelyn to submit to an examination by Dr. Wiggins without the accompaniment of her personal physician during any portion of the examination. The Longs refused, and petitioned this court for a writ of mandate to countermand Hauser's order. We denied the petition without opinion. They next petitioned the superior court and were again denied. They appeal this latest rejection.

Initially, we consider the procedural appropriateness of the Longs' choice to seek the prerogative writ in the superior court.

CA(1) (1) The teaching of *Pacific Tel. & Tel. Co.* v. *Superior Court*, 2 Cal.3d 161, 169-171 [84 Cal.Rptr. 718, 465 P.2d 854] is that ***HN1*** except in extraordinary circumstances, discovery matters should remain at the trial level until the completion of the trial. This principle should also be applied to arbitration. Hauser was serving the function of a trial court, and his ruling on a routine discovery matter should not have been challenged, if at all, until the arbitration ended and the award confirmed. As inadequate as such review may be in some cases, the prerogative writs should only be used in discovery matters to review questions of first impression that are of general importance to the trial courts and the profession, and where general guide lines can be laid down for future cases (*Oceanside Union School Dist.* v. *Superior Court*, 58 Cal.2d 180, 185, fn. 4 [23 Cal.Rptr. 375, 373 P.2d 439]; *Pacific Tel. & Tel. Co.* v. *Superior Court, supra*, 2 Cal.3d 161, 169). We perceive no such widespread interest in this discovery matter.

The Longs' appeal to the superior court for the prerogative writ defeated one of the primary purposes of arbitration, the avoidance of delay. The superior court should exercise sparingly its discretion to hear the merits of petitions relating to ordinary discovery issues such as this. ***HN2*** Too lax a view of the extraordinary nature of prerogative writs, rendering substantial pretrial appellate delay a hazard of the use of discovery, is likely to result in more harm to the judicial process than the denial of immediate relief from less significant errors (*Pacific Tel. & Tel. Co.* v. *Superior Court, supra*, 2 Cal.3d 161, 170). Accordingly, the appellate **[493]** court should view with disfavor appeals from the decisions which the superior court renders in such discovery matters.

Nevertheless, in view of the inordinate two-year delay already encountered in disposing of this discovery question, we proceed to resolve the merits of the Longs' petition.

CA(2) (2) The Longs claim an unqualified right to their physician's presence at the pretrial examination. We find no California case establishing such a broad right and have determined none exists.

Gonzi v. *Superior Court*, 51 Cal.2d 586, 589 [335 P.2d 97] and *Sharff* v. *Superior Court*, 44 Cal.2d 508, 510 [282 P.2d 896, 64 A.L.R.2d 494] respectively permitted a court reporter and the examinee's attorney to attend medical examinations such as the one involved here. The presence of those persons was held sufficient to prevent inquiries not reasonably related to the legitimate scope of the examination, which is to discover the true nature and extent of the injuries claimed. This purpose can best be achieved by divesting the examination as far as possible of any adversary character, and by strictly limiting the number of unessential participants.

In explaining his ruling, Hauser wrote, ". . . I do not believe that as an arbitrator I can expand the holding of *Sharff* v. *Superior Court*, 44 Cal.2d 508, to allow in addition to the court reporter and the plaintiff's attorney, either the plaintiff's husband and/or a physician of her choosing." The Longs argue this statement mistakenly interpreted the law and shows Hauser refused to exercise his discretion.

Sharff makes no mention of doctors and does not specifically allow or disallow a plaintiff's physician to attend a pretrial examination. Hauser's statement can be taken to mean he decided the holding of *Sharff* could not be enlarged to allow Evelyn's physician to be present as a matter of right. Hauser correctly interpreted *Sharff* and properly exercised his discretion.

Judgment affirmed.