D.D. v. Pitcher

((2022) ___Cal.App.5th___ [2022 Cal. App. LEXIS 523].)

During the voir dire procedure, a trial court has discretion to restrict the content of a brief opening statement or to disallow a brief opening statement if it contains objectionable matter, despite the phrase "*shall* allow a brief opening statement" in California Code of Civil Procedure section 225.5(d).

FACTS/PROCEDURE

D.D. was six years old at the time of the incident. D.D.'s guardian ad litem filed suit against D.D.'s neighbor, Pitcher, after D.D. sustained an injury that Plaintiff claimed was caused by Pitcher's negligence. During trial in late 2018, D.D. testified in the Superior Court of Kern County that he was laying against a tree on Pitcher's lawn when Pitcher ran over his leg with his bicycle. Pitcher testified that D.D. darted between two cars on his own bike and collided with Pitcher, injuring his leg. The jury found that Pitcher was not negligent.

On appeal, Plaintiff challenged the trial court's ruling on its first motion in limine which sought permission for D.D.'s counsel to give a brief opening statement prior to voir dire. The trial court granted the motion on the condition that it be less than 250 words, read to the jury verbatim, and approved by the trial judge. Defendants objected to the statement and the trial judge sustained the objection, finding that it was argumentative and not appropriate for a brief opening statement.

Plaintiff argued on appeal that the trial court violated the plain language, as well as the purpose and spirit of California Code of Civil Procedure section 222.5 by not allowing his counsel to give a brief opening statement prior to voir dire questioning.

HOLDING/DISCUSSION

The Court of Appeal for the Fifth Appellate District found that the trial court did not err in disallowing D.D.'s counsel to make a brief opening statement. The Court held that a CCP § 222.5 gives the trial judge discretion to reject improper content in a brief opening statement if it contains objectionable matter because legislative history is consistent with this conclusion, irrespective of the word "*shall*" in the statute.

Although Senate Bill No. 658 changed CCP § 222.5(d) to "*should* allow a brief opening statement" from "*shall* allow a brief opening statement," the Senate Rules Committee made no mention of how the term "*shall*" made opening statements mandatory. The Senate Rule Committee provided several examples of how the amendments limit the trial court's discretion but made no mention of the provision concerning brief opening statements. Another legislative summary of Bill No. 658 stated that "counsel for each party may provide a brief opening statement (if allowed by the judge)." The Assembly Committee on the Judiciary also added, "this bill clarifies that counsel has an affirmative duty to request the option of making an opening statement before a court will determine whether the opening statement will be allowed or not. Lastly, CCP § 222.5(b)(1) states that "[t]he scope of the examination conducted by counsel shall be within reasonable limits prescribed by the trial judge in the *judge's sound discretion* subject to the provisions of this chapter."

In its conclusion, the court added that if they were to find that a trial court lacks such discretion, the court would open the door to abuse of the litigation process and potentially jeopardize parties' rights to a fair trial.