Filed 11/27/17

IN THE SUPREME COURT OF CALIFORNIA

F.P.,	
Plaintiff and Respondent,	S216566
v.	Ct.App. 3 C062329
JOSEPH MONIER,	
Defendant and Appellant.	Sacramento County Super. Ct. No. 06AS00671

Section 632 of the Code of Civil Procedure[1] provides that "upon the trial of a question of fact by the court," the court "shall issue a statement of decision explaining the factual and legal basis for its decision as to each of the principal controverted issues at trial upon the request of any party appearing at the trial." We granted review in this case to decide whether a court's error in failing to issue a statement of decision as this section requires is reversible per se. The Court of Appeal held that such errors are not reversible per se, but are subject to harmless error review. The court based its conclusion on article VI, section 13 of the California Constitution (article VI, section 13), which provides: "No judgment shall be set aside, or new trial granted, in any cause, on the ground of misdirection of the jury, or of the improper admission or rejection of evidence, or for any error as to any matter of pleading, or for any error as to any matter of procedure, unless,

[1] All further unlabeled statutory references are to the Code of Civil Procedure.

after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice." For reasons explained below, we agree with the Court of Appeal and affirm its judgment.

FACTUAL AND PROCEDURAL BACKGROUND

In February 2006, plaintiff F.P. sued defendant Joseph Monier for acts of sexual battery that defendant allegedly committed in 1990 and 1991, when plaintiff was 10 years old and defendant was 17 years old. Plaintiff also sued defendant's parents for negligence, alleging that they had failed reasonably to care for, supervise, direct, oversee, and protect her from defendant. Defendant filed an answer denying the allegations and asserting in part that others were at fault and that any liability should be apportioned among them.

Before trial, plaintiff settled her claim against defendant's parents. The rest of the action went to trial before the court. The evidence presented during that trial showed, among other things, that plaintiff's father also sexually abused plaintiff during the time period in question. Dr. Laurie Wiggen, a licensed clinical psychologist who treated plaintiff from September 2005 until December 2007, diagnosed plaintiff as having posttraumatic stress disorder and attributed it to the traumas resulting from the molestations by her father and defendant. Dr. Wiggen could not separate the harm done by defendant from that done by plaintiff's father, testifying that their conduct was "cumulatively impactful." Dr. Eugene Roeder, a licensed psychologist who evaluated plaintiff in July 2005, diagnosed plaintiff as suffering from major depression, an anxiety disorder, and posttraumatic stress disorder. Like Dr. Wiggen, Dr. Roeder could not distinguish the symptoms defendant had caused from those plaintiff's father had caused, but he testified that the molestation by plaintiff's father "was dramatically more traumatic than" the molestation by defendant because plaintiff's relationship with her father "was a

much more central, basic relationship in her life" and "[h]er relationship with the [defendant] was more tangential."

The court issued a tentative decision on April 29, 2009, finding that defendant had committed the alleged acts and that his conduct was a substantial factor in causing plaintiff's injuries. The court indicated its intent to award damages in the amount of $305,096, consisting of $44,800 for lost income, $10,296 for past and future medical expenses, and $250,000 for general noneconomic damages. The court instructed plaintiff's counsel to prepare a judgment. Later that day, defendant timely filed a request for a statement of decision requesting, as relevant here, that the court set forth "the basis upon which" it was awarding special damages, emotional distress damages, past and future medical expenses, and lost wages.

On May 1, 2009, plaintiff's counsel submitted a proposed judgment to the court. In an accompanying declaration, counsel explained: (1) he faxed a copy of the proposed judgment to defendant's counsel after trial on April 29, 2009, and was informed that defendant's counsel was no longer at that number; (2) the next day, April 30, he faxed a copy of the proposed judgment to the new fax number of defendant's counsel and left counsel a voicemail explaining that the trial judge, who had been visiting, "needed" the proposed judgment reviewed and signed "immediately" because the judge "was leaving Sacramento on May 1, 2009"; and (3) he did not hear from defendant's counsel and submitted the proposed judgment to the court the next day, May 1, 2009.

On May 1, 2009, the court signed the judgment without issuing a separate statement of decision. The judgment stated in relevant part: "After considering all of the evidence and testimony presented at trial it is hereby adjudged, determined and decreed that [defendant] molested his biological cousin, plaintiff [F.P.] numerous times when she was ten years old, including acts of unlawful penetration, sodomy, oral copulation of him and other lewd and lascivious acts. The conduct of Defendant . . . is further found to be outrageous and a substantial

factor in causing injuries to the Plaintiff. Defendant took advantage of the vulnerability of the Plaintiff due to her age. Plaintiff . . . was injured as a proximate result of [defendant's] sexual assaults of her causing her to incur past and future medical/psychological treatment expenses of $10,296.00. Plaintiff lost income as a proximate result of [defendant's] sexual assaults of her in the amount of $48,800.00." The judgment ordered defendant to pay total damages of $305,096.00, which included general damages of $250,000 and special damages of $55,096.00.

Defendant appealed, arguing that the trial court had erred in failing to issue a statement of decision and that the error was reversible per se. According to defendant, without a statement of decision, it was unknown whether the trial court had apportioned general damages as the law required. The Court of Appeal found error, but disagreed that it was reversible per se. Article VI, section 13, the court held, precludes reversal absent a showing that the trial court's failure to issue a statement of decision regarding the issues defendant had specified "resulted in a miscarriage of justice." The error here, the court found, did not result in a miscarriage of justice because defendant had forfeited any right to apportionment of damages by failing to raise the issue at trial. Thus, the court concluded, the absence of a statement of decision on the issue of general noneconomic damages was of no consequence.

We granted review, limiting the issue to whether "a trial court's error in failing to issue a statement of decision upon a timely request" is "reversible per se."[2]

DISCUSSION

The duty of a trial court in question here — to issue, upon the request of a party appearing at a court trial of a question of fact, "a statement of decision

---

2 Given this limitation, we express no opinion regarding the Court of Appeal's conclusion that the error here was, in fact, harmless.

explaining the factual and legal basis for its decision as to each of the principal controverted issues at trial" (§ 632) — reflects many years of statutory evolution. In 1851, the Legislature enacted section 180 of the Practice Act, which provided that "[u]pon the trial of an issue of fact by the Court, its decision shall be given in writing, and filed with the clerk, within ten days after the trial took place. In giving the decision, the facts found, and conclusions at law, shall be separately stated. Judgment upon the decision shall be executed accordingly." (Stats. 1851, ch. 5, § 180, pp. 78-79.) Ten years later, the Legislature added a provision stating that "[i]n cases tried by the court without a jury, no judgment shall be reversed for want of a finding, or for a defective finding, of the facts, unless exceptions be made in the court below to the finding, or to the want of a finding." (Stats. 1861, ch. 522, § 2, p. 589.) Five years after that, in 1866, the legislature combined these provisions into a single section that provided: "Upon a trial of issue of fact by the Court, judgment shall be entered in accordance with the finding of the Court, and the finding, if required by either party, shall be reduced to writing and filed with the Clerk. In the finding filed, the facts found and the conclusions of law shall be separately stated. In such cases no judgment shall be reversed on appeal for want of a finding in writing at the instance of any party who, at the time of the submission of the cause, shall not have requested a finding in writing, and had such request entered in the minutes of the Court . . . ." (Stats. 1865-1866, ch. 619, § 2, p. 844.)

In 1872, when the Legislature enacted the Code of Civil Procedure, it replaced these provisions with section 632 and former section 633. Section 632 provided: "Upon the trial of a question of fact by the Court, its decision must be given in writing and filed with the Clerk within twenty days after the cause is submitted for decision, and unless the decision is filed within that time the action must again be tried." Former section 633 provided: "In giving the decision, the facts found and conclusions of law must be separately stated. Judgment upon the decision must be entered accordingly." (Repealed by Stats. 1933, ch. 744, § 198,

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.