

IN THE
Court of Appeal of the State of California
IN AND FOR THE
THIRD APPELLATE DISTRICT

OROVILLE HOSPITAL,
Petitioner,
v.
THE SUPERIOR COURT
OF BUTTE COUNTY,
Respondent;
LYNDA AMBROSE et al.,
Real Parties in Interests.

C100226
Butte County
No. 16CV03116

BY THE COURT:

Petitioner Oroville Hospital is the defendant in a civil action brought by the family of Eyvon Ambrose, who received home health care from petitioner and later died. Petitioner challenges respondent court's order granting plaintiffs' motion to amend their complaint to include a punitive damages claim. (See Code Civ. Proc., § 425.13; further undesignated statutory references are to the Code of Civil Procedure.) Petitioner claims the motion was untimely. Plaintiffs elected not to file preliminary opposition. It appears from this court's preliminary review that petitioner is correct.

Plaintiffs first filed a complaint for wrongful death. In September of 2017, plaintiffs filed a second complaint stating causes of action for elder abuse and "willful misconduct," with punitive damages pleaded as to both. The two complaints were consolidated. In August of 2019, respondent court denied summary adjudication on the elder abuse cause of action. Petitioner successfully sought writ review in this court, resulting in a published opinion that found the elder abuse cause of action and its concomitant punitive damages claim failed due to lack of an adequate caretaking or custodial relationship between the parties. (*Oroville Hospital v. Superior Court* (2022) 74 Cal.App.5th 382 (*Oroville*).)

Petitioner then moved to strike the punitive damages claim as pleaded with respect to the willful misconduct claim based on plaintiffs' failure to comply with section 425.13, which requires court approval of a punitive damages claim in actions arising out of professional negligence of a health care provider. A section 425.13 motion serves a gatekeeping function. A plaintiff must show "there is a substantial probability" the plaintiff will prevail on the punitive damages claim. (§ 425.13, subd. (a).) Petitioner cited authority holding that compliance with section 425.13 is required to claim punitive damages if the conduct at issue involves the mere provision of medical care, even if pleaded as an intentional tort. (See, e.g., *Davis v. Superior Court* (1994) 27 Cal.App.4th 623, 627-628.)

Respondent court concluded petitioner's motion to strike was justified based on changed circumstances. The court explained that compliance with section 425.13 was now required because of this court's decision. (See also §§ 435, 436 [court may strike any part of a pleading not in conformity with state law at any time].) But the court further stated that plaintiffs should be allowed to file a belated section 425.13 motion as they had "moved with reasonable speed, and through no fault of their own were placed in a position where compliance with the time requirements was impossible" In later granting plaintiffs' section 425.13 motion, respondent court reiterated its earlier reasoning.

Section 425.13 provides the superior court "shall not grant" such a motion if it is "not filed within two years after the complaint or initial pleading is filed or not less than nine months before the date the matter is first set for trial, whichever is earlier." (§ 425.13, subd. (a).) While plaintiffs' delay may be understandable based on the successful motion to strike, there is no statutory authority providing the superior court with discretion to grant a belated motion. While "[i]t may have been better had the Legislature left case management decisions to the sound discretion of trial judges, who are in the best position to weigh the competing interests and circumstances in particular cases," the court must apply the law as it is. (*Freedman v. Superior Court* (2008) 166 Cal.App.4th 198, 207.) As the court explained in *Freedman*, the lack of discretion afforded a trial court to grant a belated motion has "the potential to impair the fair administration of justice," but the court must follow the established rule "even if doing so does not always advance a fair resolution of the case." (*Ibid.*)

In support for its decision to allow the belated section 425.13 motion, respondent court cited *Goodstein v. Superior Court* (1996) 42 Cal.App.4th 1635 (Goodstein).¹ This case, and related cases, recognize a narrow exception to section 425.13's strict timing provisions based on the court's inherent authority, where it is "impossible or reasonably impracticable" to bring a timely motion. (*Id.* at p. 1645.) This exception does not apply by its own terms. Plaintiffs *could* have pursued a timely motion to secure their right to seek punitive damages, anticipating what ultimately occurred in this case, i.e., that they were left with a punitive damages claim in an action for professional negligence that was untethered to the elder abuse claim. The failure to file a section 425.13 motion to support the punitive damages claim at an earlier time created a problem of plaintiffs' own making. They drafted the operative pleading. Neither at that time nor when first faced with petitioner's summary adjudication motion did they make any attempt to comply with the statute.

Even were this court to conclude otherwise, the various prerequisites for applying the case-created exception do not aid plaintiffs. *Goodstein* addressed section 425.13's requirement the motion be brought no more than nine months before the initial trial date. The court emphasized the motion must be brought as soon as practicable after discovery "but in no event more than two years after the filing of [a plaintiff's] initial complaint." (*Goodstein, supra*, 42 Cal.App.4th at p. 1645.) Plaintiffs must also show lack of earlier awareness of *evidence* to support the motion, their diligence and good

¹ This petition is timely from the superior court order granting plaintiffs' motion, and it appears reasonable for petitioner to have waited and challenged that ruling even though respondent court had stated in its earlier order striking the claim that it would allow plaintiffs to seek a belated motion under section 425.13. (See *People v. Superior Court (Troyer)* (2015) 240 Cal.App.4th 654, 670-671.)

faith efforts to comply with the statutory timeline in light of the facts and evidence, and a lack of “surprise or prejudice” to defendants. (*Ibid.*) As recognized in this court’s opinion, petitioner pursued writ relief on the elder abuse claim to avoid “needlessly complicat[ing] the trial, *expos[ing] them to punitive damages and uncapped noneconomic damages*, and provid[ing] plaintiffs with ‘unwarranted settlement leverage.’ ” (*Oroville, supra*, 74 Cal.App.5th at p. 398, italics added.)

This court is considering issuing a peremptory writ of mandate in the first instance, i.e., without first issuing an alternative writ. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171.) Respondent court may avoid issuance of the writ by vacating its ruling of November 15, 2023, which granted plaintiffs’ section 425.13 motion, and by issuing a new and different order that denies the motion as untimely. In the event respondent court is considering proceeding in this manner, it must afford the parties notice and an opportunity to be heard (if requested by a party) before vacating its earlier decision. (See *Brown, Winfield & Canzoneri, Inc. v. Superior Court* (2010) 47 Cal.4th 1233.)

Respondent court is requested to inform this court of any relevant action that it takes in the case consistent with this notice and to provide a status update on or before March 12, 2024. If respondent court chooses to change its order in the manner described herein, this court will dismiss the instant petition as moot.


ROBIE, Acting P.J.

cc: See Mailing List

IN THE
Court of Appeal of the State of California
IN AND FOR THE
THIRD APPELLATE DISTRICT

MAILING LIST

Re: Oroville Hospital v. The Superior Court of Butte County
C100226
Butte County Super. Ct. No. 16CV03116

Copies of this document have been sent by mail to the parties checked below unless they were noticed electronically. If a party does not appear on the TrueFiling Servicing Notification and is not checked below, service was not required.

Curt Charles Cutting
Horvitz & Levy LLP
3601 West Olive Avenue, 8th Floor
Burbank, CA 91505-4681

Mark Andrew Kressel
Horvitz & Levy LLP
3601 West Olive Avenue, 8th Floor
Burbank, CA 91505-4681

Robert H. Zimmerman
Schuering Zimmerman & Doyle, LLP
400 University Avenue
Sacramento, CA 95825-6502

Ian A. Scharg
Scheuring Zimmerman & Doyle, LLP
400 University Avenue
Sacramento, CA 95825

Joseph M. Earley III
Law Offices of Joseph M. Earley, III
331 Wall Street
Chico, CA 95928

Cameron Michael Easterling
Law Offices of Joseph M. Earley, III
331 Wall Street
Chico, CA 95928

Butte County Superior Court - Main
One Court Street
Oroville, CA 95965
(e-mail)