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Wilson Petty attorney wins important case for employers

By DOUG SHERWIN

The San Diego law firm **Wilson Petty Kosmo & Turner** helped score a win for employers recently when it successfully argued before the state Supreme Court that supervisors cannot be sued individually for retaliation claims under California law.

The dispute at issue in *Jones v. The Lodge at Torrey Pines Partnership et al.* focused on provisions in the Fair Employment and Housing Act (FEHA) and whether individuals could be liable for allegedly retaliating against fellow employees.

The legislation was written to prevent unlawful employment practices and to combat discrimination by holding employers responsible for discrimination, harassment and retaliation claims.

In a ruling last week, the justices agreed with Wilson Petty partner Regina Petty that the statute makes no mention of individual liability.

"It's not how the legislation was written, and it's not a good rule to impose upon the work place because it can make supervisors afraid to do their job," Petty said. "From a day-to-day, management standpoint, hopefully it alleviates the problem of a manager hesitating to effectively manage and supervise employees because he or she is afraid if they discipline this person, they will be sued."

Throughout the years, plaintiffs have brought cases against individual supervisors and co-workers, suing them for discrimination, harassment or retaliation.

Previously, the state's high court rejected the imposition of individual liability for discrimination and harassment claims under FEHA but hadn't addressed the issue of retaliation.

The court's most recent decision brings the issue of retaliation in line with the other two claims.

"(The state Supreme Court) didn't think it was good public policy to impose the risk of financial ruin on everyone who accepts a supervisor position," Petty said. "That law worked just fine having only the employer liable.

"I strongly believe that was the right outcome, so I was passionate about seeing the issue through to get the right outcome. I'm very excited that we were successful."

The state's high court also disapproved several prior appellate court opinions authorizing individual liability for FEHA retaliation.

Whether the California legislature will attempt to amend FEHA's retaliation provision to authorize individual liability remains to be seen. Prior California Supreme Court action suggests any amendment will operate prospectively only, Petty said. She added, though, that any amendment is unlikely.

Lawmakers amended the harassment provision to include individual liability, and the justices said it only applies to future cases.

For Petty, who admits she isn't an "appellate specialist," successfully arguing the case, which essentially was on appeal, proved to be gratifying.

"It is very satisfying to have had the opportunity to have a case before the Supreme Court because it is becoming rarer and rarer for civil attorneys (to get a case heard by the justices)," she said. "And to win in front of the Supreme Court, it really is a highlight of my career."