

NOT TO BE PUBLISHED IN OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

MARTY J. SCALZO,

Plaintiff and Respondent,

v.

FREDERICK T. SCALZO etc., et al.,

Defendants and Appellants.

G045601

(Super. Ct. No. 30-2008-00110196)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Andrew P. Banks, Judge. Reversed and remanded with directions pursuant to Code of Civil Procedure section 128, subdivision (a)(8).

Newmeyer & Dillion and Charles S. Krolikowski for Defendants and Appellants.

Baker & Baker and William E. Baker, Jr. for Plaintiff and Respondent.

* * *

THE COURT:*

Three siblings and their children have become enmeshed in a protracted family dispute over a family trust. It has generated multiple legal proceedings at the trial and appellate levels in several counties.

The parties have now reached a global settlement. As part of the settlement, the parties have filed a stipulated request to reverse the judgment below. It involves only a small piece of the puzzle: a disagreement about who owns a vintage 1963 Corvette that has been stored on trust property. But even this single contest has ballooned into a jury verdict for more than \$1.5 million in compensatory and punitive damages.

We grant the request to reverse the judgment. We have examined the joint application and the record on appeal, and determine that 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)¹.) This is purely a private family dispute. Not only does a stipulated reversal comport with the state's strong public policy to promote settlements but it also serves other important interests, including preserving family relationships and trust assets by ending needless litigation. (See, e.g. *Estate of Schuster* (1984) 163 Cal.App.3d 337, 342.)

I

In 2008, plaintiff Marty J. Scalzo sued Frederick T. (Rick) Scalzo and Donna M. Ostermiller for converting a 1963 Corvette. Plaintiff claimed the Corvette was a gift from his father, Martin R. Scalzo. Defendants, who were the father's brother and sister, claimed that Rick Scalzo bought the Corvette about 40 years ago and acted in good faith in refusing plaintiff's demand for its return to him.

* Before Bedsworth, Acting P. J., Aronson, J., and Fybel, J.

¹ Statutory references are to the Code of Civil Procedure.

The matter went to jury trial in May 2011. The jury found that plaintiff owned the Corvette and that defendants acted with malice, oppression or fraud when they refused to return it. The jury awarded plaintiff \$106,500 damages for the reasonable rental value of the Corvette, and \$1.4 million in punitive damages.

During post-trial proceedings, plaintiff accepted the trial court's remittitur of compensatory damages to \$45,000 and punitive damages of \$270,000. The court entered an amended judgment on July 31, 2011. Defendants have appealed.

This litigation is part of a larger intrafamilial legal conflict, involving the trust and the trustees, and related issues. Various parties first agreed to secure an "expungement" of this judgment during the course of various settlement conferences in an anti-SLAPP lawsuit in Los Angeles County. Although recognizing that "there is no expungement *per se* in a civil case," on February 27, 2012, the court (Judge Amy Hogue) ordered plaintiff to execute and file a joint request to set aside the judgment and enter a dismissal of the entire action with prejudice.

Two days later, Scalzo family members appeared in Orange County Superior Court in a related legal action to confirm a global settlement of all claims, including this appeal. The court in the related action (Judge Gail A. Andler) commended the participants for sincerely working "to heal this rift . . . and you really can look at the legacy for your family as you conclude this, and you can say with pride that you were the ones that really helped to finally put this to an end, and to stop paying lawyer fees"

The parties initially filed a stipulated request to *dismiss* the appeal with directions to the trial court on remand to vacate or reverse the amended judgment. Such a result cannot be achieved with a stipulated request for dismissal.

On March 15, 2012, this court issued the following order: "The parties are advised that a stipulated request for dismissal of the appeal will result in an affirmance of the judgment, not a reversal. If the parties jointly request that this court entertain a

stipulated request for reversal of the trial court’s judgment, the parties must strictly comply with the requirements of Code of Civil Procedure section 128, subdivision (a)(8) and this court’s internal policies and practices; see *Hardisty v. Hinton & Alfert* (2004) 124 Cal.App.4th 999, 1005 [presumption against stipulated reversals].)”

Following the March 15 order, the parties jointly filed a new request for this court to reverse the amended judgment. The parties’ letter brief included a single joint declaration by counsel describing the parties and the factual and legal issues presented at trial and explaining why a stipulated reversal complies with the statutory factors listed in Code of Civil Procedure section 128, subdivision (a)(8). (See also Ct. App., Fourth Dist., Div. Three, Internal Practices and Proc., § V C, Stipulated Requests for Reversal.)

II

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).)² Under the statute, the amended judgment does not 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.)

The stipulated reversal satisfies these statutory requirements and does not adversely affect the public interest. As the parties have pointed out, this is only a private

² 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).)

family matter that does not affect the public or involve important public rights. If anything, public trust is enhanced where legal processes are used to reduce conflicts and avoid the expense of unnecessary litigation, both to the litigants and to the judicial branch. We see no reason to erect roadblocks to the parties' commendable efforts to avoid desultory battles to what they themselves call "the bitter end."

Under these circumstances, we find no realistic prospect that the stipulated reversal will adversely affect the 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.)

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, but restore jurisdiction to the trial court so that it may effectuate the settlement, which will render the action moot. The parties shall bear their own costs on appeal.