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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

PATRICIA PORTER et al., Plaintiffs and Respondents, v. AG ARCADIA, LLC et al., Defendants and Appellants.	B285461 (Los Angeles County Super. Ct. No. BC512207)

APPEAL from an order of the Superior Court of Los Angeles County, Edward B. Moreton, Judge. Dismissed.

Buchalter, Harry W.R. Chamberlain II and Robert M. Dato; Petrullo APC, John Patrick Petrullo and Grace Song for Defendants and Appellants.

Law Office of Martin N. Buchanan APC and Martin N. Buchanan; Moran Law, Michael F. Moran, Lisa T. Flint and Alex H. Feldman for Plaintiffs and Respondents.

INTRODUCTION

Plaintiffs Patricia Porter, through her successor-in-interest Linda Solis, and Solis, individually (collectively, plaintiffs) sued AG Arcadia, LLC, doing business as Country Villa Huntington Drive Healthcare Center (Country Villa), AG Facilities Operations, LLC (AG Facilities), and Country Villa Service Corp. dba Country Villa Health Services (Service Corp.) (collectively, defendants) for elder abuse under Welfare and Institutions Code[1] section 15657, a provision of the Elder Abuse and Dependent Adult Civil Protection Act (Elder Abuse Act), violation of the Patient's Bill of Rights (Health & Safety Code, § 1430, subd. (b)), negligence, willful misconduct, and wrongful death.

The trial court ordered arbitration of all claims except the claim for violation of the Patient's Bill of Rights, which the court stayed pending the arbitration.

The arbitrator issued a written decision finding the defendants acted with recklessness and awarding damages for elder abuse and wrongful death. The arbitrator also found Country Villa and Service Corp. were joint venturers. Country Villa and AG Facilities appeal from the judgment confirming the arbitration award.[2]

Country Villa and AG Facilities argue the arbitrator exceeded her authority, and the arbitration award should be vacated, because the award of $1 million in noneconomic damages for wrongful death violates Civil Code section 3333.2, a

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[1] Statutory references are to the Welfare and Institutions Code unless otherwise indicated.

[2] Service Corp. is not a party to the appeal.

provision of the Medical Injury Compensation Reform Act (MICRA); the arbitrator awarded duplicative damages; the arbitrator failed to make findings against AG Facilities; and the unallocated award of noneconomic damages violates Proposition 51. They also argue they were substantially prejudiced by the arbitrator's refusal to hear evidence material to the controversy.

At oral argument, we inquired about the appealability of the trial court's judgment in light of the pending claim for violation of the Patient's Bill of Rights. We have not received any information showing the claim is no longer pending or an appealable judgment against Country Villa and AG Facilities was entered despite the pending claim. Nor have we been asked to treat the appeal as a petition for writ of mandate. Because the appeal has been taken from a non-appealable order, we dismiss the appeal. Finding no unusual circumstances warranting treatment of the appeal as a writ petition, we decline to assert jurisdiction to review the matter.

BACKGROUND

A. Country Villa, AG Facilities, and Service Corp.[3]

Country Villa is a skilled nursing facility. AG Facilities states it "operates and manages the property where [Country Villa] is located" but it also refers to itself as a "holding company affiliated with [Country Villa]."[4] Service Corp. is an administrative services company.

In 2003, Country Villa and Service Corp. entered into a Management Agreement under which Service Corp. managed Country Villa. In March 2012, Country Villa and Service Corp. entered into a Facility Consulting Agreement under which Service Corp. provided "consulting services" to Country Villa. No operational changes took place after the 2012 agreement became effective.

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[3] The facts are taken primarily from the arbitrator's award. Courts may not review for sufficiency the evidence supporting an arbitrator's award. (*Advanced Micro Devices, Inc. v. Intel Corp.* (1994) 9 Cal.4th 362, 367, fn. 1 (*Advanced Micro Devices*).) We therefore take the arbitrator's findings as correct without examining a record of the arbitration hearing; indeed, as in *Advanced Micro Devices*, the appellate record does not contain a reporter's transcript (or other official record) of the oral arbitration proceedings or the exhibits introduced during the hearing. (See *ibid.*)

[4] In the trial court, AG Facilities asserted it is "simply a holding company with no employees and [it] provided no services to [Country Villa]." At oral argument, counsel for AG Facilities stated it was the parent corporation of Country Villa.

Country Villa and Service Corp. share the profits of Country Villa's operation. Service Corp. also receives 4.25 percent of Country Villa's gross profits.

B. Porter's Care at Country Villa

On July 4, 2012, Patricia Porter was admitted to Country Villa following her discharge from Methodist Hospital. Porter, who was in her 70s, required antibiotic treatment for a sore on one of her toes. Porter's daughter, Linda Solis, and Solis's husband had full-time jobs and they felt Porter would receive the attention she needed at Country Villa.

When Porter was admitted to Country Villa, a nurse noticed a sore on her coccyx. On July 4, Dr. Siew ordered that Porter receive a low air mattress, which is important in the care of a patient with pressure sores. Although a patient with an order for a low air mattress is supposed to receive one as soon as possible, Porter did not receive a low air mattress until July 12.

The standard of care requires that patients with pressure sores be turned every two hours. Country Villa "did not appropriately turn Mrs. Porter[,]" "[left] her sitting in a wheelchair for six hours and [left] her in dirty diapers, contribut[ing] to the development of or complications from pressure sores due to the bacteria which migrate into the sores."

On August 1, 2012, Porter was returned to Methodist Hospital following an apparent stroke. On her admission to the hospital, she had a Stage 4 pressure sore on her coccyx.

On November 26, 2012, Porter passed away. Her death certificate listed dementia as the cause of death. But Porter actually died of sepsis related to her wound from the pressure sore and urinary infections.

B. Arbitration Proceedings

In June 2013, Solis, in her individual capacity and as Porter's successor-in-interest (plaintiffs), filed suit against Country Villa, AG Facilities and Service Corp. asserting claims for elder abuse under section 15657, negligence, willful misconduct, violation of the Patient's Bill of Rights, and wrongful death.

Defendants petitioned to compel arbitration. Plaintiffs opposed the petition, arguing, among other things, claims for violation of the Patient's Bill of Rights were not subject to arbitration. The trial court ordered arbitration of all claims except the claim for violation of the Patient's Bill of Rights, which the court stayed pending the arbitration.

The arbitration took place during three days in January 2016, as the parties had agreed. The arbitrator (Hon. Judy Chirlin, retired) heard opening statements and testimony from a number of witnesses. When it appeared the parties needed additional time, the arbitrator agreed to continue the hearing for an additional four hours on February 5, 2016. At the arbitrator's request, the parties prepared a notebook for the arbitrator which contained the exhibits received in evidence.

The parties submitted written closing arguments. In their written closing arguments, Country Villa and AG Facilities asserted they had been prejudiced by the amount of time allocated to the arbitration. They asked that the arbitration be reopened so they could call additional witnesses. The arbitrator denied the request.

On April 14, 2016, the arbitrator issued a 10-page Arbitration Award finding "by clear and convincing evidence that the Stage 4 coccyx sore that [Porter] had when she left [Country

Villa] on August 1st was caused by the lack of appropriate care she received at [Country Villa] and that it was a substantial factor in causing her death." The arbitrator also found that Service Corp. was a "joint venturer" with Country Villa "in the running and management of [Country Villa]." The Arbitration Award listed the evidence and additional factual determinations that supported the arbitrator's conclusions.

The arbitrator further found that defendants "acted with recklessness in failing to follow their care plan for turning Mrs. Porter, in failing to follow their own policies and procedures and in failing to follow Dr. Siew's order for a low air mattress."

Addressing the assertion that Country Villa and AG Facilities were prejudiced by the amount of time allocated to the arbitration, the arbitrator noted that the parties had agreed to the time allotted, the arbitrator had agreed to schedule an additional four hours on a separate day, and Country Villa and AG Facilities did not object or assert prejudice when the arbitration was extended for an additional four hours.

On the elder abuse claim, the arbitrator awarded $83,750.73 for Porter's past economic damages and $250,000 for Porter's non-economic damages under section 15657. On the wrongful death claim, the arbitrator awarded Solis $1,000,000. The arbitrator later granted plaintiffs' motion for attorneys' fees and costs.

C. Motion to Vacate and Petition to Confirm Award

On May 20, 2016, defendants moved to vacate the arbitration award. Defendants argued: (1) the arbitrator exceeded her powers by awarding noneconomic damages against defendants in lump sums rather than in proportion to each

defendant's percentage of fault under Proposition 51,[5] (2) the arbitrator exceeded her powers by awarding $1,000,000 on the wrongful death cause of action in violation of defendants' right to limit noneconomic damages to $250,000 under Civil Code section 3333.2, a provision of MICRA, (3) the arbitrator exceeded her powers by failing to make any findings against AG Facilities, and (4) the arbitrator substantially prejudiced defendants' rights by refusing to grant them additional time to present material testimony from treating nurses and defendants' medical expert Karen Josephson, M.D.

After a hearing, the trial court denied defendants' motion to vacate the award.[6] The court found the arbitrator did not exceed her authority in her decisions concerning Proposition 51 and MICRA's $250,000 cap. The court also found the defendants did not meet their burden of proving they were prejudiced by the denial of their request for additional time to present evidence.

On May 22, 2017, plaintiffs petitioned to confirm the arbitration award. Defendants opposed the petition. On August 22, 2017, the trial court confirmed the award, including $294,168 in attorneys' fees for plaintiffs under the Elder Abuse Act, and entered judgment.

Country Villa and AG Facilities appealed.

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[5] Civil Code sections 1431 to 1431.5, part of the Fair Responsibility Act of 1986, are commonly referred to as Proposition 51. (*Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1192.)

[6] We dismissed without prejudice the appeal of Country Villa and AG Facilities from this order because it was not appealable. (*Porter v. AG Arcadia, LLC* (B276183, Feb. 28, 2017) [nonpub. opn.].)

DISCUSSION

A. The judgment is not appealable because it does not dispose of all the claims between the parties.

"[S]ince the question of appealability goes to our jurisdiction, we are dutybound to consider it on our own motion." (*Olson v. Cory* (1983) 35 Cal.3d 390, 398 (*Olson*).) As noted, the trial court's order compelling arbitration excluded plaintiffs' claim for violation of the Patient's Bill of Rights and stayed that claim pending the arbitration of plaintiffs' elder abuse, wrongful death, negligence, and willful misconduct claims. When the trial court entered judgment confirming the arbitration award, therefore, the judgment did not dispose of all the claims pending between the parties.

"Under California's 'one final judgment' rule, a judgment that fails to dispose of all the causes of action pending between the parties is generally not appealable." (*Kurwa v. Kislinger* (2013) 57 Cal.4th 1097, 1100 (*Kurwa*).) The one final judgment rule "precludes an appeal from a judgment disposing of fewer than all the causes of action extant between the parties, even if the remaining causes of action have been severed for trial from those decided by the judgment." (*Id*. at p. 1101.) "The theory of the rule is that piecemeal disposition and multiple appeals in a single action would be oppressive and costly, and that a review of intermediate rulings should await the final disposition of the case. [Citation.] [Citation.]" (*Ibid*., internal quotation marks omitted.) "In determining whether a judgment is final, its substance governs, not its label or form. [Citations.]" (*Rubin v.*

Western Mutual Ins. Co. (1999) 71 Cal.App.4th 1539, 1546 (*Rubin*).)

The one final judgment rule applies to judgments confirming arbitration awards. (*Rubin*, *supra*, 71 Cal.App.4th at pp. 1547-1548 [dismissing appeal from "judgment" confirming arbitration award where claims remained pending between parties]; see *Kaiser Foundation Health Plan, Inc. v. Superior Court* (2017) 13 Cal.App.5th 1125, 1130-1131, 1139-1140 (*Kaiser*) [judgment confirming partial arbitration award was not appealable because claims and cross-claims remained to be resolved].)

So far as the record reveals, the trial court's order is neither final nor appealable because a claim remains pending between the parties. We therefore conclude the order is not appealable.

B. We decline to treat the appeal as a petition for writ of mandate.

When an appeal is taken from a non-appealable order, the reviewing court under certain circumstances may treat the appeal as a petition for an extraordinary writ. (See *Olson*, *supra*, 35 Cal.3d at pp. 400-401.) The record must "demonstrate[ ] the lack of adequate remedy at law necessary for issuance of the writ." (*Id.* at p. 401.) And "[t]he records and briefs before us [must] include in substance the elements necessary to a proceeding for writ of mandate." (*Ibid.*)

Even when the reviewing court has the power to treat a purported appeal as a petition for writ of mandate, "we should not exercise that power except under unusual circumstances."

(*Olson*, *supra*, 35 Cal.3d at p. 401.) In *Olson*, "unusual circumstances" existed where, among other things, "the issue of appealability was far from clear in advance" and the parties "urge[d] . . . that instead of dismissing the appeal, [the Supreme Court] treat it is as a petition for extraordinary writ." (*Id*. at pp. 400-401.) Similarly, in *Kaiser*, *supra*, 13 Cal.App.5th 1125, the Court of Appeal exercised its discretion to treat the appeal as a petition for writ of mandate because "[t]he issue of appealability was not clear" before the court issued its decision and the parties "joined forces and answered yes" to the court's question whether it could treat the appeal as a petition for writ of mandate. (*Id*. at pp. 1129, 1150 & fn. 14; see *Hall v. Superior Court* (2016) 3 Cal.App.5th 792, 807-808 [treating attempted appeal as writ petition where, "through no fault of the parties, the appealability of the court's order was not clear" and Attorney General urged appellate court to treat appeal as writ petition]; *H.D. Arnaiz, Ltd. v. County of San Joaquin* (2002) 96 Cal.App.4th 1357, 1366-1367 [treating appeal as petition for writ of mandate where "[t]he appealability of the order was not clear as the only published case addressing the issue held it was appealable" and County asked appellate court to treat appeal as writ petition].)

Here, we have a sufficient record for writ review and the issues have been fully briefed. Nonetheless, writ review is not appropriate. We have no information suggesting Country Villa and AG Facilities lack an adequate remedy at law by way of an appeal after disposition of all claims between the parties. (See *Mid-Wilshire Associates v. O'Leary* (1992) 7 Cal.App.4th 1450, 1455 (*Mid-Wilshire*).) "'A remedy is not inadequate merely because more time would be consumed by pursuing it through the ordinary course of law than would be required in the use of an

extraordinary writ. [Citations.]'" (*Baeza v. Superior Court* (2011) 201 Cal.App.4th 1214, 1221.)

In addition, we are not aware of any unusual circumstances. As the record discloses that a claim remains pending between the parties, the well-established one final judgment rule makes it clear without any need for our confirmation that the judgment is not appealable. (See, e.g., *Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 736-744 [disapproving exception to onfinal judgment rule].)

Moreover, the parties have not asked us to treat this appeal as a petition for extraordinary relief. (See *Mid-Wilshire*, *supra*, 7 Cal.App.4th at p. 1455 ["We also decline to assume jurisdiction by treating this appeal as a petition for writ of mandate. [Citation.] First, appellant has not expressly requested that we do so"].) Although we raised the appealability issue at oral argument, no party has asked us to exercise our discretion to treat the appeal as a writ petition if we conclude, as we have, the judgment is not appealable.

Finally, the parties have not brought any other facts to our attention that might qualify as "unusual circumstances" supporting a decision to treat the appeal as a writ petition.

We therefore dismiss the appeal. We decline to exercise our discretion to treat the appeal as a petition for extraordinary relief.

DISPOSITION

The appeal is dismissed. Plaintiffs Patricia Porter, through her successor-in-interest Linda Solis, and Linda Solis, individually, are entitled to recover their costs on appeal.

JASKOL, J.*

We concur:

BAKER, Acting P. J.

MOOR, J.

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6, of the California Constitution.