Filed 1/18/17 Nsejjere v. MannKind Corp. CA2/5CA2/5

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

| | |
|---|---|
| ISAAC NSEJJERE,<br><br>Plaintiff and Appellant,<br><br>v.<br><br>MANNKIND CORPORATION,<br><br>Defendant and Respondent. | B268372<br><br>(Los Angeles County Super. Ct. No. PC056200) |

Appeal from an order of the Superior Court of the County of Los Angeles, Melvin Sandvig, Judge. Dismissed.

Isaac Nsejjere, in pro. per., for Plaintiff and Appellant.

Quinn Emanuel Urquhart & Sullivan, LLP, Joseph Paunovich, Ryan Landes, and David C. Kramer, for Defendant and Respondent.

## INTRODUCTION

Plaintiff and appellant Isaac Nsejjere (plaintiff) appeals from an order dismissing his amended complaint that was entered following the sustaining of a demurrer filed by defendant and respondent MannKind Corporation (defendant). Because the order from which plaintiff appeals did not dispose of defendant's cross-complaint against plaintiff, we dismiss the appeal as taken from a nonappealable order.

## PROCEDURAL BACKGROUND

Following the filing of plaintiff's amended complaint, defendant filed a cross-complaint against plaintiff. Thereafter, the trial court sustained defendant's demurrer to the amended complaint without leave to amend and entered a dismissal order in favor of defendant on that complaint. The order expressly provided that "[t]his Order shall dismiss [plaintiff's] claims against [defendant] only. [Defendant's] cross-claims against [plaintiff] remain pending, and nothing in this Order shall be construed as dismissing [defendant's] cross-claims against [plaintiff]." Plaintiff filed a notice of appeal from the dismissal order.

Because it appeared that the dismissal order did not dispose of all the claims between the parties, we requested that the parties brief the issue of whether the appeal should be dismissed as taken from a nonappealable order. In his letter brief, plaintiff contends that the dismissal order is not interlocutory because it resolved all of the claims in his amended complaint and is therefore appealable. In the alternative, he urges us to exercise our discretion to treat his appeal as a petition for an extraordinary writ. In its letter brief, defendant

concedes that the appeal is taken from a nonappealable order, but also asks us to treat the appeal as a petition for an extraordinary writ.

## DISCUSSION

In *Kurwa v. Kislinger* (2013) 57 Cal.4th 1097 (*Kurwa*), the Supreme Court confirmed that an appeal cannot be taken from an order or judgment that resolves some, but not all, of the claims between the parties. (*Id.* at p. 1100 ["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. (Code Civ. Proc., § 904.1, subd. (a) [fn. omitted]; *Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 740-741 [29 Cal.Rptr.2d 804, 872 P.2d 143] (*Morehart*).)"].) Here, the very order from which plaintiff appeals makes clear that not all claims between the parties have been resolved; defendant's cross-complaint remains pending in its entirety. As such, defendant has appealed from a nonappealable order, and his appeal must therefore be dismissed.

We recognize, as the parties jointly urge, that in "unusual circumstances" we may review an interlocutory order by way of a petition for writ of mandate instead of the ordinary appeals process.[1] (*Kurwa*, *supra*, 57 Cal.App.4th at 1107.) But neither party has demonstrated that such circumstances exist to justify our review of the dismissal order here. Instead, the parties merely cite a handful of decisions holding that we have

---

[1] See, for example, *Olson v. Cory* (1983) 35 Cal.3d 390, 400-401; *California Dental Assn. v. California Dental Hygienists Assn.* (1990) 222 Cal.App.3d 49, 60; and *Lopez v. Superior Court* (1996) 45 Cal.App.4th 705, 710, footnote 1.

discretion, in appropriate cases, to treat defective appeals as writ petitions.

Neither party, however, makes any attempt to show that there is no adequate remedy at law such that writ review might be appropriate. (*Serna v. Superior Court* (1985) 40 Cal.3d 239, 263 ["In criminal as well as civil proceedings review of interlocutory rulings of trial courts by extraordinary writ generally is available only if there is no adequate remedy by appeal. (Code Civ. Proc., §§ 1086, 1103; cf. *Babb v. Superior Court* (1971) 3 Cal.3d 841, 851 [92 Cal.Rptr. 179, 479 P.2d 379] ['upon occasion our attention is drawn to instances of such grave nature or of such significant legal impact that we feel compelled to intervene through the issuance of an extraordinary writ']"].) Indeed, neither party addresses any of the necessary criteria to merit extraordinary writ review. (See *Smith v. Superior Court* (1996) 41 Cal.App.4th 1014, 1020 ["While parties are generally limited to appellate review of most interim orders, pretrial writ relief is available in certain limited circumstances, summarized in *Omaha Indemnity Co. v. Superior Court* (1989) 209 Cal.App.3d 1266 [258 Cal.Rptr. 66]: '(1) the issue tendered in the writ petition is of widespread interest [citation] or presents a significant and novel constitutional issue [citation]; (2) the trial court's order deprived petitioner of an opportunity to present a substantial portion of his cause of action [citations]; (3) conflicting trial court interpretations of the law require a resolution of the conflict [citation]; (4) the trial court's order is both clearly erroneous as a matter of law and substantially prejudices petitioner's case [citations]; (5) the party seeking the writ lacks an adequate means, such as a direct appeal, by which to attain relief [citation]; and (6) the petitioner will suffer harm

or prejudice in a manner that cannot be corrected on appeal. [citations]'"].)

Suggesting that treating plaintiff's appeal as a writ petition would avoid delay and serve judicial economy, defendant contends that writ relief is warranted because both parties "desire a resolution of the merits of the appeal" and because both parties have fully briefed the merits of the appeal. Neither ground is convincing. In *Kurwa, supra*, 57 Cal.4th 1097, the Supreme Court rejected the parties' attempt to manufacture appellate jurisdiction by jointly agreeing to dismiss without prejudice and hold in abeyance for future litigation all remaining claims. We likewise reject the contention here that the nonappealable dismissal order should be reviewed at this time just because the parties agree that it should be. With respect to any purported time savings and judicial economy because the matter is fully briefed, we find that adherence to the one final judgment rule promotes judicial economy far more under the circumstances. (See *Kurwa, supra,* 57 Cal.4th at p. 1101 ["The theory of the [one final judgement] 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."' [citations]"].)

Because there is nothing about the issues raised by defendant's demurrer that warrants immediate review or emergency relief, the well-established policies of finality underlying the one final judgment rule outweigh the parties' mutual interest in having those demurrer issues resolved prior to the entry of a final, appealable judgment. We therefore decline the parties' invitation to exercise our discretion to treat plaintiff's defective appeal as a petition for an extraordinary writ.

**DISPOSITION**

The appeal from the dismissal order is dismissed. No costs awarded on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

KIN, J.*

We concur:

KRIEGLER, Acting P. J.

BAKER, J.

---

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