

**CERTIFIED FOR PUBLICATION**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

KATHERINE LEE BATES, as Special  
Administrator, etc.,

Plaintiff and Appellant,

v.

PRESBYTERIAN  
INTERCOMMUNITY HOSPITAL,  
INC.,

Defendant and Respondent.

B232731

(Los Angeles County  
Super. Ct. No. VC 049976)

ORDER MODIFYING OPINION  
AND DENYING PETITION FOR  
REHEARING [NO CHANGE IN  
JUDGMENT]

THE COURT:\*

It is ordered that the opinion filed herein on March 12, 2012, be modified as follows:

The following footnote will be added on page 11, line 9, after “provisions.”: Appellant’s suggestion that the legislative history of the Elder Protection Act -- specifically Welfare and Institutions Code section 15600, subdivisions (h) and (j) -- compels a different result is unavailing. First, as noted above, our Supreme Court has held that where a statute does not

expressly disallow costs to a prevailing defendant, costs awardable under Code of Civil Procedure sections 1032 and 998 cannot be precluded by implication. (*Murillo v. Fleetwood Enterprises, Inc.*, *supra*, 17 Cal.4th at pp. 989-999.) The Elder Protection Act contains no such provision, and no expression of legislative intent can override a construction of statutory language articulated by our highest court. Second, in deciding *Murillo*, the court expressly recognized the legislative intent invoked by appellant here -- to encourage suits that would not otherwise be brought -- by providing for an award of attorney fees to prevailing plaintiffs. (*Id.* at p. 994.) It found, however, that such intent would not be thwarted by allowing a prevailing defendant to recover costs, and that the one-way pro-consumer attorney-fee-shifting mechanism was “sufficient to support the Legislature’s pro-consumer purpose.” (*Id.* at p. 996.) Any argument that “the playing field should be tilted even more” in favor of consumer-plaintiffs, the court noted, “is more properly addressed to the Legislature.” (*Id.* at p. 994.) The same reasoning applies here.

The petition for rehearing is denied. The modification does not change the judgment.

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\*EPSTEIN, P. J.

MANELLA, J.

WILLHITE, J.