

S290188

IN THE SUPREME COURT OF CALIFORNIA

GLENN MANIAGO, *et al.*,
Plaintiffs and Appellants,

v.

**DESERT CARDIOLOGY CONSULTANTS'
MEDICAL GROUP, INC., *et al.*,**
Defendants and Respondents.

AFTER A DECISION BY THE COURT OF APPEAL, FOURTH DIST., DIV. ONE • NO. D085025
RIVERSIDE COUNTY SUPERIOR COURT • HAROLD HOPP, JUDGE
CASE No. CVRI 2303683

**APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF
SUPPORTING RESPONDENTS; AMICUS CURIAE BRIEF OF
CALIFORNIA ACADEMY OF APPELLATE LAWYERS**

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APPLICATION FOR LEAVE TO FILE AMICUS BRIEF

Under California Rules of Court, rule 8.520(f), the California Academy of Appellate Lawyers respectfully requests permission to file the attached amicus curiae brief in support of defendants and respondents Desert Cardiology Consultants’ Medical Group, Inc. et al.

This Court granted review of the first question framed in the Petition, as follows: “Is a voluntary dismissal with prejudice an appealable order if it was entered after an adverse ruling by the trial court in order to expedite an appeal of the ruling?”

That framing, however, is imprecise and overly broad; it encompasses a variety of circumstances not presented, on which answers could differ. (See generally *Maniago v. Desert Cardiology Consultants’ Medical Group, Inc.* (2025) 109 Cal.App.5th 621, 630 (*Maniago*) [“We do agree that a voluntary dismissal following an adverse ruling can result in an appealable judgment in some circumstances. ...”].)

Instead, the opinion under review:

- **Presents** a more specific question: Is a voluntary dismissal *of an entire action* with prejudice an appealable judgment (or order) if it was entered *by the clerk* after an adverse ruling by the trial court *on fewer than all claims between appellants and respondents*, in order to expedite an appeal of that ruling? (*Maniago*, 109 Cal.App.5th at pp. 625–627.)
- **Identifies a conflict** in the caselaw on the related, controlling question of whether a voluntary dismissal

of an entire action with prejudice is an appealable judgment (or order) if it was entered *by the clerk* after an adverse ruling by the trial court *on all claims between appellants and respondents*, in order to expedite an appeal of that ruling? (See *id.* at pp. 628–632.)

If the answer to the second question is no, then the answer to the first must also be no: If a clerk-entered dismissal is not appealable following judicial disposition of *all* claims, leaving nothing left to do but enter judgment, then it certainly cannot be appealable where one or more causes of action remain for judicial disposition. The opinion under review so held, albeit without drawing this comparison so explicitly. (*Id.* at pp. 630–631.)

The Academy believes the proper answer to both questions is no, and offers the attached amicus brief explaining that view.

The Academy is a non-profit elective organization of experienced appellate practitioners. Its goals include promoting appellate procedures that ensure proper and effective appellate representation; encouraging the efficient administration of justice on appeal; and supporting improvements in the law affecting appeals. The Academy respectfully requests permission to file the accompanying brief in support of all these goals. The Academy has participated as amicus curiae in many cases before this Court, including *Family Violence Appellate Project v. Superior Court*, S288176; *Guardianship of Saul H.* (2022) 13 Cal.5th 827; *Jameson v. Desta* (2018) 5 Cal.5th 594; *F.P. v. Monier* (2017) 3 Cal.5th 1099; *Ryan v. Rosenfeld* (2017) 3 Cal.5th 124; *Conservatorship of McQueen* (2014) 59 Cal.4th 602; *Kurwa v.*

Kislinger (2013) 57 Cal.4th 1097; and *Silverbrand v. County of Los Angeles* (2009) 46 Cal.4th 106.

No party or attorney for a party participated in drafting this brief or in the Academy's decision to file it. No person or entity, including any party or party's counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

November 13, 2025

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AMICUS CURIAE BRIEF

The trial court here “never entered a judgment of dismissal.” (*Maniago, supra*, 109 Cal.App.5th at p. 630.) Instead, plaintiffs purported to appeal from a clerk-entered voluntary dismissal of their entire case. (*Id.* at pp. 626–627.)

I. The opinion under review identified a particular caselaw conflict on whether a clerk-entered voluntary dismissal is appealable.

The issue in the Court of Appeal was not whether all voluntary dismissals with prejudice following adverse trial court rulings are appealable, regardless of the circumstances. Instead, the court considered whether plaintiffs’ voluntary dismissal of their whole case with prejudice, *entered by the clerk* after an adverse trial court ruling *on fewer than all of their claims*, in order to expedite an appeal of that ruling, was appealable. (See *Maniago, supra*, 109 Cal.App.5th at pp. 626–632 & fns. 1–2.)

To dispose of that question, the Court of Appeal looked to precedents assessing the appealability of a clerk-entered voluntary dismissal in cases where the trial court ruling actually disposed of *all* claims—and still found jurisdiction lacking.

► The opinion here relied on the holding in *Yancey v. Fink* (1991) 226 Cal.App.3d 1334, 1342–1343 (*Yancey*), that a *clerk’s* entry of a voluntary dismissal with prejudice is a nonappealable ministerial act—even when it follows an order sustaining demurrer to an *entire* complaint *with* prejudice (a more final judicial disposition than here). In *Yancey*, as in this case, there was “no judgment of dismissal; indeed, the minute order [on the

demurrer] does not even mention the possibility of a dismissal.” (*Id.* at p. 1342.)

► The opinion here rejected the irreconcilable holding in *Ashland Chemical Co. v. Provence* (1982) 129 Cal.App.3d 790 (*Ashland Chemical*). (See *Maniago, supra*, 109 Cal.App.5th at pp. 631–632.) In the same procedural circumstance as *Yancey*, the *Ashland Chemical* court treated a clerk-entered voluntary dismissal *as if* it were a “judgment of dismissal,” on the theory that the plaintiff’s request for dismissal was “tantamount to a request to enter judgment on [the defendant]’s demurrer.” (*Ashland Chemical*, 129 Cal.App.3d at pp. 792–793 [allowing appeal to proceed].)

► The opinion here cast doubt upon *Austin v. Valverde* (2012) 211 Cal.App.4th 546 (*Austin*), which permitted an appeal from a clerk-entered voluntary dismissal with prejudice to expedite appeal from an adverse ruling on another interim order. (See *id.* at pp. 550–552; *Maniago*, 109 Cal.App.5th at pp. 629–631 & fn. 2.)

II. This Court should affirm that no appeal lies from a clerk-entered voluntary dismissal with prejudice, following an adverse trial court ruling—regardless of whether that ruling disposed of all claims.

The Court of Appeal analyzed this issue correctly. Appeals must be taken from statutorily appealable orders or final judgments, and not from clerk-entered dismissals. We endorse, and do not repeat, the Court of Appeal’s rationale in the pages cited above. We add the following in further support.

A. Plaintiffs’ motive to expedite appeal is not relevant.

In many cases, just like here, would-be appellants request dismissals in superior court “solely to expedite an appeal of the trial court’s adverse rulings.” (*Maniago*, 109 Cal.App.5th at pp. 629–630 [citing cases relied on by plaintiffs]; *Austin*, 211 Cal.App.4th at pp. 550–551 [collecting cases]; *Ashland Chemical*, 129 Cal.App.3d at pp. 792–793.)

That motive may partly explain parties’ actions, but it does not affect the question of whether appellate jurisdiction exists—two points improperly blended by the courts in *Austin* and *Ashland Chemical*. An express intention to expedite appeal can forestall certain *non-jurisdictional* bars to appeal. (*Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 399–403 [neither the normal rule that a party may not appeal a consent judgment, nor the doctrine of invited error, barred appeal where plaintiffs made clear they were stipulating to judgment solely to hasten appeal and never misled trial court].) But appellate jurisdiction “is determined by statute,” and appellate courts cannot act in its absence. (*Meinhardt v. City of Sunnyvale* (2024) 16 Cal.5th 643, 651–652 (*Meinhardt*), citing *Griset v. Fair Political Practices Com.* (2001) 25 Cal.4th 688.) A party’s motive cannot create appellate jurisdiction.¹

¹ If a clerk-dismissal requested solely to expedite appeal *were* all a party needed to pursue appeal from interim adverse rulings, then as the Court of Appeal observed, nothing would remain of the one final judgment rule. (*Maniago*, 109 Cal.App.5th at p. 630.) Piecemeal appeals would be an accepted norm, rather than a forbidden hazard.

B. The problems addressed in *Meinhardt* are not implicated here; *Kurwa I* is the closer case.

Contrary to plaintiffs’ arguments, *Meinhardt* cannot be read to support their position. The Court of Appeal there deemed a timely appeal *from a final judgment entered by the trial court* to be too late—and thus forever barred—because an earlier “order” served on the appellant had fully disposed of all claims. (*Id.* at pp. 650–651.) Reversing, this Court stated two core principles that drove its decision:

“The time of appealability, having jurisdictional consequences, should above all be clear.” (*Budinich v. Becton Dickinson and Co.* (1988) 486 U.S. 196, 202,)

“[B]right lines are essential in this area, to avoid both inadvertent forfeiture of the right to appeal and excessive protective appeals by parties afraid they might suffer such a forfeiture.” (*In re Baycol Cases I & II* (2011) 51 Cal.4th 751, 761,)

(*Meinhardt*, 16 Cal.5th at pp. 649–650, line break added.)

None of those concerns are present here. Plaintiffs did not appeal too late, nor was there ever any threat of confusion about jurisdictional time limits, nor did plaintiffs fear they might forfeit an appeal if they delayed its filing. To the contrary, the question here is whether plaintiffs—in their quest to “expedit[e] an appeal” (*Maniago, supra*, 109 Cal.App.5th at p. 626)—acted *too soon* and *in the wrong manner*. To put it more precisely, the question is whether the law permitted them to create an appeal right, after the demurrer rulings but before judicial resolution of all their claims against respondents, by asking the clerk to

dismiss their entire case with prejudice. For these reasons, in addition to those in footnote 3 of the Court of Appeal’s opinion, *Meinhardt* is inapposite.

The situation here is more akin to *Kurwa v. Kislinger* (2013) 57 Cal.4th 1097 (*Kurwa I*), where this Court confronted, and rejected, another strategy for expediting an appeal. The parties there agreed, after the trial court dismissed some of the plaintiff’s claims with prejudice, to dismiss their remaining claims against each other without prejudice and to waive any statutes of limitation. (*Id.* at p. 1100.) This Court held that the judgment was not final and appealable because the parties had attempted to preserve their remaining claims for future litigation. (*Ibid.*)

While plaintiffs’ approach here differed from that of the *Kurwa I* parties, both suffered from the same legal infirmity requiring rejection. Both sought to create an appealable judgment or order before *judicial resolution of all claims* between the parties. Indeed, the approach employed here lay even *further* from that crucial end-point. The *Kurwa I* parties at least directed their request to the trial court judge, who agreed to enter a “judgment.” (*Id.* at pp. 1101, 1106–1107.) In this case, “[t]he trial court never entered a judgment of dismissal” (*Maniago, supra*, 109 Cal.App.5th 621, 630) or *any* kind of judgment, and plaintiffs never asked the judge to dispose of their undecided claims.²

² The Court of Appeal correctly noted that the procedural facts here bore at least some resemblance to the more elaborate strategy in *Kurwa I*: Having requested and obtained a clerk-

Thus the principles animating *Kurwa I* suit this case better than those driving *Meinhardt*. As declared in *Kurwa I*,

California law provides no case-by-case efficiency exception to the one final judgment rule for appealability. ... The question is thus not what rule will best serve litigants and trial courts, but what rule is most consistent with the policy against piecemeal appeals codified in section 904.1 and vindicated in *Morehart [v. County of Santa Barbara]* (1994) 7 Cal.4th 725].

(*Kurwa I*, 57 Cal.4th at p. 1107.) The rule most consistent with the policy against piecemeal appeals is the rule adopted by the Court of Appeal opinion here.

Moreover, that rule would not have imposed any serious inefficiency here (and certainly not a full trial on plaintiffs’ remaining claims)—just more careful compliance with the Code of Civil Procedure and this Court’s precedents. We turn now to the importance of educating the bar on how to secure an appealable judgment in similar circumstances.

dismissal “with prejudice” of their whole case, plaintiffs here nevertheless sought “a complete reversal of the dismissal to revive all the same claims they purportedly dismissed.” (*Maniago, supra*, 109 Cal.App.5th at p. 633.) This echoed the *Kurwa I* parties’ attempt to keep claims on ice for revival at the appeal’s conclusion, and the result should be the same: “no finality for appealability purposes.” (*Ibid.*, citing *Kurwa I, supra*, 57 Cal.4th at p. 1106.)

III. This Court’s opinion should clarify the path to appeal as-of-right for litigants and counsel who face a damaged case, with residual claims.

Even after *Kurwa I*, litigants and counsel need this Court’s guidance on how to properly obtain an appealable judgment where too little remains of a case to justify continued litigation. Beyond holding that the clerk-entered voluntary dismissal path taken here did not suffice to confer appellate jurisdiction, this Court’s opinion should map some proper paths. We map the paths appropriate to the procedural facts here, but analogs apply for all situations. Two proper paths existed, with the choice depending on whether plaintiffs wished to preserve their right to pursue their unadjudicated claims.³

► If plaintiffs did wish to challenge the sustaining of a demurrer as to some claims while also preserving their unadjudicated claims, then the only immediate avenue was a writ petition. (*Kurwa I, supra*, 57 Cal.4th at p. 1107 [“Where unusual circumstances justify it, review of interlocutory judgments may be obtained by petition for writ of mandate, but not by appeal.”]; see *Maniago, supra*, 109 Cal.App.5th at p. 629 [“a writ of mandate may be granted when the trial court has deprived a party of an opportunity to plead his cause of action or defense and extraordinary relief may prevent a needless and expensive trial and reversal”].) To secure an order actually dismissing the demurred-to claims, plaintiffs need only have filed

³ The unadjudicated claims were Glenn Maniago’s negligence claim and his wife Geneanne’s loss of consortium claim. (*Maniago, supra*, 109 Cal.App.5th at pp. 625–626 & fn. 1.)

a short motion under Code of Civil Procedure section 581, subdivision (f), stating their inability to materially amend the allegations as to those claims to conform to the adverse ruling. “The court may dismiss the complaint as to that defendant when: [¶] (2) ... after a demurrer to the complaint is sustained with leave to amend, the plaintiff fails [or chooses not] to amend it within the time allowed by the court and either party moves for dismissal.” (Code Civ. Proc., §581, subd. (f)(2).) Plaintiffs could then seek writ relief regarding the now-final judicial disposition of those claims.

► However, if plaintiffs were willing to abandon their unadjudicated claims, then they could have immediately secured an appealable judgment by (1) voluntarily dismissing those unadjudicated claims with or without prejudice, and then (2) having the court enter a final judgment of dismissal on the claims as to which the demurrer was sustained. (See *Maniago, supra*, 109 Cal.App.5th at p. 630). The opinion below did not spell out the procedure for doing so. The proper tool was Code of Civil Procedure section 581d: “All dismissals *ordered by the court* shall be in the form of a written order *signed by the court* and filed in the action and those orders when so filed *shall constitute judgments* and be effective for all purposes” (emphasis added).

Plaintiffs could have secured such *court* orders under Code of Civil Procedure section 581:

- 1) For the unadjudicated causes of action, subdivision (b)(1) permitted plaintiffs to effectively abandon them (and forgo appellate review) by dismissing them with or

without prejudice through an “oral or written request to the court at any time before the actual commencement of trial, upon payment of the costs, if any.” (See also Code Civ. Proc., § 581, subd. (c).) *Kurwa I* confirms the right of a plaintiff or cross-complainant “to voluntarily dismiss a cause of action without prejudice prior to trial” under these subdivisions, because “such a dismissal, unaccompanied by any agreement for future litigation, does create sufficient finality as to that cause of action so as to allow appeal from a judgment disposing of the other counts.” (57 Cal.4th at p. 1105.)

- 2) Then, to secure an appealable order dismissing the causes of action as to which demurrer was sustained, plaintiffs could stand on their pleadings and allow dismissal pursuant to subdivision (f) as set forth above.

These procedural paths are narrow—expectedly and appropriately so. Appellate relief from the disposition of a mere subset of claims is, and should remain, the exception and not the rule.

CONCLUSION

For the foregoing reasons, and those stated in the Court of Appeal opinion, this Court should hold that no appeal lies from a voluntary dismissal of the entire case with prejudice, entered by the clerk after an adverse trial court ruling, regardless of whether that ruling disposed of some or all claims. The bright-line rule should be that appellate courts cannot derive

jurisdiction by treating such a clerk-entered dismissal as if it were a final judgment.

The Academy also respectfully urges the Court to continue guiding the bar on how to secure an appealable judgment when facing the common problem that plaintiffs here faced: a trial court's elimination of most (but not all) of a case.

November 13, 2025

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CERTIFICATE OF WORD COUNT
(Cal. Rules of Court, rule 8.204(c).)

The text of this brief consists of 2,298 words, as counted by the program used to generate the brief.

Dated: November 13, 2025

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PROOF OF SERVICE

I am employed in the County of Los Angeles, California. I am over the age of 18 years and not a party to the within action. My business address is 6420 Wilshire Boulevard, Suite 1100, Los Angeles, California 90048; electronic email service address: vworrell@gmsr.com.

On November 13, 2025, I served the foregoing document(s) described as: **APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF SUPPORTING RESPONDENTS; AMICUS CURIAE BRIEF OF CALIFORNIA ACADEMY OF APPELLATE LAWYERS** on the interested parties in this action, addressed as follows:

**** SEE ATTACHED SERVICE LIST ****

(X) I electronically filed the document(s) with the Clerk of the Court by using the TrueFiling system. Participants in the case who are registered TrueFiling users will be served by the TrueFiling system. Participants in the case who are not registered TrueFiling users will be served by mail or by other means permitted by the court rules.

Executed this 13th day of November, 2025 at Los Angeles, California.

(X) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

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