

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

ROBERT PAUL GARDNER III,

Plaintiff and Respondent,

v.

BABY TREND, INC., et al.,

Defendants and Appellants;

ROBERT PAUL GARDNER III,

Plaintiff and Appellant,

v.

BABY TREND, INC., et al.,

Defendants and Appellants.

G042621

(Consol. with G042913)

(Super. Ct. No. 05CC11681)

G042913

(Super. Ct. No. 05CC11681)

Appeal from a judgment of the Superior Court of Orange County, Gregory H. Lewis, Judge. Reversed.

Horvitz & Levy, H. Thomas Watson, Karen M. Bray and Daniel J. Gonzalez; Ku & Fong and H.G. Robert Fong, for Defendants and Appellants.

Law Offices of Michael Procopio, Michael J. Procopio and Jill S. Kramer; Law Offices of Steven R. Young, Steven Young; Pine & Pine, Norman Pine, Beverly Tillett Pine, Janet R. Gusdorff and Stacy L. Tillett, for Plaintiff, Respondent and Appellant.

FACTS

Robert Gardner, doing business as The Gardner Marketing Group, began providing services to Baby Trend, Inc. as an independent sales representative in 1988. In 1999, the parties entered into an agreement making Gardner vice-president of sales and marketing for Baby Trend, while also agreeing he would continue to work as an “independent contractor” and be allowed to represent other companies in the same territory “as long as there is no conflict.” Baby Trend terminated this relationship in 2004.

Gardner sued, contending he had become an employee of Baby Trend, and alleging wrongful termination in violation of public policy, failure to reimburse business expenses, unlawful deductions of wages earned and waiting time penalties, violation of the Independent Sales Act, retaliation, unfair business practices, breach of an oral contract, breach of the covenant of good faith and fair dealing, fraud, emotional distress, and a count seeking an accounting. He won an 8.1 million dollar verdict.

Baby Trend and its president, Denny Tsai, appealed. We reversed the judgment, but remanded the matter with instructions not only to enter judgment in favor of Tsai, but also to conduct a new trial on Gardner’s breach of contract claims. Gardner petitioned for a rehearing and we granted his petition.

While awaiting rehearing, the parties arrived at a settlement. As part of that settlement, they have filed a stipulated request to reverse the judgment below.

DISCUSSION

Before accepting the parties’ stipulated request to reverse the amended judgment, we must find that the reversal will not adversely affect nonparties or the public, and that the positive reasons for reversal outweigh any potential negative consequences, including the erosion of public trust and impact on future pretrial settlements. (§ 128, subd. (a)(8).)¹ Under the statute, the amended judgment does not

¹ The predicate findings are: “(A) There is no reasonable possibility that the interests of nonparties or the public will be adversely affected by the reversal. [(¶)] (B) The reasons of the parties for requesting reversal outweigh the erosion of public trust that may result from the nullification of a judgment and the risk that the availability of stipulated reversal will reduce the incentive for pretrial settlement.” (§ 128, subd. (a)(8).)

belong solely to the parties; instead, “[t]his judgment now belongs to the public – not the parties – and the public indisputably has an interest in its continuing existence.”

(Muccianti v. Willow Creek Care Center (2003) 108 Cal.App.4th 13, 15.)

We find the public has little if any interest in the continuing existence of this judgment. Throughout this protracted and complex litigation, there has been no suggestion the rights of anyone other than Gardner and the Baby Trend parties have any interest in the case. It is a business dispute that in no way involves the public or important public rights. Our opinion had no precedential value and we directed that it not be published in the official reports.

Nor do we see any danger of erosion of public trust or a negative impact on future pretrial settlements. If anything, any members of the public who familiarized themselves with the history of this case would be impressed, as we were, that the parties had the good sense – and the court system the mechanism to allow them – to settle the matter. The issues were complex, and they were looking at another appellate round followed, quite likely, by more litigation. We would expect the public to be reassured that parties and their attorneys would call a halt to their litigation, consider what they had learned from the collective opinions of the judges and jurors who had heard their arguments, and negotiate a settlement. And we fail to see how anyone contemplating a settlement of a future matter might look at this one and reject a pre-trial settlement in favor of what these parties have gone through.

Under these circumstances, we find no realistic prospect that the stipulated reversal will adversely affect nonparties or the public. *(Union Bank of California v. Braille Inst. Of America, Inc. (2001) 92 Cal.App.4th 1324; In re Rashad H. (2000) 78 Cal.App.4th 376, 381.)*

We grant the request to reverse the judgment. We have examined the joint application, the declarations in support thereof, and the extensive appellate record. We have determined the stipulated reversal does not violate any third party’s right or the

rights of the public in general. (Code Civ. Proc., § 128, subd. (a)(8)².) This is a private dispute that does not affect the rights of any non-parties. A stipulated reversal here not only advances the state's strong public policy to promote settlements, but also comports generally with our original opinion and avoids further protracted litigation.

DISPOSITION

Pursuant to the parties' stipulation, the amended judgment is reversed. By accepting the parties' stipulation, we do not rule on the merits of the issues raised in the appeal and petition for rehearing, but restore jurisdiction to the trial court so that it may effectuate the settlement, thus rendering the action moot. As per the agreement of the parties, each shall bear its own costs on appeal.

BEDSWORTH, J.

WE CONCUR:

O'LEARY, P. J.

ARONSON, J.

²

All further statutory references are to the Code of Civil Procedure unless otherwise identified.