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Summary of Sicor, Inc. v. Sacks, 127 Nev. Adv. Op. 81

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CIVIL PROCEDURE – VENUE

Summary

The Court considered an appeal from a district court order denying without prejudice and deferring a final ruling on a motion to change venue in a tort action.

Disposition/Outcome

The Court concluded that a district court order deferring a final ruling on a change of venue motion, based on adverse pretrial publicity, until after jury selection begins, does not finally decide the motion. The Court accordingly dismissed the appeal.

Factual and Procedural History

Appellants Sicor, Inc., are manufacturers of an anesthetic drug, Propofol, which was used in medical procedures in facilities in southern Nevada. In 2008, the Southern Nevada Health District sent letters to around 60,000 patients of these facilities. The letters warned patients that they might have been exposed to blood-borne infections, including hepatitis B, hepatitis C, and HIV.

These events led to criminal investigations, bankruptcy proceedings by the medical facilities, and approximately 200 civil actions in Clark County against the various parties, including Appellants. The subject was also extensively covered by the media via newspaper articles, television and radio broadcasts, and internet sites.

About one month before trial, Appellants filed a motion to change venue from Clark County to Washoe County based on the adverse pretrial publicity, which they argued was pervasive and prejudicial to their right to a fair trial. Respondents argued that the use of juror questionnaires and voir dire could be used to select an impartial jury. They showed that the population, and thus potential jury pool, was five times larger in Clark County. Furthermore, they argued that any venue change made prior to finding that an impartial jury was unavailable would be premature.

The district court reviewed 100 of the completed juror questionnaires and concluded that a change in venue was not warranted at the time. However, the district court expressly withheld its final decision and stated that it would revisit the issue if an impartial jury could not be seated. The Appellants argued that not granting the motion to change venue constituted a denial, and thus a final decision. This appeal followed.

¹ By Richard A. Andrews

Discussion

Justice Hardesty wrote for the unanimous Court.² According to Nevada law, a district court has authority to change venue of a civil trial on motion of a party when an impartial trial cannot be had.³ In addition, appellate review before entry of a final judgment is permissible for certain orders, including a district court order granting or denying a motion to change the place of trial.⁴ The Court maintained, however, its consistent requirement that a motion is only appealable when it finally resolves the particular issue.

The Court noted the nature of Nevada's rule governing venue appeals, which states that an order granting or denying a change of venue is immediately appealable.⁵ Furthermore, the rule prohibits raising the venue change issue in a final judgment appeal.⁶

While past decisions by the Court have construed a district court's silence as denial of the relief sought,⁷ the Court held that the rule in this case, by providing for an expedited review and a mandatory stay, indicates that appeal is not feasible until a jury is selected and the trial commences.

The Court then looked at reason and policy considerations, civil decisions from other jurisdictions, and Nevada's criminal practice to interpret the rule. As to Nevada's criminal practice, state law prohibits a court from granting a motion to change venue until after voir dire has been conducted. Moreover, it must be "apparent to the court that the selection of a fair and impartial jury cannot be had in the county."⁸

Finally, the Court cited the United State's Supreme Court's decision in *Skilling v. U.S.*, which rejected the argument that prejudice should be presumed for cases with a high amount of adverse publicity and stated that "juror impartiality . . . does not require ignorance."⁹ The Court also pointed out similarities between this case and the *Skilling* decision, including the size of the population of the venue and the use of juror questionnaires and voir dire examination as tools to identify an impartial jury.

Conclusion

Appellants retain their right to appeal after jury selection efforts are completed. Since the district court did not issue a final order that disposed the motion to change venue, an appeal is premature.

² Chief Justice Saitta and Justice Hardesty also participated in this decision.

³ NEV. REV. STAT. § 13.050(2)(b) (2007).

⁴ NEV. R. APP. P. § 3A(b)(6).

⁵ *Id.*

⁶ *Id.* § 3A(b)(6).

⁷ *Bd. of Gallery of History v. Datecs Corp.*, 116 Nev. 286, 289, 994, P.2d 1149, 1150 (2000); *Weiler v. Ross*, 80 Nev. 380, 382, 395 P.2d 323, 324 (1964).

⁸ NEV. REV. STAT. § 174.455(2).

⁹ 561 U.S. ___, ___, 130 S. Ct. 2896, 2914-15 (2011).