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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

JAMES VAN BUREN,

Plaintiff and Appellant,

v.

SIAN EVANS, M.D. et al.,

Defendants and Respondents.

F054227

(Super. Ct. No. 146178)

OPINION

APPEAL from a judgment of the Superior Court of Merced County. Ronald Hansen, Judge.

Law Offices of David M. Jamieson, and David M. Jamieson, for Plaintiff and Appellant.

Cole Pederson, Curtis A. Cole and Matthew S. Levinson, and McNamara, Dodge, Ney, Beatty, Slattery, Pfalzer, Borges & Brothers, and Robert W. Hodges, for Defendant and Respondent Sian Evans, M.D..

Schuering, Zimmerman, Scully, Tweedy & Doyle, and David J. VanDam, Cole Pederson and Curtis Cole, for Defendant and Respondent Yosemite Surgery Associates.

Horvitz & Levy, and David S. Ettinger, for California Medical Association, California Hospital Association and California Dental Association, as Amicus Curiae on behalf of Defendants and Respondents.

Fred J. Hiestand for Californians Allied for Patient Protection etc., as Amicus Curiae on behalf of Defendants and Respondents.

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In 1975 the California Legislature enacted the Medical Injury Compensation Reform Act (MICRA, Stats. 1975, Second Ex. Sess. 1975-1976, chs. 1 & 2, pp. 3949-4007.) The legislation was enacted in response to “a rapid increase in medical malpractice insurance premiums.” (*American Bank & Trust Co. v. Community Hospital* (1984) 36 Cal.3d 359, 363.) “In broad outline, the act (1) attempted to reduce the incidence and severity of medical malpractice injuries by strengthening governmental oversight of the education, licensing and discipline of physicians and health care providers, (2) sought to curtail unwarranted insurance premium increases by authorizing alternative insurance coverage programs and by establishing new procedures to review substantive rate increases, and (3) attempted to reduce the cost and increase the efficiency of medical malpractice litigation by revising a number of legal rules applicable to such litigation.” (*Id.* at pp. 363-364.)

This case involves a provision of MICRA which limits the recovery of so-called “noneconomic” damages to a maximum of \$250,000 in any action against a health care provider based on professional negligence. The statute, Civil Code section 3333.2, states in pertinent part: “(a) In any action for injury against a health care provider based on professional negligence, the injured plaintiff shall be entitled to recover noneconomic losses to compensate for pain, suffering, inconvenience, physical impairment, disfigurement and other nonpecuniary damage. [¶] (b) In no action shall the amount of damages for noneconomic losses exceed two hundred fifty thousand dollars (\$250,000).” Appellant James Van Buren is a medical malpractice plaintiff whose jury award of

\$2,500,000 in noneconomic damages was reduced to \$250,000 pursuant to a defense motion made under Civil Code section 3333.2. He appeals from the \$250,000 judgment.

APPELLANT'S CONTENTIONS

Van Buren's contentions on appeal are that the reduction of his \$2,500,000 jury verdict to a judgment of \$250,000 pursuant to Civil Code¹ section 3333.2 constituted: (1) a violation of his right to a jury trial under article 1, section 16 of the California Constitution; (2) a usurpation of judicial power by the Legislature in violation of article VI, section 1 of the California Constitution; (3) an unlawful attempt by the Legislature to exercise judicial power in violation of article III, section 3 of the California Constitution, and (4) a violation of his right to equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution and by article I, section 7, subdivision (a) of the California Constitution. He also contends (5) that section 3333.2 is not applicable to him in the present case. As we shall explain, we find all of these contentions to be without merit, and will affirm the judgment.

FACTS

Appellant Van Buren brought this action for medical negligence against defendants Sian Evans, M.D. and Yosemite Surgery Associates. The complaint alleged that Dr. Evans was the agent of defendant Yosemite Surgery Associates, and that Evans breached her duty to meet the applicable standard of care in her treatment of Van Buren's perianal cyst. The parties stipulated that Evans was an agent of Yosemite and that any judgment against Evans would also be a judgment against Yosemite. A five day jury trial resulted in a special verdict finding Dr. Evans negligent and awarding appellant \$2,500,000 in noneconomic damages. No economic damages were awarded. The jury's vote was 9 to 3, both on the question of whether Dr. Evans was negligent and on the dollar amount of appellant's damages.

¹ All further statutory references are to the Civil Code unless otherwise stated.

Evans and Yosemite moved to reduce the amount of noneconomic damages to \$250,000 pursuant to section 3333.2. The court heard and granted the motion. Its order stated: “1. The jury verdict of \$2,500,000 rendered for plaintiff ... is reduced pursuant to Civil Code Section 3333.2(b), and ¶] 2. Judgment shall be entered in the amount of \$250,000 against Yosemite Surgery Associates and Sian Evans, M.D., jointly and severally.”

JUDICIAL CHALLENGES TO MICRA

Judicial challenges to various provisions of MICRA were abundant after the enactment of the legislation, but unsuccessful. *American Bank & Trust Co. v. Community Hospital, supra*, involved in Code of Civil Procedure section 667.7, which provided “that when a plaintiff in a medical malpractice [action] has sustained ‘future damages’ of \$50,000 or more, compensation for those future damages is to be paid periodically” over the time the plaintiff incurs the losses, rather than in one lump sum judgment. (*American Bank & Trust Co., supra*, 36 Cal.3d at p. 364.) In *American Bank* the court rejected contentions that this provision violated federal and state constitutional guarantees of due process, equal protection, and the right to a jury trial. *Barme v. Wood* (1984) 37 Cal.3d 174 involved section 3333.1, subdivision (b), which barred a “collateral source” which has provided medical expenses or other medical benefits to a medical malpractice plaintiff from obtaining reimbursement of those expenses from a medical malpractice defendant. (*Barme v. Wood, supra*, 37 Cal.3d at p. 177.) In *Barme* the court rejected due process and equal protection challenges to this provision. *Roa v. Lodi Medical Group, Inc.* (1985) 37 Cal.3d 920, involved Business and Professions Code section 6146, which placed “limits on the amount of fees an attorney could obtain in a medical malpractice action when [representing] a party on a contingency fee basis.” (*Roa v. Lodi Medical Group, Inc., supra*, 37 Cal.3d at p. 923, fn. omitted.) The court in *Roa* rejected arguments that this provision denied due process and equal protection and violated the separation of powers doctrine.

Fein v. Permanente Medical Group (1985) 38 Cal.3d 137 (*Fein*), involved the same MICRA provision at issue in this case -- the cap on noneconomic damages found in section 3333.2. In *Fein* the court rejected due process and equal protection challenges to this provision. In rejecting the due process argument, the court in *Fein* stated: “As our language in *American Bank* itself suggests, our past cases make clear that the Legislature retains broad control over the *measure*, as well as *the timing*, of damages that a defendant is obligated to pay and a plaintiff is entitled to receive, and that the Legislature may expand or limit recoverable damages so long as its action is rationally related to a legitimate state interest.” (*Fein, supra*, 38 Cal.3d at p. 158.) The *Fein* court further stated with regard to section 3333.2: “Although reasonable persons can certainly disagree as to the wisdom of this provision, we cannot say that it is not rationally related to a legitimate state interest.” (*Fein, supra*, 38 Cal.3d at p. 160, fns. omitted.) And even clearer and plainer, the court stated: “[I]t is clear that section 3333.2 is rationally related to legitimate state interests.” (*Fein, supra*, 38 Cal.3d at p. 158.) The *Fein* court further stated: “[We] know of no principle of California -- or federal -- constitutional law which prohibits the Legislature from limiting the recovery of damages in a particular setting in order to further a legitimate state interest.” (*Id.* at p. 161.)

The court explained those legitimate state interests as follows: “[T]he Legislature was acting in a situation in which it had found that the rising cost of medical malpractice insurance was posing serious problems for the health care system in California, threatening to curtail the availability of medical care in some parts of the state and creating the very real possibility that many doctors would practice without insurance, leaving patients who might be injured by such doctors with the prospect of uncollectible judgments. In attempting to reduce the cost of medical malpractice insurance in MICRA, the Legislature enacted a variety of provisions affecting doctors, insurance companies and malpractice plaintiffs. [¶] Section 3333.2, like the sections involved in *American Bank*, *Barme* and *Roa*, is, of course, one of the provisions which made changes in

existing tort rules in an attempt to reduce the cost of medical malpractice litigation, and thereby restrain the increase in medical malpractice insurance premiums. It appears obvious that this section -- by placing a ceiling of \$250,000 on the recovery of noneconomic damages-- is rationally related to the objective of reducing the costs of malpractice defendants and their insurers.” (*Fein, supra*, 38 Cal.3d at pp. 158-159.)

The *Fein* court further elaborated on the Legislature’s rational basis for enacting section 3333.2 as follows:

“There is no denying, of course, that in some cases – like this one – section 3333.2 will result in the recovery of a lower judgment than would have been obtained before the enactment of the statute. It is worth noting, however, that in seeking a means of lowering malpractice costs, the Legislature *placed no limits whatsoever on a plaintiff’s right to recover for all of the economic, pecuniary damages – such as medical expenses or lost earnings – resulting from the injury*, but instead confined the statutory limitations to the recovery of *noneconomic damages*, and – even then – permitted up to a \$250,000 award for such damages. Thoughtful jurists and legal scholars have for some time raised serious questions as to the wisdom of awarding damages for pain and suffering in any negligence case, noting, inter alia, the inherent difficulties in placing a monetary value on such losses, the fact that money damages are at best only imperfect compensation for such intangible injuries and that such damages are generally passed on to, and borne by, innocent consumers. While the general propriety of such damages is, of course, firmly imbedded in our common law jurisprudence (see, e.g., *Capelouto v. Kaiser Foundation Hospitals* (1972) 7 Cal.3d 889, 892-893), no California case of which we are aware has ever suggested that the right to recover for such noneconomic injuries is constitutionally immune from legislative limitation or revision. (See, e.g., *Werner v. Southern Cal. Etc. Newspapers, supra*, 35 Cal.2d 121, 126-128; fn. 15, *ante*. See generally Morris, *Liability for Pain and Suffering* (1959) 59 Colum.L.Rev. 576 [urging legislative revision of rules relating to damages for pain and suffering].)

“Faced with the prospect that, in the absence of some cost reduction, medical malpractice plaintiffs might as a realistic matter have difficulty collecting judgments for *any* of their damages – pecuniary as well as nonpecuniary – the Legislature concluded that it was in the public interest to attempt to obtain some cost savings by limiting noneconomic damages. Although reasonable persons can certainly disagree as to the wisdom of this

provision, we cannot say that it is not rationally related to a legitimate state interest.” (*Fein, supra*, 38 Cal.3d at pp. 159-160, fns. omitted.)

I.

JURY TRIAL

Article I, section 16 of the California Constitution states in pertinent part that “Trial by jury is an inviolate right and shall be secured to all, but in a civil cause three-fourths of the jury may render a verdict.” (Cal. Const., art. I, §16.) Notwithstanding our California Supreme Court’s pronouncements that “[i]t is well established that a plaintiff has no vested property right in a particular measure of damages, and ... the Legislature possesses broad authority to modify the scope and nature of such damages” (*American Bank & Trust Co., supra*, 36 Cal.3d at p. 368) and “the Legislature retains broad control over the *measure*, as well as *the timing*, of damages that a defendant is obligated to pay and a plaintiff is entitled to receive, and ... the Legislature may expand or limit recoverable damages so long as its action is rationally related to a legitimate state interest” (*Fein, supra*, 38 Cal.3d at p. 158), appellant contends that the Legislature does not have this authority -- only a jury does. This argument was made and rejected more than 20 years ago in *Yates v. Pollock* (1987) 194 Cal.App.3d 195. We reject it again here, and for the same reason the *Yates* court rejected it -- *Fein* and *American Bank & Trust Co.* instruct us otherwise, and we are bound to follow the precedents of the California Supreme Court. The decisions of the California Supreme Court “are binding upon and must be followed by all the state courts of California.” (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.) “Courts exercising inferior jurisdiction must accept the law declared by courts of superior jurisdiction.” (*Ibid.*) We also observe that *Fein* and *American Bank & Trust* are not by any means the only California Supreme Court cases holding that the Legislature possesses broad authority to modify the scope and nature of recoverable damages. In *Werner v. Southern California Associated Newspapers* (1950) 35 Cal.2d 121, 128, the court stated: “[W]e cannot say that the

Legislature could not reasonably conclude that the danger of excessive recoveries of general damages in libel actions justified limitation of recovery to special damages when a retraction has not been demanded and refused.” See also *Feckenscher v. Gamble* (1938) 12 Cal.2d 482, 499, where the court noted that “the measure of damages was changed by the [L]egislature by an amendment” and “no one has a vested right in a measure of damages.”

II.

SEPARATION OF POWERS

Article VI, section 1, of the California Constitution states: “The judicial power of this State is vested in the Supreme Court, courts of appeal, and superior courts, all of which are courts of record.” Article III, section 3 of the California Constitution states: “The powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution.” Appellant argues that section 3333.2 violates these provisions of the California Constitution because the Legislature exercised judicial power, not legislative power, when it enacted the \$250,000 noneconomic damages limitation.

This contention is without merit. The flaw in this argument is that the enactment of the noneconomic damages limitation was an exercise of legislative power, not judicial power. (*Fein, supra*, 38 Cal.3d at pp. 157-160; *American Bank & Trust Co. v. Community Hospital, supra*, 36 Cal.3d at pp. 368-370; *Werner v. Southern California Associated Newspapers, supra*, 35 Cal.2d at pp. 126-128; *Feckenscher v. Gamble, supra*, 12 Cal.2d at pp. 499-500.)

III.

EQUAL PROTECTION

The Fourteenth Amendment to the United States Constitution states in pertinent part: “No State shall ... deny to any person within its jurisdiction the equal protection of the laws.” The United States Supreme Court has of course recognized that a legislature

could not legislate at all if it could not draw classifications and treat one class of persons (the class to which the legislation pertains) differently from others.

“Unless a classification trammels fundamental personal rights or is drawn upon inherently suspect distinctions such as race, religion, or alienage, our decisions presume the constitutionality of the statutory discriminations and require only that the classification challenged be rationally related to a legitimate state interest. States are accorded wide latitude in the regulation of their local economies under their police powers, and rational distinctions may be made with substantially less than mathematical exactitude. Legislatures may implement their program step by step, *Katzenbach v. Morgan*, 384 U.S. 641, 86 S.Ct. 1717, 16 L.Ed.2d 828 (1966), in such economic areas, adopting regulations that only partially ameliorate a perceived evil and deferring complete elimination of the evil to future regulations. See, E.g., *Williamson v. Lee Optical Co.*, 348 U.S. 483, 488-489, 75 S.Ct. 461, 464-65, 99 L.Ed. 563 (1955). In short, the judiciary may not sit as a superlegislature to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights nor proceed along suspect lines, see, E.g., *Day-Brite Lighting, Inc. v. Missouri*, 342 U.S. 421, 423, 72 S.Ct. 405, 407, 96 L.Ed. 469 (1952); in the local economic sphere, it is only the invidious discrimination, the wholly arbitrary act, which cannot stand consistently with the Fourteenth Amendmt. See, E.g., *Ferguson v. Skrupa*, 372 U.S. 726, 732, 83 S.Ct. 1028, 1032, 10 L.Ed.2d 93 (1963).” (*City of New Orleans v. Dukes* (1976) 427 U.S. 297, 303-304, fn. omitted.)

Appellant contends that section 3333.2 deprives him of equal protection of the laws because, he says, his \$250,000 in noneconomic damages does not have the same purchasing power that \$250,000 in noneconomic damages had in 1975. *Fein* has already decided, however, that this statute is “rationally related to a legitimate state interest” and “rationally related to the legislative purpose.” (*Fein, supra*, 38 Cal.3d at p. 160 & 162, fn. omitted.) Therefore there is no equal protection violation. (*City of New Orleans v. Dukes, supra*, 427 U.S. at pp. 303-304.) We also note that the statute does not violate equal protection for yet another reason -- it draws no distinction at all between appellant and a 1975 plaintiff. Both are limited in their recovery of noneconomic damages to a maximum of \$250,000. The statute does not address purchasing power. It addresses the

maximum dollar amount of noneconomic damages that a plaintiff may recover in an action against a health care provider based on professional negligence. That amount is the same for every such plaintiff. The fact that appellant might have preferred a different statute, indexed for inflation, does not render unconstitutional the statute the Legislature actually enacted. “We are not equipped to decide desirability; and a court cannot eliminate measures which do not happen to suit its tastes if it seeks to maintain a democratic system. The forum for correction of ill-considered legislation is a responsive legislature.”” (*Werner v. Southern California Newspapers, Inc.*, *supra*, 35 Cal.2d at p. 130, quoting from *Daniel v. Family Security Life Ins. Co.* (1949) 336 U.S. 220, 224.)

Article I, section 7 of the California Constitution states in pertinent part: “A person may not be ... denied equal protection of the laws.” Like its federal counterpart, the state equal protection clause requires that a classification “bear some rational relationship to a conceivable legitimate state purpose.” (*Cooper v. Bray* (1978) 21 Cal.3d 841, 847-848; in accord, *Warden v. State Bar* (1999) 21 Cal.4th 628, 644-645.) *Fein, supra*, held that such a rational relationship exists. (*Fein v. Permanente Medical Center, supra*, 38 Cal.3d at pp. 162-163.) Appellant’s contention that section 3333.2 violates the state equal protection clause is therefore likewise unavailing.

IV.

APPLICABILITY

Finally, appellant makes a perfunctory argument that section 3333.2 “should be held inapplicable in the present context” because, he says, it conflicts with the “strong public policy purposes” of two other statutes, Code of Civil Procedure section 998 and section 3291. The argument is meritless.

Section 3333.2 applies to appellant because a jury determined the amount of his noneconomic damages to be \$2,500,000, but section 3333.2 limits the recovery of noneconomic damages to \$250,000. The statute is clearly applicable whenever a jury

determines that a plaintiff's noneconomic damages exceed \$250,000 in an action against a health care provider based on professional negligence. It was enacted precisely for the purpose for which it was used in this case.

Notwithstanding appellant's arguments about the "public policy purposes" of Code of Civil Procedure section 998 and section 3291, neither of those statutes addresses at all the topic addressed by section 3333.2 -- a limitation on the recovery of noneconomic damages in actions for medical negligence. They address other topics -- a shifting of costs, and the awarding of prejudgment interest, in cases in which a party rejects a reasonable settlement offer and then does not do better at trial than he or she would have done if he or she had accepted the settlement offer. Appellant argues that because these other two statutes were intended to encourage settlement, and section 3333.2 does not encourage settlement (because a health care provider sued by a plaintiff who incurred large noneconomic losses has less incentive to settle when the provider's noneconomic damages liability cannot exceed \$250,000), section 3333.2 should be held inapplicable whenever the defendant refuses a reasonable settlement offer.²

The flaw in appellant's argument is that not every item of legislation enacted by the Legislature must promote the same policies. The noneconomic damages limitation of section 3333.2 was enacted to address "serious problems for the health care system in California" (*Fein, supra*, 38 Cal.3d at p. 158), not to promote settlement of litigation. "[P]olicy determinations as to the need for, and desirability of, the enactment are for the Legislature." (*American Bank & Trust Co. v. Community Hospital, supra*, 36 Cal.3d at p. 369.)

² Appellant offered pursuant to Code of Civil Procedure section 998 to settle this case prior to trial for \$149,999.

DISPOSITION

The judgment is affirmed. Costs to respondent.

Ardaiz, P.J.

WE CONCUR:

Levy, J.

Gomes, J.