

Where a request for a statement of decision is improperly denied, and the trial judge is no longer available, the only appropriate appellate remedy is to remand for a new trial.

FACTS AND PROCEDURAL POSTURE

In 1988 plaintiff Dale Wallis invented an antigen for a bovine mastitis vaccine as part of her duties as an employee of PHL Associates. In 1989 Wallis and PHL negotiated a long term employment contract in which she would retain the rights to any inventions or products that she developed. Wallis bought shares in PHL and was given a vote at board meetings. In 1991 PHL negotiated with Upjohn to sell the vaccine. While these negotiations were ongoing, PHL fired Wallis and attempted to reimburse her for the shares she bought. The sale of the vaccine was finalized for \$2.5 million, PHL agreed not to compete with Upjohn for 10 years, and PHL would be the exclusive supplier of the antigen to Upjohn.

Wallis' husband started a new company, Hygieia Biological Laboratories. In 1993 Wallis began working for Hygieia. Hygieia developed its own antigen. Upjohn sued Wallis and Hygieia. Wallis and Hygieia counterclaimed. The court granted summary judgment to Upjohn on the counterclaim, and the parties settled Upjohn's claim, agreeing that Upjohn owned the vaccine.

In 1994 Wallis sued PHL and its directors alleging unjust enrichment, fraud, conspiracy, constructive fraud, constructive trust, and conversion. PHL cross-claimed. The case went to trial in 2000. At trial on Wallis' claims the jury found PHL liable for fraud and conversion related to Wallis' purchasing of shares in PHL. Wallis was awarded more than \$2.5 million in compensatory damages and \$500,000 in punitive damages. As to Wallis' equitable claims, the court imposed a constructive trust for the money PHL received for the antigen. In January 2001 PHL filed a written request for a statement of decision; the court denied this request as untimely. In 2002 Wallis filed notice of peremptory disqualification of the trial judge and the judge stepped aside. The parties settled the cross-complaint in April 2010. Final judgment on Wallis' claims was not entered until July 2010.

Both parties moved for a new trial. The court denied both motions.

DISCUSSION

On appeal, PHL contended that the trial court erred by denying its request for a statement of decision. The court agreed, explaining that "the trial court's failure to issue a statement of decision can have a significant adverse effect on that party's ability both to assess whether an appeal is justified and, if an appeal is filed, to present an effective challenge to the trial court's decision." A trial court's failure to issue a statement of decision is "per se reversible error." PHL met the timing requirements of a request for statement of decision because the time to request a statement of decision runs from the time the trial court completes the announcement of its decision on all reserved issues.

The normal appellate remedy for improper denial of a request for a statement of decision is to reverse and remand for preparation of a statement of decision. In this case, however, the trial judge was disqualified after trial. Because the trial judge was no longer available, the only appropriate remedy was to remand for a new trial on the equitable claims.