

Mitchell v. Superior Court (2015) 243 Cal.App.4th 269

Evidence sanction excluding witnesses at trial was inappropriate where there was no evidence of willful omission of witnesses in discovery and no violation of a court order compelling discovery.

FACTS/PROCEDURE:

Plaintiff Mitchell sued Defendant Johnson for personal injuries and property damage arising out of a 2012 automobile accident. Johnson propounded form interrogatories on Mitchell. Mitchell's response to Interrogatory 12.1 (and to defendant's supplemental request) identified Mitchell's daughter, a passenger in her vehicle at the time of the accident, as the only witness to the incident. Subsequently, however, plaintiff identified several additional witnesses whom she intended to call at trial. These witnesses did not witness the accident itself, but would testify as to plaintiff's physical limitations as a result of the accident.

Defendant filed a motion in limine to exclude testimony of any witnesses not previously disclosed in discovery, and argued that such witnesses should be excluded as an evidence sanction for plaintiff's failure to disclose the witnesses in response to discovery. The trial court granted the motion, excluding the additional witnesses at trial.

DISCUSSION/HOLDING:

The Court of Appeal explained that Form Interrogatory 12.1 seeks the identities of percipient witnesses, i.e. witnesses at the scene of the subject incident. It does not seek the identity of witnesses who may testify to physical injuries or disabilities suffered by plaintiff as a result of the accident. The Court stated that 12.1 should be narrowly construed.

The Court also noted that exclusion of witnesses for a party's failure to identify the witnesses in discovery is appropriate only if the omission was willful or a violation of a court order compelling a response. Even if 12.1 could be construed as a request to identify the witnesses at issue here, there was no evidence that plaintiff's failure to identify the witnesses was willful, or that plaintiff violated a court order to provide discovery.

The Court held that it was error to impose the evidence sanction, and issued a peremptory writ of mandate directing the superior court to vacate its order and issue a new order denying defendant's motion in limine.