Filed 5/25/18 Doster v. Pomona Valley Hospital Medcial Center CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

TERRI DOSTER, Plaintiff and Appellant, v. POMONA VALLEY HOSPITAL MEDICAL CENTER, Defendant and Respondent.	B280005 (Los Angeles County Super. Ct. No. BC570211)

APPEAL from an order of the Superior Court of Los Angeles County, Elihu M. Berle, Judge. Affirmed.

Carpenter Law, Gretchen Carpenter; Law Office of Barry Kramer and Barry L. Kramer for Plaintiff and Appellant.

Hooper, Lundy & Bookman, Amanda L. Hayes-Kibreab, Sansan Lin and Glenn E. Solomon for Defendant and Respondent.

* * * * * *

Plaintiff Terri Doster believes that the defendant hospital charged her too much for emergency room services. She seeks to represent a class of similarly situated uninsured emergency room patients in a single cause of action for declaratory relief. In contrast to a cause of action for breach of contract, declaratory relief does not require proving damages.[1]

Doster eschews class certification of any cause of action requiring proof of damages because damages for overbilling of emergency room services requires individual determinations and is fatal to class action status.[2] (*Hale v. Sharp Heathcare* (2014) 232 Cal.App.4th 50, 53 [affirming decertification of uninsured patient class because of individual issues related to damages].) Doster sought class certification solely to obtain a declaration that the hospital may charge only the "reasonable value" of its emergency room services.

---

[1] Code of Civil Procedure section 1060 allows "[a]ny person interested under a written instrument, . . . or under a contract, or who desires a declaration of his or her rights or duties with respect to another . . . may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an original action . . . in the superior court for a declaration of his or her rights and duties in the premises, including a determination of any question of construction or validity arising under the instrument or contract." However, Code of Civil Procedure section 1061 states "[t]he court may refuse to exercise the power granted by this chapter in any case where its declaration or determination is not necessary or proper at the time under all the circumstances."

[2] Doster admits that she "made a strategic decision to seek class certification only with respect to her claim for declaratory judgment" to avoid the conclusion that individual issues rather than common issues predominate.

As the trial court correctly concluded, by curtailing her proposed class action, even if Doster obtained declaratory relief, neither she nor any putative class member would receive effective relief. The court would not determine whether Doster or any putative class member was billed more than the reasonable value of services. An *individual* determination as to the "reasonable value" of services rendered to each patient would remain necessary. It follows, as the trial court thoughtfully concluded, that a class action is not a superior method of resolving Doster's dispute with the hospital.

Doster's principal argument on appeal—that the court should have applied federal law instead of state law has already been rejected. (*Hefczyc v. Rady Children's Hospital-San Diego* (2017) 17 Cal.App.5th 518, 527-536 (*Hefczyc*); see *Kendall v. Scripps Health* (2017) 16 Cal.App.5th 553, 578 (*Kendall*).) We affirm the order denying Doster's motion for class action certification.

BACKGROUND

On June 17, 2014, Doster received emergency medical services at the Pomona Valley Hospital Medical Center (the Hospital). She signed an agreement which included the following payment provision: "I agree to promptly pay all hospital bills in accordance with the regular rates and terms of the hospital, including its charity care and discount payment policies, if applicable. I understand that all physicians and surgeons, including the radiologist, pathologist, emergency physician, anesthesiologist, and others, will bill separately for their services. Should any account be referred to an attorney or collection agency for collection, I will pay actual attorneys' fees and

collection expenses. All delinquent accounts shall bear interest at the legal rate, unless prohibited by law."

On January 23, 2015, Doster sued the Hospital. Her operative complaint includes causes of action for unfair competition law, violation of the Consumer Legal Remedies Act (Civ. Code, § 1750 et seq.), and declaratory relief. Doster seeks to represent a class *only* with respect to her declaratory relief cause of action. She sought a declaration "that Defendant's standard contracts for emergency room care only permit billing for, and collection of, amounts constituting the reasonable value of the treatment Defendant provides." According to Doster this declaration is necessary to prevent the Hospital from relying on its "chargemaster," or master list of itemized charge rates. She acknowledges that "no 'reasonable value' determinations are sought in [her] declaratory judgment claim . . . ."

In her declaration in support of her motion for class certification, Doster averred that she received bills for $1,288 from the Hospital. She believes this amount is greater than the reasonable value of the services she received. She does not identify the services she received.

At a hearing on her motion for class certification, Doster's counsel acknowledged that Doster was not "asking the Court to determine reasonable value." Counsel argued that with the declaration she requested, putative class members would be empowered to pursue individual actions or to negotiate with the Hospital. In its written order, the trial court explained: "In the present case, it is unclear how a declaration would actually benefit the proposed Class. [T]he declaration requested merely limits defendant to collect reasonable value of services without determining what is meant by 'reasonable value' and what the

reasonable value would be for each type of service. The term 'reasonable value' is at best vague and amorphous and, therefore, the significance of such a ruling would be called into question." The benefit of a declaration to "provide guidance for future conduct [of] the parties is unclear and undetermined." "[T]he benefit from certification does not appear to be substantial." And any benefit is "outweighed by the burdens of individualized proof."

This appeal followed. An order denying a motion for class certification of an entire class is appealable. (*Hefczyc, supra*, 17 Cal.App.5th at p. 526, fn. 6.)

DISCUSSION

On appeal, Doster's primary argument is that the court erred in applying state rather than federal standards, and according to her, federal standards support granting class certification. She also argues that a class action would be a superior method of resolving the parties' controversy because "[p]atients in collection would be able to use a favorable Contract interpretation ruling to defend against Hospital's improper collections attempts based on Chargemaster rates" and the Hospital would be required to show that its rates were reasonable. We discuss her arguments in reverse order.

1. Class Action Litigation Is Not Superior

" '[T]he class action statute "is based upon the equitable doctrine of virtual representation, which ' "rests upon considerations of necessity and paramount convenience, and was adopted to prevent a failure of justice." ' [Citations.]" ' [Citation.] Accordingly, a class action should not be certified unless ' " 'substantial benefits accrue both to litigants and the courts' " ' [citation], and the moving party proves a class action is 'superior'

to separate lawsuits by class members. [Citation.] '[E]ven if [common] questions of law or fact predominate, the lack of superiority provides an alternative ground to deny class certification.' " (*Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1352-1353.)

As one court has explained: "A trial court ruling on a certification motion determines 'whether . . . the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants.' " (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326.)

In *Kendall, supra*, 16 Cal.App.5th 553, a case similar to the present one, the plaintiff sought among other things declaratory relief that amounts charged to emergency room patients were unfairly based on the chargemaster rates. (*Id.* at p. 557.) As in this case, the plaintiff sought to certify a class of self-pay patients to interpret the patients' agreement with the hospital. The appellate court affirmed an order denying class certification. (*Id.* a p. 559.) The *Kendall* court reasoned that "trial courts are required to ' " 'carefully weigh respective benefits and burdens and to allow maintenance of the class action only where substantial benefits accrue both to litigants and the courts.' " ' " (*Id.* at p. 565.) The court indicated that " 'the facts and circumstances of the particular case dictate what evidence is relevant to show the reasonable market value of the services at issue, i.e., the price that would be agreed upon by a willing buyer and a willing seller negotiating at arms length.' " (*Id.* at p. 572.) Therefore, no class-wide reduction in fees could be ordered and damages would have to be considered on an individual basis. (*Id.*

at p. 573.) A class action required a "community of interest" that did not exist. (*Id*. at p. 574.) Further, the court held that it was not an abuse of discretion to conclude declaratory relief would not appropriately consider the regulations relevant to "emergency services billing that allow the use of the Charge Master format." (*Id*. at pp. 579-580.) "Kendall is essentially requesting an abstract contract interpretation ruling that excludes consideration of existing provisions of law that govern the financial arrangements that hospitals may make for recipients of emergency care." (*Id*. at p. 577.)

Here, Doster argues that a class action is superior because the requested declaration would enable class members to shift the burden of proof of "reasonable value" to the hospital. She admits that "no 'reasonable value' determinations are sought in [her] declaratory judgment claim . . . ," and she cites no support for her claim that a class action that merely alters the burden of proof is superior to individual actions. Nor does she demonstrate any substantial benefit accruing either to the putative class members or to the court. (See *Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 384-386; *Caro v. Procter & Gamble Co.* (1993) 18 Cal.App.4th 644, 657; *Stilson v. Reader's Digest Assn., Inc.* (1972) 28 Cal.App.3d 270, 274.) Because, as the trial court concluded, even if she prevailed she would not obtain a significant benefit for the class, her argument that a class action is superior is not persuasive.

Although in *Kendall* the plaintiff sought class action certification for both a declartory relief claim and a claim under the Consumer Legal Remedies Act, the case is similar to Doster's. It strongly supports the conclusion that a class action is not a superior method of litigating Doster's declaratory relief claim. As

in *Kendall*, here Doster failed to show that a class action is superior. The putative class members received different services, no class-wide damages could be established, and no individual class members' claim could be resolved. The evidence relevant and factual issues related to each putative class member's claim against the Hospital differs, and no damages could be calculated efficiently even if Doster is successful in her declaratory relief action. The declaration Doster seeks fails to elucidate the "reasonable value" for any particular patient, which she recognizes may be more than some putative class members were charged. The trial court did not abuse its discretion in concluding that the proposed class action was not superior. (*Kendall, supra*, 16 Cal.App.5th at p. 565 [court's order denying certification reviewed for abuse of discretion].)

2. The Trial Court Properly Applied State Law Governing Class Actions

Doster argues that the trial court should have applied federal Rules of Civil Procedure, rule 23 (28 U.S.C.) to evaluate her motion for class certification instead of applying state law. She argues that under federal law, she would not be required to show that class litigation is superior. We need not determine the correctness of her application of federal law because this court is required to apply state law. (*Hefczyc*, *supra*, 17 Cal.App.5th at p. 527.) *Hefczyc* explained: "Our Supreme Court has . . . consistently applied the long-standing and well-settled requirement that the proponent of class certification must establish that there are substantial benefits from certification that render proceeding as a class superior to the alternatives." (*Id*. at p. 528.) State courts only look to rule 23 of the federal Rules of Civil Procedure in the " '*absence* of relevant state

precedent.' " (*Hefczyc, supra*, at p. 531.) "[C]ase law consistently holds that ascertainability, predominance and superiority are always required to certify a class action in California," and "no authority" supported the argument to apply federal law—the same argument Doster makes here. (*Id*. at p. 533.) As in *Hefczyc*, here the trial court properly rejected Doster's effort to circumvent state law.[3]

DISPOSITION

The order denying Doster's motion for class certification is affirmed. Respondent is entitled to costs on appeal.

ROGAN, J.*

WE CONCUR:

RUBIN, Acting P. J.

GRIMES, J.

---

[3] Doster argues that the court should have certified an "issue class." In her reply brief she proposes to limit the issue class to those directly billed by hospital. But once again she provides no support for the conclusion that certifying her proposed issue class would be a superior method of litigation.

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