

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

SECOND APPELLATE DISTRICT

DIVISION EIGHT

ILYA ORSHANSKY et al.,

Plaintiff and Appellant,

v.

PAGIEL SHECHTER,

Defendant and Respondent.

B290863

(Los Angeles County
Super. Ct. No. BC630810)

APPEAL from an order of the Superior Court of
Los Angeles County. Bobbi Tillmon, Judge. Affirmed.

Balisok & Associates and Russell S. Balisok for Plaintiff
and Appellant.

Cole Pedroza, Kenneth R. Pedroza and Matthew S.
Levinson; Reback, McAndrews & Blessey and Thomas
McAndrews for Defendant and Respondent.

MEMORANDUM OPINION

Ilya Orshansky, through his guardian ad litem, brought suit against Dr. Pagiel Shechter and Lina Samarkina for elder abuse and fraud. The case proceeded to trial against the two defendants. Immediately after a jury of 12 was sworn in, two jurors approached the court and requested to be excused for extreme financial hardship and family emergency. No alternate jurors had yet been selected and the other potential jurors had not yet been dismissed. After the two sworn jurors were excused, Orshansky's counsel moved for a mistrial because the trial court refused to allow peremptory challenges to the remaining 10 sworn jurors. The trial court denied the motion.

After discussion, the trial court allowed counsel to question and select two replacement jurors and two alternates from the random list of potential jurors, and gave each side two peremptory challenges pursuant to Code of Civil Procedure section 234. The court denied Orshansky's request for four peremptory challenges for each side.

The jury found in favor of Orshansky in his claims against Samarkina, but against him in his claims against Shechter. The jury found Samarkina 35 percent responsible for Orshansky's harm and awarded him \$187,900 in damages. Orshansky timely appealed from the judgement. After the notice of appeal was filed, Orshansky began to execute on the judgment against Samarkina, filing a memorandum of costs and obtaining a writ of execution from the Superior Court.

On appeal, Orshansky argues he was deprived of a fair trial at jury selection. He contends his motion for mistrial should have been granted and that he should have been afforded four peremptory challenges instead of two. However, Orshansky does

not seek reversal of the entire judgment, only the part of the judgment that is in favor of Shechter.

Shechter argues Orshansky has waived his right to appeal the judgment by accepting the benefits of the judgment. In short, he claims Orshansky cannot appeal from a judgment which he is currently seeking to enforce. Orshansky argues he has not waived his right to appeal because the judgment is severable as it relates to the two defendants. We conclude Orshansky has waived his right to appeal.¹

It is well established that voluntary “acceptance by the appellant of the benefits of a judgment constitutes an ‘ . . . affirmance of the validity of the judgment against him.’ ” (*Lee v. Brown* (1976) 18 Cal.3d 110, 114; *Satchmed Plaza Owners Assn. v. UWMC Hospital Corp.* (2008) 167 Cal.App.4th 1034, 1041–1042 (*Satchmed*).) “Although the acceptance must be clear, unmistakable, and unconditional [citation], acceptance of even a part of the benefit of a judgment or order will ordinarily preclude an appeal from the portion remaining. [Citation.]” (*Epstein v. DeDomenico* (1990) 224 Cal.App.3d 1243, 1246.)

An appeal from a part of a judgment may be made if that part is severable, such that modification or reversal of that part of the judgment has no effect upon the remainder. (*Satchmed, supra*, 167 Cal.App.4th at p. 1044.) The test of severability is “whether the matters or issues embraced [in the appeal] are the same as, or interdependent upon, the matters or issues which have not been attacked.” (*Oliver v. Schene* (1960) 182

¹ Because the question of whether Orshansky has waived his right to appeal is dispositive, we need not address the other issues he raises.

Cal.App.2d 473, 478, quoting *American Enterprise, Inc. v. Van Winkle* (1952) 39 Cal.2d 210, 217.)

Here, Orshansky may not argue he was denied a fair jury as to his claims against Shechter, but accept the same jury's verdict as to his claims against Samarkina. There was only one jury at trial and one jury selection process. Thus, we may not modify or reverse the part of the judgment in Shechter's favor without affecting the judgment against Samarkina. The judgment is not severable under these circumstances. Orshansky has waived his right to appeal by accepting the benefits of a nonseverable judgment.

DISPOSITION

The judgment is affirmed. Respondent Shechter is awarded costs on appeal.

BIGELOW, P. J.

We concur:

GRIMES, J.

WILEY, J.