2d Civ. No. B308602

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION EIGHT

WADE ROBSON, ET AL.,

Plaintiffs and Appellants,

v.

MJJ PRODUCTIONS, INC. and
MJJ VENTURES, INC.

Defendants and Respondents.

Appeal from Los Angeles Superior Court
Case No. BC 508502
Honorable Mark A. Young, presiding

PETITION FOR REHEARING

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PETITION FOR REHEARING

Respondents MJJ Productions, Inc. and MJJ Ventures, Inc. ("the Corporations") respectfully submit that the Opinion in this matter omits or misstates the following facts, contentions, and issues.[1]

I. The Probate Claims Filing Scheme and Post-Death Statute of Limitations.

The Probate Code and the Code of Civil Procedure impose deadlines on filing claims and suits for money damages against a decedent's estate based on the decedent's allegedly tortious acts while alive. No action can be brought against a decedent's estate unless a timely creditor's claim has been filed. (Prob. Code, §9351.) Separately, no action "may be brought on a liability of the

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[1] This appeal was consolidated for purposes of decision with *Safechuck v. MJJ Productions, Inc., et al.*, No. B309450. An identical petition for rehearing is being filed in that matter. When citing to the appendices, we identify which appeal's appendix we cite to with the prefixes "*Robson*" (for this appeal's appendices), or "*Safechuck*" (for the Safechuck appeal appendices). For the *Robson* Appellant's Appendices, given that there are multiple volumes, the cites are in the format [vol.]AA:[page]. RAA cites are to the redacted volumes of Appellant's Appendix, and UAA cites are to the unredacted volumes.

[deceased] person whether arising in contract, tort, or otherwise, and whether accrued or not accrued" except "within one year after the date of death." (Code Civ. Proc., §366.2, subd. (a).) That one-year deadline "shall not be tolled or extended for *any* reason except" in express and limited circumstances specifically set out in the statute. (*Id.*, §366.2, subd. (b), italics added; *Bradley v. Breen* (1999) 73 Cal. App. 4th 798, 803.)

The Opinion neglects to mention that (a) both appellants petitioned to file claims against Jackson's probate estate based on Jackson's alleged direct perpetrator liability, and (b) that the probate court held that these efforts were untimely in final rulings from which no appeals were taken. (*Robson* Respondents' Brief 30; *Safechuck* Respondents' Brief 19-20; *Safechuck* Appendix to Motion for Judicial Notice ("*Safechuck* MJN Appendix") 3-32, 103-105, 113-122; *Robson* 6RAA:3667.) Neither Robson nor Safechuck ever sought appellate review of the orders dismissing their respective claims against Jackson's estate, and the time to appeal has long since expired. The orders are thus final.

Given that the Opinion makes no effort to distinguish between the acts of Jackson *personally* (which are not actionable, see Prob. Code, §9351; Code Civ. Proc., §366.2, subd. (a)), on the one hand, and the acts of the Corporations, on the other, the

Opinion runs afoul of the legislative scheme governing claims against a decedent based "on a liability of the [deceased] person." (Code Civ. Proc., §366.2, subd. (a).) It does not acknowledge or resolve the conflict.

The concurrence makes the conflict with the Probate Code and Code of Civil Procedure section 366.2 even more stark. The concurrence posits that the Corporations are liable because of Jackson's *personal* conduct, i.e., because *Jackson personally* should have restrained himself from allegedly committing criminal acts. (Concurring Opinion 3.) The concurrence's theory would defeat the probate claims filing requirements in *every case* where the decedent has a controlling interest in a company. It would not matter whether a claim was ever filed against the decedent's estate, or whether suit was filed more than one year after death, because the claim could always be reframed as one for negligence against the company for the decedent's failure to restrain himself.

II. The General Negligence Claim.

The Opinion does not (a) make clear what the alleged Corporations' duties are and conduct a *Rowland* analysis specific to these duties, nor does it (b) address plaintiffs' contention that

the Corporations had a duty to them because its employees were mandatory reporters.

A. The Opinion does not make clear what the Corporations' duties are and does not conduct a separate *Rowland* analysis as to them.

The Supreme Court has directed that the duty analysis requires courts to first "identify the *specific* action or actions the plaintiff claims the defendant had a duty to undertake." (*Castaneda v. Olsher* (2007) 41 Cal.4th 1205, 1214, italics added.) "'Only *after* the scope of the duty under consideration is defined may a court meaningfully undertake the balancing analysis of the risks and burdens present in a given case to determine whether the specific obligations should or should not be imposed.'" (*Ibid.*, italics added.)

The Opinion does not make clear what the "specific action or actions" the Corporations were required to take. The Opinion posits that the Corporations' agents could have issued warnings to parents and to police and confronted Jackson (Opinion 25), and/or refused to "facilitate" Jackson being alone with minors (*id.* 30). The Opinion never explains whether the Corporations had a duty to take *all* of these steps or just *some* of them.

The Opinion also does not conduct a separate *Rowland* analysis as to each duty as the Supreme Court's framework

requires. (*Castaneda*, *supra*, 41 Cal.4th at p. 1214; *see also id.* at pp. 1216-1223 [conducting separate *Rowland* analyses as to each specific action that plaintiffs alleged defendants should have taken].) And furthermore, the Opinion's *Rowland* analysis does not meaningfully engage with, the Corporations' various contentions. (Opinion at 26-27.) The Opinion simply dismisses them all without analysis, on the ground that the molestation was "foreseeable."

The Opinion does not key this alleged foreseeability to the acts or actions that it contends that the Corporations could have taken, nor does it explain how, if such acts would have prevented molestation.

B. The Opinion does not address the contention that the Corporations had a duty to report because their employees were allegedly mandated reporters.

Both Safechuck and Robson alleged that certain Corporations employees were mandated reporters under the Child Abuse and Neglect Reporting Act ("CANRA"), (Pen. Code §§11164 et seq.), and that the Corporations are thus liable for negligence per se for not reporting. (*Robson* 1RAA:81-83; *Safechuck* AA:48-50.) In both cases, the trial court rejected the claim that any employees were mandated reporters. (*Safechuck*

AA:322-323, RA:201.) Safechuck, at least, continued to press the point on appeal. (*Safechuck* Appellant's Opening Brief ("AOB") 50-52.)

The Opinion neglects to address this issue. It appears to find a common-law duty to report (Opinion 25), but makes *no* finding that any individuals in this case are mandated reporters under CANRA. The result is that the Opinion will be read to turn any person who comes into contact with a child and reasonably suspects abuse into a mandated reporter, even in circumstances (like those here) where the Legislature did not so provide. This will upset the Legislature's carefully-delineated scheme regarding who is a mandatory reporter, how reports must be made (confidentially), to whom (only law enforcement and certain government agencies), and what protections the reporters have from liability. (Pen. Code §§11165.7, 11166, 11167.5, 11172).

The Opinion disregards this careful scheme and imposes an amorphous new reporting duty with none of the protections and nuance of the statutory scheme. This will sow confusion on return to the trial court and will sow further confusion throughout other cases.

III. The Negligent Hiring/Retention/Supervision Claims.

The Opinion disposes of the plaintiffs' negligent hiring, retention and supervision claims in two sentences, merely saying

that three cases the Corporations cited were not "apt authority." (Opinion 28.) The Opinion, however, never analyzes these claims.

Specifically, both Robson and Safechuck allege that the Corporations were negligent because they hired Michael Jackson, retained him as an employee, and did not adequately supervise him. Specifically, they alleged that the two Corporations "owed Plaintiff[s] a duty not to hire and/or to retain Michael Jackson," (*Robson* 1RAA:83, 86; *Safechuck* AA:53-54, 259-260.)), and a duty to "investigat[e] Michael Jackson's background" when "supervising" him. (*Robson* 1RAA:83; *Safechuck* AA:259-60.) The undisputed evidence here is that the Corporations did not "hire" or "retain" Jackson. Just the opposite: *Jackson created the Corporations* to run aspects of his own businesses. (*Robson* 4UAA:9065-9066, 9082, 9084-9091; 6RAA:3336-3339; *Safechuck* AA:349.) This is why both trial judges rejected these claims as a matter of law. (*Safechuck* AA:323-24, RA:201-03.)

Nor could the Corporations supervise or fire Jackson. No one at the Corporations had supervisory authority over Jackson, the sole shareholder. As the trial court recognized, "a negligent supervision claim necessarily requires a plaintiff to 'show that a person *in a supervisorial position over the actor* had prior knowledge of the actor's propensity to do the bad act.' (*Z.V. v.*

County of Riverside (2015) 238 Cal.App.4th 889, 902)." (*Safechuck* RA:201, italics added.)

And the plaintiffs' express allegations that the Corporations should have refrained from "hiring" Jackson—and/or should have fired him—make no sense. MJJ Productions was formed to furnish Jackson's services as a recording artist and MJJ Ventures was formed to provide Jackson's services in a joint venture with his record company. (*Robson* 4UAA:9084, 9088; 6RAA:3337, 3339.) The Corporations were not like a school or church that could hire a different teacher or priest. Jackson was the sole reason the Corporations existed.

The Opinion further ignores black letter law providing that in order to be liable for negligent hiring, retention or supervision, a defendant must have actually *hired* the person at issue. (*Jackson v. AEG Live, LLC* (2015) 233 Cal.App.4th 1156, 1188 ["the jury needed to answer the question of whether AEG hired Dr. Murray before it could determine if AEG negligently hired, retained, or supervised him"].)

The Court's holding that Safechuck and Robson stated viable claims for negligent hiring, retention and supervision effectively means that any person who a jury could find *in retrospect* should have suspected that he, himself, had criminal

tendencies is under a negligence-based duty to not employ himself. Essentially, entire classes of persons would be precluded from creating loan-out/personal services companies because they should suspect themselves of some criminal proclivities. Such a duty raises serious constitutional and public policy concerns. (*Cf. Kassey S. v. City of Turlock* (2013) 212 Cal.App.4th 1276, 1280 [imposing duty on mandatory reporters to self-report would violate Fifth Amendment].)

IV. The Negligent Failure to Educate, Train or Warn Claim.

The Opinion revives plaintiffs' claims for failure to educate, train or warn with no analysis apart from a cursory statement that the cases the Corporations cited were not "apt authority." (Opinion 28.) The Opinion never grapples with the claim in any meaningful way, including with the reasoning of the two different trial judges who rejected the claim. (*Safechuck* AA:324-325, RAA:203-204.)

The plaintiffs alleged that the Corporations, corporations created by Michael Jackson to furnish his own unique personal services, were under a duty "to properly warn[ ], train[ ] or educat[e] the Plaintiff[s] and other minors about how to avoid"

the "risk of sexual abuse, harassment and molestation by Michael Jackson." (*Robson* 1RAA:88-89; *Safechuck* AA 56.)

Since Jackson ran the Corporations—in the Concurrence's analysis, he *was* the Corporations (Concurring Opinion 1-2)—imposing a duty to warn would require Jackson himself to personally disclose and direct others to disclose his supposed criminal inclinations. A duty to disclose one's own alleged criminal conduct, or to instruct others to do so, runs afoul of constitutional protections against self-incrimination. (*Kassey S.*, *supra*, 212 Cal.App.4th at p. 1280.)

To the extent that the Opinion instead means that others needed to warn about or report Jackson (Opinion 25), the Opinion does not clarify what level of employee has that duty and what type of knowledge would trigger the duty—omissions that inevitably will lead to confusion well beyond this case about corporations', and corporate directors' and employees', obligations.[2]

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[2] The Opinion does refer to "directors" having a duty to report, but this ignores the fact that it is undisputed Jackson was the *only* director of the Corporations until June 1994 (*Robson* 6RAA:3336, 3338), long after the alleged conduct in the *Safechuck* case ended and at the tail end of the period relevant in the *Robson* case. And regardless, in the *Robson* matter, there was *no evidence* that the

The Opinion's holding also is contrary to *Conti v. Watchtower Bible & Tract Society of New York, Inc.* (2015) 235 Cal.App.4th 1214, 1226. There, a minor in a religious congregation was molested by an adult congregant after they partnered for door-to-door field service. (235 Cal.App.4th at p. 1222.) The court found that church leadership exercised sufficient control over the field service to impose a duty to restrict and supervise the adult congregant's participation—but that they had no duty to warn of the dangers that the adult congregant even though they knew he had previously molested another child. (*Id.* at pp. 1227-1231, 1233-1235.) *Conti* reasoned that requiring churches to continuously monitor members for inappropriate behavior, and to gauge what behavior justifies warning another member about possible harm, would be overly burdensome. (*Id.* at p. 1231.) The same is true as to corporations where the source of potential danger is their sole shareholder who they do not control.

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other directors knew or should have known about alleged abuse. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 849 [party opposing summary judgment may not rely upon the allegations of the pleadings but must come forward with specific evidence to support its contentions].)

The Opinion's cursory claim that *Conti* is "not apt" is incorrect. *Conti* is on point, and the Opinion is contrary to it, creating a split of authority.

CONCLUSION

Rehearing should be granted to address the omissions and ambiguities in the Opinion. Upon such rehearing, a new and different Opinion should issue affirming the trial court in both cases.

Dated: September 5, 2023

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CERTIFICATION

Pursuant to California Rules of Court, rule 8.204(c)(1), I certify that this Petition for Rehearing contains **2,221 words**, not including the tables of contents and authorities, the caption page, signature blocks, this Certification page and attached proof of service.

Date: September 5, 2023

s/ Jonathan P. Steinsapir
Jonathan P. Steinsapir

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 11766 Wilshire Boulevard, Suite 750, Los Angeles, CA 90o25

On September 5, 2023, I served a true copy of the following document(s) described as **PETITION FOR REHEARING** on the interested parties in this action as follows:

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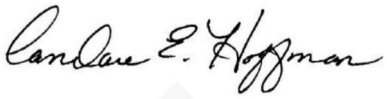

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