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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

JENNA LANE, etc., et al.,

Plaintiffs and Respondents,

v.

JOURDYN MANFRED et al.,

Defendants and Appellants.

G048809

(Super. Ct. No. 30-2010-00430643)

O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County,  
Andrew P. Banks, Judge. Affirmed.

Law Offices of Cleidin Z. Atanous and Cleidin Z. Atanous for Defendants  
and Appellants.

No appearance for Plaintiff and Respondent.

\* \* \*

Defendants Jourdyn Manfred and Andrea Twork appeal from the trial court's postjudgment order denying them costs under Code of Civil Procedure section 998 (section 998) against plaintiffs Jenna Lane, individually and as guardian ad litem for Allison Lane. We conclude no error occurred and affirm the court's order.

## BACKGROUND

Following an automobile accident, plaintiffs sued defendants for motor vehicle and general negligence alleging (1) Manfred negligently operated a motor vehicle, (2) owned and negligently entrusted to him by himself and Twork, and (3) while each acted within the course and scope of an agency and employment relationship with the other. Plaintiffs sought both economic and noneconomic damages. Defendants filed a joint answer.

Defendants "offer[ed] to compromise" the action on four conditions: "1. Defendant(s) pay to plaintiff(s), Jenna Lane the amount of \$5,001. [¶] 2. Plaintiff enter a dismissal, with prejudice, of the above-entitled action. [¶] 3. Plaintiff(s) to execute a general release of all claims. [¶] 4. Each side to bear its own cost of suit." (Capitalization and boldface omitted.) Plaintiffs rejected the offer and a jury trial commenced. After defendants admitted Manfred was negligent, the jury awarded damages of \$1,933 to Jenna and \$250 to Allison.

In their memorandum of costs, defendants sought postoffer costs against Jenna because she did not receive greater relief than their joint section 998 offer. The court granted Jenna's motion to tax those costs, finding the section 998 offer invalid because it was (1) addressed to Jenna only, in her individual capacity, and not also as Allison's guardian ad litem, and (2) jointly made by defendants who potentially had separate liability.

## DISCUSSION

Defendants contend the trial court erred in finding their section 998 offer was invalid. We disagree.

Under section 998, subdivision (e), “If an offer [to compromise] made by a defendant is not accepted and the plaintiff fails to obtain a more favorable judgment or award, the costs under this section, from the time of the offer, shall be deducted from any damages awarded in favor of the plaintiff. If the costs awarded under this section exceed the amount of the damages awarded to the plaintiff the net amount shall be awarded to the defendant and judgment or award shall be entered accordingly.”

“The party offering the settlement bears the burden of demonstrating that a section 998 offer is valid, and the offer must be strictly construed in favor of the party subjected to its operation. [Citation.] An offer of settlement must be certain, and when an offer is made jointly, the offeree must be able to evaluate the likelihood of each offeror receiving a more favorable verdict at trial.” (*Persson v. Smart Inventions, Inc.* (2005) 125 Cal.App.4th 1141, 1170 (*Persson*)). Whether “section 998 [applies] to an undisputed set of facts is an issue of law, which we review de novo.” (*Id.* at p. 1170, fn. 19.)

Defendants focus entirely on the argument that a joint offer by two defendants sued on a vicarious liability theory is valid. We need not address their contention because we affirm the trial court’s order on another basis. That is, although the section 998 offer was made “to plaintiff(s), Jenna Lane,” there were actually two plaintiffs, Allison and Jenna, with Jenna acting in two capacities – individually and as guardian ad litem for Allison. (See *Hernandez v. Fujioka* (1974) 40 Cal.App.3d 294, 301 [father acting in capacity as guardian ad litem is separate from him acting in individual capacity]; see also *Dominguez v. City of Alhambra* (1981) 118 Cal.App.3d 237, 241 [party bringing action in multiple capacities may have different results depending on the

capacity].) The existence of two distinct plaintiffs, Jenna and Allison, with separate claims of injury required defendants to specify whether the section 998 offer was made to Jenna individually, to Jenna on Alison's behalf, or to Jenna in both capacities.

If the section 998 offer was intended to address both Jenna and Allison together, with Jenna acting as Allison's guardian ad litem, it was an offer made to multiple parties, which ““is valid only if it is expressly apportioned among them and not conditioned on acceptance by all of them.”” (*McDaniel v. Asuncion* (2013) 214 Cal.App.4th 1201, 1206 (*McDaniel*)). “A single, lump sum offer to multiple plaintiffs which requires them to agree to apportionment among themselves is not valid.” (*Santantonio v. Westinghouse Broadcasting Co.* (1994) 25 Cal.App.4th 102, 112.)

An exception to this rule exists “[w]here there is more than one plaintiff, a defendant may still extend a single joint offer if the separate plaintiffs have a “unity of interest such that there is a single, indivisible injury.”” (*McDaniel, supra*, 214 Cal.App.4th at p. 1206.) That exception does not apply here because, as established by the judgment, Jenna and Allison did not have ““a single, indivisible injury.”” (*Ibid.*) On the negligence cause of action, Jenna recovered \$1,933 while Allison received an award of \$250. Under those circumstances, defendants were required to apportion their section 998 offer to the extent it was made to Jenna in both her capacity as an individual plaintiff and as guardian ad litem for Allison. (*Ibid.*)

The absence of a unity in interest between Jenna and Allison distinguishes this case from *Peterson v. John Crane, Inc.* (2007) 154 Cal.App.4th 498. The court there rejected a widow's contention that her three capacities (individual loss of consortium claimant/survivor tort claimant/wrongful death heirship claims) required three separate offers. Although the plaintiff had standing to assert different types of claims, they were all made on her own behalf, and they all arose out of the same injury (her late husband's asbestosis). She remained the same individual party, and she properly represented only

one offeree plaintiff for purposes of section 998, such that one offer to her was permitted. (*Id.* at pp. 505-507.)

On the other hand, if the offer was made solely to Jenna individually, or solely to Allison with Jenna acting as her guardian ad litem, defendants were required to say so in order to make the offer certain. They did not.

Defendants' failure to identify whether the offer was made to Jenna as an individual, as Allison's guardian ad litem, or both, made the settlement offer fatally uncertain because Jenna could not determine whose claim defendants were seeking to compromise. Strictly construing the offer in Jenna's favor, defendants did not carry their burden to show the offer was valid.

#### DISPOSITION

The postjudgment order is affirmed. Plaintiffs shall recover their costs on appeal.

RYLAARSDAM, J.

WE CONCUR:

O'LEARY, P. J.

IKOLA, J.