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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

KAISER FOUNDATION HOSPITALS
et al.,

Petitioners,

v.

THE SUPERIOR COURT OF
RIVERSIDE COUNTY,

Respondent;

JOSHUA TUCKER et al.,

Real Parties in Interest.

E058283

(Super.Ct.No. RIC1218828)

OPINION

ORIGINAL PROCEEDINGS; petition for writ of mandate. Ronald L. Taylor, Judge. (Retired judge of the Riverside Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Petition granted.

La Follette, Johnson, De Haas, Fesler & Ames, Louis H. De Haas and David J. Ozeran; Arnold & Porter, Lawrence A. Cox and Brian K. Condon, for Petitioners.

No appearance for Respondent.

Law Offices of Patricia Law and Patricia A. Law; Arias & Lockwood and Christopher D. Lockwood, for Real Parties in Interest.

In this matter we have reviewed the petition and the opposition filed by real parties in interest. We have determined that resolution of the matter involves the application of settled principles of law, and that issuance of a peremptory writ in the first instance is therefore appropriate. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 178.)

DISCUSSION

The arbitration contract in question requires the arbitrator to set out the reasons for the decision “consistent with California Code of Civil Procedure Section 437c(g) [*sic*] or Section 632.”¹ This means only that the arbitrator must explain the factual and legal basis for the decision as to each of the principal controverted issues or ultimate facts. (*Central Valley General Hospital v. Smith* (2008) 162 Cal.App.4th 501, 513.) Another way of putting it is that the arbitrator (or trial court) must address each fact without which a claim or defense must fail. (*Yield Dynamics, Inc. v. TEA Systems Corp.* (2007) 154 Cal.App.4th 547, 559.) It is well settled that a statement of decision need not address every legal or factual issue raised, only the essential ones. (*Muzquiz v. City of Emeryville* (2000) 79 Cal.App.4th 1106, 1124-1125.) However, an award that does not dispose of all

¹ The requirement is very similar to the statutory rule governing arbitration awards, which simply requires the arbitrator to include “a determination of all the questions submitted to the arbitrators the decision of which is necessary in order to determine the controversy.” (Code Civ. Proc., § 1283.4.)

crucial issues is subject to being vacated. (*Mossman v. City of Oakdale* (2009) 170 Cal.App.4th 83, 88.)

Measured against this standard, the arbitrator's decision was adequate. The essential findings were that there was no negligence up until a specified time, and that, even if surgery had been performed at that time, real parties failed to establish "to a reasonable medical probability" that a better result would have been obtained. Real parties understandably do not like this conclusion, but we are not reviewing the correctness of factual or legal findings, just the adequacy of the explanation. Once the arbitrator found that petitioners met the standard of care at least until 9.30 a.m. on the day after plaintiff William Tucker's admission, that plaintiff William Tucker had suffered irreversible bowel damage by that time, and that plaintiffs failed to show that less bowel would have been lost than was actually the case had surgery been done at that time, petitioners' *subsequent* acts, negligent or not, became irrelevant.

There was no requirement that the arbitrator list every action or omission and expressly make a finding on each one, although the finding that there was no negligence prior to 9.30 a.m. implicitly *does* make such findings with respect to conduct up to that time, and in fact the arbitrator's award *is* explicit on many of the points now raised by real parties. For example, he *did* expressly find that delaying surgery in order to place a nasogastric tube fell within the standard of care. With respect to the "failure" to address whether plaintiff's pain should have suggested peritonitis, the arbitrator again explained that any negligence in the evaluation of pain came after the point at which bowel death had begun to occur, and that plaintiffs failed to establish that earlier action would have

resulted in a functionally significant improvement in “saved” bowel. The same analysis applies to plaintiffs’ argument that Dr. Wang improperly delayed commencing surgery.

Plaintiffs also object that the arbitrator failed to address their claim that the removal of viable, “pale pink” bowel was below the standard of care. However, the award discusses at length the medical significance of the appearance of the removed portions of bowel, including the testimony to the effect that even bowel that looks normal when removed may in fact be irreversibly ischemic, and the award also stresses the failure of plaintiffs’ proof with regard either to the removal of “healthy” bowel or whether plaintiff William Tucker would have had a better quality of life if surgery had been done earlier.

In our view the award in this case is exemplary, reflecting a careful attention to the details of plaintiff’s care as well as a marshaling of the technical medical evidence. The decision on the “ultimate issues” of negligence and causation is clear and meticulously explained. Any omission of a specific discussion of collateral, evidentiary issues does not invalidate the award.

DISPOSITION

Accordingly, the trial court erred in vacating the award and remanding for a full new hearing.

Let a peremptory writ of mandate issue directing the Superior Court of Riverside County to vacate its order granting real parties’ motion to vacate the arbitration award, and to enter a new order denying said motion.

Petitioners are directed to prepare and have the peremptory writ of mandate issued, copies served, and the original filed with the clerk of this court, together with proof of service on all parties. Petitioners to recover their costs.

The previously ordered stay is lifted.

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MILLER
Acting P. J.

We concur:

HOLLENHORST
J.

MCKINSTER
J.