

What Happens to a Fee Award After the Judgment Is Reversed? Try a Stipulated Reversal

Tim Kowal April 26, 2023



Here is a common scenario, with a rather uncommon resolution. You have appealed a judgment, and you have separately appealed the attorney fee award. You reversed

the judgment. After reporting the victory to the client, you suddenly remember: what about the fee award?

That is what happened in *Mid-Wilshire Property, L.P. v. Dr. Leevil, LLC* (D4d3 Jul. 20, 2022 no. G059899) 2022 WL 2824967 (nonpub. opn.). The appellants reversed the judgment, but briefing had not even begun in the separate appeal of the fee award of almost \$500,000.

Here is what the parties did: They filed a joint stipulated request to summarily reverse the attorney fee award. And the appellate court granted it.

But the court made a few comments about the parties' request.

The Procedure for a Stipulated Reversal

First, the court noted that an appellate court has “inherent authority” to summarily reverse. (Eisenberg et al., *Cal. Practice Guide: Civil Appeals and Writs* (The Rutter Group 2016) ¶ 5:82, p. 5-34.) This power may be exercised when the correct outcome of an appeal is clear, making further appellate proceedings a waste of time. (*Melancon v. Walt Disney Productions* (1954) 127 Cal.App.2d 213, 215 [motion granted because recent Supreme Court case on same issue compelled reversal].)

But the legislature has something to say about this procedure. Specifically, Code of Civil Procedure section 128(a)(8) imposes a presumption against stipulated reversals. Section 128(a) states:

“An appellate court shall not reverse or vacate a duly entered judgment upon an agreement or stipulation of the parties unless the court finds both of the following: [¶] (A) There is no reasonable possibility that the interests of nonparties or the public will be adversely affected by the reversal. [¶] (B) The reasons of the parties for requesting reversal outweigh the erosion of public trust that may result from the nullification of a judgment and the risk that the availability of stipulated reversal will reduce the incentive for pretrial settlement.”

The burden under section 128(a) is very difficult to meet. (*Hardisty v. Hinton & Alfert* (2004) 124 Cal.App.4th 999.)

And the Court of Appeal has its own local rules concerning stipulated reversals. (Ct. App., Fourth Dist., Div. Three, Internal Practices and Proc., V C, Stipulated Requests for Reversal.)

Here, the parties did not address the statutory factors.

But that was not really important, the court concluded, because the parties were correct that reversal of the fee order was inevitable after the judgment was reversed. “A disposition that reverses a judgment automatically vacates the costs award in the underlying judgment even without an express statement to this effect.” (*Ducoing Mgmt. Inc. v. Superior Court* (2015) 183 Cal.Rptr.3d 548, 555.) So there is no way a nonparty or the public’s trust could be undermined by the reversal.

Comment

Under *Ducoing* and many other cases, this procedure seems unnecessary: the reversal of the underlying judgment operates to automatically vacate any fee or cost awards. But given the award was under separate appellate review here, the trial court lacked jurisdiction to vacate the award. And the appellant was understandably reluctant to simply dismiss the appeal.

An alternative to seeking stipulated reversal here would have been to point out in the briefing the existence of the separate appeal of the fee award. That way, the appellate court might have disposed of it in the same opinion as the underlying appeal.

This article was originally published on the website of Thomas Vogele & Associates, APC.

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