NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

JENNIFER SLAMER et al., Plaintiffs and Appellants, v. SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP, Defendant and Respondent.	D086908 (Super. Ct. No. CIVDS1709131)

APPEAL from an order of the Superior Court of San Bernardino County, Thomas S. Garza, Judge. Reversed with directions.

McCune Law Group, Richard D. McCune, Steven A. Haskins, Michele M. Vercoski, Cori R. Weck, and Andrew W. Van Ligten for Plaintiffs and Appellants.

Wilson Turner Kosmo, Fredrick W. Kosmo, Jr., Katherine M. McCray, Olivia J. Miner; Jennifer Arnold Law and Jennifer Chapman Arnold for Defendant and Respondent.

Jennifer Slamer and Christopher Slamer appeal the order granting the motion of Southern California Permanente Medical Group (SCPMG) for reimbursement of workers' compensation benefits it had paid Jennifer. SCPMG sought to recoup those benefits from proceeds of a settlement the Slamers had reached with Ecolab, Inc. (Ecolab) in the underlying action. We conclude that after the Slamers dismissed the action with prejudice, the trial court lacked jurisdiction to grant the motion. We therefore reverse the order.

BACKGROUND

While working for SCPMG in February 2016, Jennifer Slamer suffered disabling injuries to her respiratory system from exposure to a disinfectant manufactured by Ecolab. SCPMG settled her claim for workers' compensation benefits in an administrative proceeding.

In May 2017, the Slamers sued Ecolab, SCPMG, and entities related to SCPMG for damages and other relief for injuries related to Jennifer's workplace exposure to the disinfectant. After several demurrers and motions for summary judgment, SCPMG and its related entities were dismissed from the action with prejudice.

The Slamers proceeded to trial against Ecolab. Before submission of the case to the jury, the Slamers and Ecolab entered into a confidential settlement agreement on April 19, 2023. The Slamers voluntarily dismissed the entire action with prejudice on June 1, 2023.

During the pendency of the action, SCPMG paid Jennifer workers' compensation benefits and filed several notices of lien for the increasing amount of those benefits on any judgment or settlement in favor of the Slamers. (Lab. Code, § 3856, subd. (b).) After the Slamers refused SCPMG's post-settlement requests for reimbursement of the benefits and a mediator was unable to resolve the dispute, SCPMG filed a motion for reimbursement

on February 16, 2024. The Slamers opposed the motion and argued, among other points, that the amount of the lien had to be reduced by SCPMG's share of liability for their injuries under principles of comparative fault and by an equitable share of costs and attorney fees they incurred in procuring the settlement. The Slamers refused to disclose the amount of the settlement or the amount of their attorney fees but stipulated the settlement amount exceeded the sum of SCPMG's lien and their attorney fees and costs.
On April 18, 2025, the trial court granted SCPMG's motion and ordered the Slamers to reimburse the full amount of the lien plus interest.

DISCUSSION

The Slamers challenge the trial court's order on multiple grounds. They contend the court could not order any reimbursement of workers' compensation benefits because SCPMG did not move for reimbursement until after the settlement proceeds had been disbursed and because SCPMG's comparative fault was never adjudicated. The Slamers also contend the amount of reimbursement the trial court ordered was excessive because the court erroneously refused to allocate to SCPMG a share of the attorney fees and costs they incurred in obtaining the settlement and erroneously awarded interest accrued before the date of the order. The Slamers ask us to reverse the order.

While we were considering the appeal, a question arose about the trial court's jurisdiction to grant SCPMG's reimbursement motion after the entire action had been voluntarily dismissed with prejudice. We obtained supplemental briefs from the parties on the jurisdictional issue.[1] As we shall explain, the court lacked jurisdiction, and its order must be reversed.

We begin by setting out some general principles governing compensation of employees for work-related injuries. An employee injured in the course and scope of employment generally may not sue the employer and is limited to recovery of workers' compensation benefits from the employer without regard to negligence. (Lab. Code, §§ 3600, subd. (a), 3602, subd. (a); *Torres v. Parkhouse Tire Service, Inc.* (2001) 26 Cal.4th 995, 1001.) The employee may sue a third party whose tort contributed to the injury for all resulting damages. (Lab. Code, § 3852, subd. (a); *Witt v. Jackson* (1961) 57 Cal.2d 57, 69.) To prevent double recovery by the employee, the employer may assert the amount of workers' compensation benefits it has paid as a lien on any judgment or settlement the employee obtains in an action against the third-party tortfeasor. (Lab. Code, § 3856, subd. (b); *Duncan v. Wal-Mart Stores, Inc.* (2017) 18 Cal.App.5th 460, 469.) The employer's reimbursement

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1 SCPMG also filed: (1) a motion to augment the record with reporter's transcripts of two hearings held in this action, a copy of an order to transfer and coordinate actions that was filed in this action, a reporter's transcript of a hearing held in the coordinated actions, and copies of case status documents filed in the coordinated actions; (2) a motion for judicial notice of prior versions of Code of Civil Procedure section 664.6 and of bills and legislative committee reports related to prior and current versions. The Slamers filed opposition to both motions. We grant the motion to augment the record as to Exhibits A, B, and F, which constitute documents filed in this action or transcripts of hearings held in this action, and deny it as to the other exhibits, which do not. (Cal. Rules of Court, rule 8.155(a); *Garcia v. Martin* (1961) 192 Cal.App.2d 786, 788–789.) We deny the motion for judicial notice "because the proffered documents are not 'necessary, helpful, or relevant' to the resolution of the appeal." (*Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 819.)

for workers' compensation benefits must be reduced proportionally when the employer's and third party's negligence both contributed to the employee's injury. (*State Comp. Ins. Fund v. Workers' Comp. Appeals Bd.* (1997) 53 Cal.App.4th 579, 582, fn. 4 (*State Comp. Ins. Fund*).) The reimbursement also must be reduced by a proportional share of costs and attorney fees when the employee obtains the judgment or settlement "solely through the efforts of the employee's attorney." (Lab. Code, § 3860, subd. (c); see *Manriquez v. Adams* (2003) 108 Cal.App.4th 340, 345–346 (*Manriquez*).) To be reimbursed from the proceeds of the judgment or settlement in the employee's action against the third-party tortfeasor, the employer must apply to the court for an order for payment of the lien amount before satisfaction of judgment or dismissal of the action. (Lab. Code, § 3857; *O'Dell v. Freightliner Corp.* (1992) 10 Cal.App.4th 645, 659; *Abdala v. Aziz* (1992) 3 Cal.App.4th 369, 379–380 (*Abdala*); *Harvey v. Boysen* (1975) 50 Cal.App.3d 756, 762.)

SCPMG did not apply for an order to enforce its lien rights in time to recoup the workers' compensation benefits it had paid Jennifer Slamer from the proceeds of the Slamers' settlement with Ecolab. By the time SCPMG filed its motion for reimbursement (Feb. 16, 2024), the Slamers had already reached the settlement (Apr. 19, 2023) and voluntarily dismissed the entire action with prejudice (June 1, 2023). The Slamers had a right to dismiss the action with prejudice before the case had been submitted to the jury. (*Bank of America, N.A. v. Mitchell* (2012) 204 Cal.App.4th 1199, 1209.) The filing of the dismissal terminated the action (*Hagan Engineering, Inc. v. Mills* (2003) 115 Cal.App.4th 1004, 1007) and deprived the trial court of subject matter and personal jurisdiction (*Harris v. Billings* (1993) 16 Cal.App.4th 1396, 1405). After entry of dismissal, "a 'trial court is without jurisdiction to act further in the action [citations] except for the limited purpose of awarding costs and statutory attorney's fees.' " (*Ibid.*)[2] An order issued after a court loses jurisdiction is void. (*Gogri v. Jack in the Box Inc.* (2008) 166 Cal.App.4th 255, 268.) We therefore conclude the court's order directing the Slamers to reimburse SCPMG the full amount of its lien plus interest is void.

SCPMG resists our conclusion on several grounds. None is persuasive.

First, SCPMG contends the Slamers forfeited the argument that the motion for reimbursement was filed too late by failing to argue in opposition to the motion that the settlement had already been executed and payments disbursed. (See *Abdala, supra*, 3 Cal.App.4th at p. 380 [when settlement between employee and third-party tortfeasor is complete, nothing remains to which employer's lien can attach].) SCPMG urges us not to consider the argument because the record is uncertain and underdeveloped on whether the portion of the settlement proceeds intended as reimbursement for workers' compensation benefits has actually been disbursed. To suggest there may be a factual dispute about disbursement, SCPMG cites the following statement from the minutes of a May 19, 2023 hearing at which its lien was discussed: "Ecolab represents all *other* checks have been disbursed and paperwork completed." (Italics added.) Any factual dispute about disbursement of the settlement proceeds is irrelevant to the jurisdictional issue in this case. There is no dispute the entire action was voluntarily dismissed with prejudice before SCPMG filed its motion for reimbursement.

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2 Appellate courts have recognized other exceptions to the termination of jurisdiction after dismissal that allow a trial court to impose sanctions (*West Coast Development v. Reed* (1992) 2 Cal.App.4th 693, 706), to declare a litigant vexatious (*Pittman v. Beck Park Apartments Ltd.* (2018) 20 Cal.App.5th 1009, 1021–1025), or to vacate the dismissal (*Gilman v. Dalby* (2021) 61 Cal.App.5th 923, 935 (*Gilman*)). None of those exceptions applies here.

As we explained above, the dismissal terminated the trial court's jurisdiction. The Slamers' argument that the court could not order reimbursement after completion of the settlement, which included the dismissal, is a challenge to the subject matter jurisdiction of the trial court and may be raised for the first time on appeal. (*Saffer v. JP Morgan Chase Bank, N.A.* (2014) 225 Cal.App.4th 1239, 1246; *Keiffer v. Bechtel Corp.* (1998) 65 Cal.App.4th 893, 896.) There was no forfeiture.

Second, SCPMG cites several documents purportedly showing that the Slamers acknowledged that it "was actively working to enforce its lien" and contends they "assented to the trial court's retention of jurisdiction over this dispute and [SCPMG's] nonwaiver of rights to pursue lien reimbursement in keeping with Code of Civil Procedure section 664.6, subdivision (f)(1)." Any such assent was ineffectual for that purpose. "[T]he court lost subject matter jurisdiction when the [Slamers] filed a voluntary dismissal of the entire cause. Since subject matter jurisdiction cannot be conferred by consent, waiver, or estoppel, the court cannot 'retain' jurisdiction it has lost." (*Viejo Bancorp, Inc. v. Wood* (1989) 217 Cal.App.3d 200, 207; see *Garibotti v. Hinkle* (2015) 243 Cal.App.4th 470, 481 ["the parties to an action may neither confer nor extend subject matter jurisdiction by estoppel, consent, waiver, or agreement"].) Moreover, the statutory provision SCPMG cites does not apply to this case. The provision, which authorizes a party to file "a motion for the . . . determination of a lien" if the court "enters [a] judgment or dismisses the case without prejudice" pursuant to a settlement and retains jurisdiction to enforce the settlement (Code Civ. Proc., § 664.6, subd. (f)(1)), did not become operative until January 1, 2025 (*id.*, subd. (i)). That was 19 months after the Slamers had settled with Ecolab and voluntarily dismissed the entire action with prejudice on June 1, 2023. The statutory provision does not apply retroactively to those events. (Code Civ. Proc., § 3; *Barry v. Barry* (1954) 124 Cal.App.2d 107, 112.) Even if it were it retroactive, it still would not apply because the dismissal was with prejudice, not "without prejudice pursuant to this section" as required by section 664.6, subdivision (f)(1).

Third, SCPMG contends "the trial court expressly retained jurisdiction over the lien reimbursement dispute under Code of Civil Procedure section 664.6 to enforce the settlement." At the time of the settlement and dismissal in this case, the statute provided in relevant part:

> "If parties to pending litigation stipulate, in a writing signed by the parties outside of the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. *If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.*" (*Id.*, former § 664.6, subd. (a), as amended by Stats. 2020, ch. 290, § 1, italics added.)

A request to retain jurisdiction must be made (1) "during the pendency of the case, not after it has been dismissed in its entirety," and (2) "either in a writing signed by the parties or orally before the court." (*Wackeen v. Malis* (2002) 97 Cal.App.4th 429, 440 (*Wackeen*); accord, *Sayta v. Chu* (2017) 17 Cal.App.5th 960, 966 (*Sayta*).)[3] "While a written or oral request for

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[3] The 2020 amendment eliminated the prior requirement that the request be made by the parties themselves and allowed it to be made by the parties' attorneys except in specified types of cases. (Code Civ. Proc., former § 664.6, subds. (b), (c), as amended by Stats. 2020, ch. 290, § 1; see *Wackeen, supra*, 97 Cal.App.4th at p. 440 [prior version of statute required request be made "by the parties themselves, not by their attorneys"]; *Greisman v. FCA US, LLC* (2024) 103 Cal.App.5th 1310, 1326 [amended version "does not require that the parties themselves orally stipulate, and instead allows counsel for the parties to orally stipulate on their behalf"].)

retention of jurisdiction may, but need not be, a part of the settlement agreement itself, that request must be express, not implied from other language, and it must be clear and unambiguous." (*Wackeen*, at p. 440.) No request for retention of jurisdiction satisfying these requirements appears in the record.

Neither the settlement agreement (which is confidential) nor the request for dismissal of the entire action with prejudice is in the record. We do not know whether the settlement agreement contained a provision for satisfaction of SCPMG's lien or whether either document contained a request for retention of jurisdiction to allow further litigation over the lien. The parties have cited no predismissal written or oral request for the trial court to retain jurisdiction to enforce the settlement. SCPMG cites colloquies the trial court had with the Slamers' counsel and Ecolab's counsel about the settlement on April 18 and 19, 2023, and an entry in the minutes of a May 19, 2023 hearing. None of the cited materials contains the type of request by parties that is needed for a court to retain jurisdiction to enforce a settlement.

On April 18, 2023, Ecolab's counsel and the Slamers' counsel advised the trial court they were working on a written settlement agreement and suggested the court retain jurisdiction and not discharge the jury until the settlement was final and the case could be dismissed. The court asked counsel to return early the next day to report on the status of the settlement and said it "could . . . and w[ould] retain jurisdiction in accordance with Code of Civil Procedure section 664.6 to effectuate any proposed settlement with respect to the case before having it dismissed." At that time, however, there was no "stipulat[ion], in a writing signed by the parties . . . or orally before the court, for settlement of the case" that the court could retain jurisdiction to enforce. (Code Civ. Proc., former § 664.6, subd. (a), as amended by Stats. 2020, ch. 290, § 1.)

Counsel for the Slamers and for Ecolab returned to court on April 19, 2023, and told the court the parties had entered into a confidential settlement agreement. The court asked whether any further hearings were needed or whether "a dismissal will do it and have the [c]ourt retain jurisdiction in accordance with Code of Civil Procedure section 664.6 to effectuate any settlement the parties have entered into." The Slamers' counsel responded that the settlement required Ecolab to make payment within 15 days and the Slamers "to immediately enter a dismissal," and asked the court to set a hearing in 30 days on an order to show cause why the case should not be dismissed. Ecolab's counsel stated, "I think that would be appropriate, your Honor. Thirty days from now calendar it and wrap this up." The court stated it would "deem the matter essentially dismissed" and set the requested hearing for May 19, 2023. The minutes from the May 19, 2023 hearing, at which SCPMG's counsel also appeared and requested a continuance, state that the court set a further hearing on the "Status of Worker's Comp Lien/Potential Dismissal pursuant to CCP 664.6." Neither the April 19 colloquy (during which counsel did not mention section 664.6 or ask the court to retain jurisdiction to enforce the settlement and the court did not state it was doing so) nor the vague entry in the May 19 minutes satisfies the requirements that a request for a court to retain jurisdiction to enforce a settlement "be express, not implied from other language," and "be clear and unambiguous." (*Wackeen, supra*, 97 Cal.App.4th at p. 440.)[4]

Moreover, even when a specific request for retention of jurisdiction is made, a trial court's power under Code of Civil Procedure section 664.6 "is extremely limited." (*Hernandez v. Board of Education* (2004) 126 Cal.App.4th 1161, 1176.) When a court retains jurisdiction, it "simply has reserved the power to enforce, according to its terms, the contract [the parties] negotiated amongst themselves. Further, this may only happen upon motion filed by either party." (*Ibid.*) The trial court could not exercise that power in this case.

As we noted earlier, we do not know whether the terms of the confidential settlement between the Slamers and Ecolab included one requiring payment of SCPMG's workers' compensation lien that could be enforced by a motion under Code of Civil Procedure section 664.6. And when SCPMG filed the motion for reimbursement based on the lien on February 16, 2024, it was no longer a party because it had obtained a judgment dismissing it from the case with prejudice on April 11, 2022. That dismissal made SCMPG "a stranger to the action" that "could not thereafter file pleadings or seek any relief." (*Coburg Oil Co. v. Russell* (1950) 100 Cal.App.2d 200, 204; see *Liu v. Moore* (1999) 69 Cal.App.4th 745, 751, fn. 3

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4 SCPMG also relies on postdismissal statements made by counsel and the trial court at a status conference held in related consolidated cases on June 14, 2023, to show that the court retained jurisdiction to enforce the settlement. That reliance is misplaced. We have denied SCPMG's request to augment the record to include those statements. (See fn. 1, *ante*.) And a request to retain jurisdiction must be made "during the pendency of the case, not after the case has been dismissed in its entirety." (*Wackeen, supra*, 97 Cal.App.4th at p. 440.)

["It is the general rule that once a person is dismissed from a lawsuit she is no longer a party to it and the court lacks jurisdiction to conduct further proceedings respecting her"].) Although section 664.6 provides a valuable tool in aid of enforcing settlements, it may be used only by a party to the settlement. (*Sayta, supra*, 17 Cal.App.5th at p. 967; *Harris v. Rudin, Richman & Appel* (1999) 74 Cal.App.4th 299, 305.) We conclude SCPMG could not use the statute to enforce its lien to obtain reimbursement of the workers' compensation benefits it had paid Jennifer Slamer.

Fourth and finally, SCPMG argues that regardless of Code of Civil Procedure section 664.6, the trial court had jurisdiction to order payment of its lien under the Enforcement of Judgments Law (*id.*, § 680.010 et seq.). SCPMG cites provisions of that law that: (1) allow a judgment creditor with a money judgment against a judgment debtor to obtain a lien on any judgment the judgment debtor may obtain in a pending action by filing in that action a notice of lien and an abstract or certified copy of the judgment creditor's money judgment (*id.*, § 708.410, subds. (a), (b)); (2) provide that for purposes of the lien, the action remains pending until the time for appeal has expired or any appeal has been finally decided (*id.*, subd. (d)); (3) deem the judgment creditor a party to the pending action for purposes of applying to the court for an order that the judgment debtor's rights to money or property under the judgment in the action be applied to the satisfaction of the judgment creditor's lien (*id.*, §§ 708.430, subd. (b), 708.470, subd. (a)); and (4) prohibit the judgment debtor from dismissing the action without the written consent of the judgment creditor or a court order authorizing the dismissal (*id.*, § 708.440, subd. (a)). SCPMG says those provisions of the Enforcement of Judgments Law apply because Labor Code section 3862 authorizes an employer to enforce, in the same manner that money judgments generally may be enforced, payment of a workers' compensation lien against an employee who has been paid damages by a third-party tortfeasor. We are not persuaded.

Enforcement of a workers' compensation lien "in the manner provided for enforcement of money judgments generally" is available to an employer "who has been allowed and has perfected a lien upon the judgment or award in favor of an employee against any third party for damages occasioned to the same employer by payment of compensation." (Lab. Code, § 3862, subd. (a).) When, as happened in this case, the employee alone prosecutes the action against the third party, "the court shall, on application of the employer, allow as a first lien against the amount of such judgment for damages, the amount of the employer's expenditure for compensation." (*Id.*, § 3856, subd. (b).) If a lien is not "allowed," it cannot be enforced like a money judgment; and a lien is not "allowed" until the employer applies for the lien and the court grants the application. To determine whether the employer is entitled to a lien and, if so, the amount of the lien, the employer's comparative fault and its share of the employee's attorney fees and costs may have to be adjudicated. (*Manriquez, supra*, 108 Cal.App.4th at p. 345–346; *State Comp. Ins. Fund, supra*, 53 Cal.App.4th at p. 582, fn. 4.) Only after such an adjudication could there be an order "allowing" a lien in a specific amount that would be equivalent to a money judgment and that could be enforced under the provisions of the Enforcement of Judgments Law on which SCPMG relies.

Under those provisions, the trial court could order reimbursement of the workers' compensation benefits SCPMG had paid Jennifer Slamer only if SCPMG had first filed a notice of lien for those benefits and a copy of the order allowing the lien "in the pending action" by the Slamers against Ecolab. (Code Civ. Proc., §§ 708.410, subd. (b), 708.470, subd. (b).) SCPMG could not have done so, because the order allowing the lien and determining its amount was not issued until April 18, 2025, more than 22 months after the entire action had been dismissed with prejudice on June 1, 2023. Under the Enforcement Judgments Law, the action was no longer pending when the time to appeal expired on November 28, 2023, and no notice of appeal had been filed. (*Id.*, § 708.410, subd. (d) [action is pending until time to appeal expires]; Cal. Rules of Court, rule 8.104(a)(1)(C) [notice of appeal must be filed no later than 180 days after entry of judgment]; *Maniago v. Desert Cardiology Consultants' Medical Group, Inc.* (2026) 20 Cal.5th 91, 98–99 [voluntary dismissal with prejudice terminates action].) Because SCPMG had not perfected its lien rights before the Slamers voluntarily dismissed the action, they were not required to obtain SCPMG's consent to the dismissal or an order from the court permitting the dismissal. (Code Civ. Proc., § 708.440, subd. (a).) We thus reject SCPMG's contention that the dismissal was " 'ineffective' " and " 'd[id] not deprive the trial court of jurisdiction' " to rule on the motion for reimbursement. (Quoting *Gilman, supra*, 61 Cal.App.5th at p. 936.)

For the foregoing reasons, we conclude the trial court lacked jurisdiction to issue the order granting SCPMG's motion for reimbursement of the workers' compensation benefits it had paid Jennifer Slamer. That conclusion makes it unnecessary for us to consider the other grounds on which the Slamers seek reversal of the order. We express no opinion on what remedies, if any, SCPMG may pursue to obtain reimbursement.

DISPOSITION

The order granting the motion for reimbursement of workers' compensation benefits is reversed, and the matter is remanded with directions to the trial court to enter a new order denying the motion for lack of jurisdiction. Appellants shall recover their costs on appeal.

BERMÚDEZ, J.

WE CONCUR:

DO, Acting P. J.

CASTILLO, J.