

NOT TO BE PUBLISHED IN OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

BRUCE ELIEFF,

Plaintiff and Respondent,

v.

JENNIFER ALICE ARMSTRONG,

Defendant and Appellant.

G052862

(Super. Ct. No. 30-2013-00689674)

O P I N I O N

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

Berra Connelly and Paul S. Berra for Defendant and Appellant.

Law Offices of Jeffrey S. Benice and Jeffrey S. Benice for Plaintiff and Respondent.

* * *

THE COURT:^{*}

Plaintiff Bruce Elieff and defendant Jennifer Alice Armstrong were once romantic partners, engaged to be married. But when their relationship ended, Elieff sued Armstrong, claiming (1) fraud — Armstrong had allegedly deceived him into giving her money and other valuable property, and/or (2) breach of contract — the transfers should be considered loans that Armstrong should pay back. After a bench trial, the court entered judgment on the fraud claim in favor of Elieff in the amount of \$539,106, approximately one half of the damages sought. But the court rejected Elieff’s breach of contract cause of action and his request for punitive damages.

Both parties appealed the judgment. Before appellate briefs could be filed, however, the parties reached a confidential settlement agreement at a private mediation. The settlement agreement is contingent upon the judgment being set aside and vacated.

The parties therefore filed a joint motion with this court to set aside and vacate the judgment.¹ The parties’ motion includes a joint declaration by counsel describing the parties and the factual and legal issues presented at trial, and explaining why a stipulated reversal complies with 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.)

“An appellate court shall not reverse or vacate a duly entered judgment upon an agreement or stipulation of the parties unless the court finds both of the following: [¶] (A) There is no reasonable possibility that the interests of nonparties or

* Before Rylaarsdam, Acting P.J., Aronson, J., and Ikola, J.

¹ Before doing so, the parties sought the same relief at the trial court. Though the court complied (in part) with their request by granting a “conditional order” (i.e., conditional upon the parties obtaining relief from this court), the court had no jurisdiction to entertain the request to set aside and vacate the judgment. (See *Betz v. Pankow* (1993) 16 Cal.App.4th 931, 938; Code Civ. Proc., § 916, subd. (a).) The trial court’s “conditional order” was of no effect.

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.” (Code Civ. Proc., § 128, subd. (a)(8); see *Hardisty v. Hinton & Alfert* (2004) 124 Cal.App.4th 999, 1005 [presumption against stipulated reversals].) Under section 128, subdivision (a)(8), the “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.)

Having reviewed the motion and joint declaration, we conclude the parties have met their burden. We therefore grant the motion and reverse the judgment.

First, “[t]here is no reasonable possibility that the interests of nonparties or the public will be adversely affected by the reversal.” (Code Civ. Proc., § 128, subd. (a)(8)(A).) The instant dispute is a private one between Elieff and Armstrong. The result in this case has no potential bearing on any other parties’ rights, through collateral estoppel or otherwise. There does not appear to be a particular need to ward off citizens from Armstrong’s alleged practices. As explained in the joint declaration, “[t]here was no evidence at trial that Armstrong had deceived anyone other than Elieff” and “the evidence introduced during the trial showed that Armstrong — the purported wrongdoer — had never been sued, or even sat for a deposition, before being sued in the case at bar.” And as noted in the court’s statement of decision, Armstrong is now married to the father of her children. There is no realistic prospect that the stipulated reversal will adversely affect the nonparties or the public. (See *Union Bank of California v. Braille Inst. of America, Inc.* (2001) 92 Cal.App.4th 1324, 1328-1329; *In re Rashad H.* (2000) 78 Cal.App.4th 376, 380-381.)

Second, “[t]he 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.” (Code Civ. Proc., § 128, subd. (a)(8)(B).) As explained in the joint declaration, the relief sought would allow the parties “to conclude this litigation on terms satisfactory to both, including the purported victim Elieff. Furthermore, it would allow them to move on with their lives as respected parents and successful professionals without the stain of this litigation clinging to them.” Unsuccessful settlement efforts occurred before trial, but were impeded in part by the parties’ vast gap in settlement expectations and in part by Armstrong’s financial inability at the time to muster sufficient funds to engage in productive negotiations. The parties’ effort to settle this matter before appellate briefing and argument is to be commended. And given that both parties have appealed the judgment, public trust is not likely to be eroded because both parties face significant risk in litigating this appeal to the bitter end. “When lawyers responsibly settle litigation, public trust in the courts is advanced.” (*Union Bank of California v. Braille Inst. of America, Inc.*, *supra*, 92 Cal.App.4th at p. 1331.)

DISPOSITION

Pursuant to the parties’ stipulation, the judgment is reversed. On remand, the trial court is directed to enter an order consistent with this opinion and to dismiss the action with prejudice. The parties shall bear their own costs on appeal.