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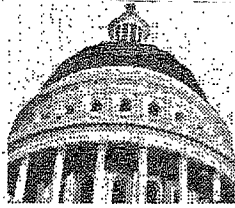
MENNEMERE GLASSMAN STROUD

STROUD, ANDREW W

980 9TH ST STE 1700

SACRAMENTO

CA 95814-2736



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SUPREME COURT

'Stipulated Reversals' On Docket Again

The Case Will Be the First Test of A 1999 Law Intended to Limit Action in Civil Suits

BY PETER BLUMBERG
Special to The Daily Recorder

California's on-again, off-again conflict over litigants erasing trial court judgments as part of settlements is back before the state Supreme Court.

The high court has agreed to review a case that appears to be the first test of a 1999 statute meant to curb parties in civil suits from entering into "stipulated reversals."

In this case, a state appellate panel issued a published opinion to resolve a funding dispute between a school district and a county treasurer about a month after the parties told the court that a settlement was imminent.

Now, the Shasta County treasurer's office that won the case at trial contends that the 3rd District Court of Appeal should have blessed the out-of-court settlement and never issued its opinion.

The high court agreed Wednesday to provide an answer in *Whitmore Union*.
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Suits

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Elementary School District v. County of Shasta, S096988.

Ever since the California Supreme Court first sanctioned stipulated reversals in its 1992 ruling in *Neary v. Regents of the University of California*, 3 Cal.4th 273, the settlement technique has generated controversy on the bench and bar alike. In *Neary*, a 4-3 majority held that appellate courts, absent extraordinary circumstances, must acquiesce when parties in civil suits agree to vacate trial court judgments as part of settlements.

Proponents, including the author of *Neary*, Justice Marvin Baxter, contend stipulated reversals bolster efficiency by relieving appellate courts of having to decide cases that parties want to settle.

Opponents, including 1st DCA Justice J. Anthony Kline, argue that stipulated reversals undermine judicial institutions by allowing parties to undo precedents affecting the public interest.

The debate intensified in 1997 when Kline

wrote in a dissent that he could not "as a matter of conscience" apply *Neary*, and he was subsequently investigated for possible discipline by the state Judicial Performance Commission.

The Legislature responded to the flap over Kline's dissent by enacting a new law in 1999 that tightly restricts the use of stipulated reversals. The judicial performance commission later declined to file disciplinary charges against Kline.

Specifically, Civil Code of Procedure Section 128(a)(3) prohibits stipulated reversals unless there is "no reasonable probability" of harm to the public interest and the reasons that the parties have agreed upon to reverse the trial court would not erode public trust in the judiciary.

In his petition to the Supreme Court, an attorney representing Shasta County said the Whitmore case fits the Section 128 criteria, but that the parties were not given an opportunity by the 3rd DCA to make their case for a stipulated reversal.

"This case may present for the Supreme Court an opportunity to address what kind of procedural rights parties have under Section 128 and affords an opportunity to interpret what the substantive standards mean in our

factual circumstances," said Kenneth Mennemeier of Mennemeier, Glassman & Stroud in Sacramento.

In February, the unanimous 3rd DCA panel indicated in a footnote at the end of its 26-page opinion that it was simply barred by Section 128 from approving a stipulated reversal. The footnote did not elaborate.

The opinion was written by Justice Coleman Blease, who was joined by Justices Arthur Scotland and Connie Callahan.

The underlying dispute in Whitmore is whether the county treasurer's office is liable for speculative losses on investments made with funds belonging to the school district.

After two rounds of trials and appeals, the parties agreed to a settlement that nullified a judgment in favor of the county. By that time, the case had been orally argued twice before the appellate panel.

While the settlement awaited final approval from the county Board of Supervisors, the 3rd DCA issued its opinion.

Mennemeier noted that one criticism of stipulated reversals is that they allow losing defendants "to buy their way out of adverse consequences" by making an attractive settlement offer to the plaintiffs.

- But he said that concern doesn't exist in Whitmore because it was the defendant who won at trial.

Furthermore, he said, there are no other "prospective" plaintiffs who would be affected by a stipulated reversal because other all the other school districts in Shasta County already agreed not to sue the county over the treasurer's investment losses.

Mennemeier said he anticipates asking the Supreme Court to dismiss the Whitmore appeal in light of the settlement, but he said the court still should rule on the procedural issues.

Clyde Small, a lawyer representing Whitmore School District, said he wants the high court to rule on the underlying merits of the case because it raises important issues.

"There are billions of dollars invested by county treasurers in California," he said. "If county treasurers are not liable at all for losses, that's a problem."

Six out of seven Supreme Court justices voted to review Whitmore: Chief Justice Ronald George and Justices Stanley Mosk, Joyce L. Kennard, Marvin Baxter, Ming W. Chin and Janice Rogers Brown. Only Justice Kathryn Mickle Werdegar did not vote to review the case.