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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

SPENCER PEARSON, as Guardian Ad Litem for BRYCE PEARSON, Plaintiff and Appellant, v. GARY NICHOLSON, et al., Defendants and Respondents.	2d Civil No. B241197 (Super. Ct. No. CV070861) (San Luis Obispo County)

Appellant settled personal injury claims on behalf of his son who was then a minor. He later filed a motion to enter judgment on the settlement agreement pursuant to Code of Civil Procedure section 664.6.[1] Respondents, the defendants and their insurance carriers, opposed the motion and objected to approval of the minor's compromise on the ground that the minor's death extinguished some of the claims covered by the settlement. The superior court found in favor of respondents. We issued a peremptory writ of mandate directing the superior court to approve the minor's compromise and to enforce the settlement agreement under section 664.6. (*Pearson v. Superior court* (2012) 202 Cal.App.4th 1333.) On remand, appellant requested an award of prejudgment interest from the date of the settlement agreement until the judgment is entered. (Civil Code, §§ 3287, 3289.) The trial

[1] All statutory references are to the Code of Civil Procedure unless otherwise stated.

court declined to award prejudgment interest. It entered judgment for the original amount of the settlement, $95,000, plus costs on the prior appeal. We affirm.

Facts

Bryce Pearson sustained personal injuries in an all-terrain vehicle (ATV) accident. Because Bryce was a minor at the time, his father and guardian ad litem, Spencer Pearson, filed an action against the driver of the ATV and her family, to recover damages for those injuries. On June 9, 2010, the Pearsons, the defendants and their defendants' insurance carriers entered a settlement of Bryce's claims on the record at a settlement conference. The settlement required defendants' insurance carriers (respondents) to pay Spencer Pearson (appellant) $95,000, on behalf of Bryce Pearson. That sum included all costs and attorney's fees incurred by appellant. As the trial court emphasized when the settlement was entered on the record, "So in addition to the payment of money there will be a full release by the plaintiffs for any claims that they have or may have as against any defendants and the full settlement includes in the settlement terms the payment of costs and attorneys fees. There's no additional provisions for payment of any money whatsoever . . . ." Counsel for all parties agreed this statement was accurate. Both appellant and the minor personally assured the trial court that they understood and accepted the terms of the settlement.

The settlement required court approval pursuant to section 372. Bryce died before the superior court ruled on the petition to approve the settlement. Appellant filed a motion to enforce the settlement agreement under section 664.6. The superior court denied the motion and declined to approve the minor's compromise. We issued a peremptory writ of mandate directing the superior court to vacate its order and enter a new order granting the motion to enforce the settlement agreement.

On remand, appellant sought an award of interest on the settlement amount ($95,000) from June 9, 2010 until the entry of judgment. He contended respondents' failure to pay the settlement was a breach of their contract and that he is entitled to prejudgment interest pursuant to Civil Code, section 3287. Respondents objected to an award of prejudgment interest because it was not provided for in the settlement agreement. The trial

court agreed with respondents, declined to award interest and entered judgment in the amount of $95,000.

Discussion

Civil Code, section 3287 subdivision (a) provides: "Every person who is entitled to recover damages certain, or capable of being made certain by calculation, and the right to recover which is vested in him upon a particular day, is entitled also to recover interest thereon from that day . . . ." Appellant contends the statute applies here because the amount due under the settlement agreement is certain and his right to recover that amount vested on June 9, 2010, the day the settlement was entered on the record.

Respondents contend appellant is not entitled to recover prejudgment interest because the settlement did not provide for it. Code of Civil Procedure section 664.6 provides: "If parties to pending litigation stipulate, . . . 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." The statute establishes an expedited means to enforce a settlement; it does not allow the trial court to add new terms to the parties' agreement. As a consequence, the trial court is without jurisdiction to award interest unless the parties' settlement agreement calls for an interest award.

We agree with respondents. Appellant was not entitled to an award of prejudgment interest because the settlement agreement contained no provision for the payment of prejudgment interest. Appellant moved to enforce the settlement under Code of Civil Procedure section 664.6. The statute "permits the trial court judge to enter judgment on a settlement agreement without the need for a new lawsuit." (*Osumi v. Sutton* (2007) 151 Cal.App.4th 1355, 1360.) Where it applies, the statute allows a party to obtain enforcement of a settlement agreement without having to file a separate action for specific performance or breach of contract, or seeking leave to amend the pleadings in the first action. (*Viejo Bancorp, Inc. v. Wood* (1989) 217 Cal.App.3d 200, 208.) The summary procedure created by section 664.6 allows the trial court to "receive evidence, determine disputed facts, and

enter the terms of a settlement agreement as a judgment[.]" (*Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 810.) It does not, however, permit the trial court judge to "*create* the material terms of a settlement, as opposed to deciding what terms *the parties themselves* have previously agreed upon." (*Id.*)

Here, the parties did not agree that respondents would pay appellant prejudgment interest from the date the settlement was placed on the record. To the contrary, all parties acknowledged in open court that their settlement agreement contained "no additional provisions for payment of any money whatsoever . . . [,]" including costs and attorneys' fees. Section 664.6 does not authorize the trial court judge to include in the judgment a new, material term to which the parties never stipulated such as a term requiring payment of prejudgment interest.

No published opinion in California has awarded prejudgment interest on a judgment entered to enforce a settlement agreement under section 664.6. Appellant's reliance on *Fireman's Fund Ins. Co. v. Allstate Ins. Co.* (1991) 234 Cal.App.3d 1154, is misplaced. The trial court in *Fireman's Fund, supra,* did not award prejudgment interest after entering judgment on a settlement agreement. Instead, it decided a coverage dispute among insurance carriers who were litigating the question of whether their respective policies provided coverage for the amount already paid to settle a separate personal injury case. The court held that a Fireman's Fund policy provided coverage for one portion of that settlement. Fireman's Fund therefore owed two other insurance carriers $750,000, which they had already paid in the other case. Fireman's Fund also owed prejudgment interest on that amount, because the insurance carriers had only disputed the existence of coverage, not the amount to be covered. (*Id.* at pp. 1172-1174.)

Thus, the award of prejudgment interest affirmed in *Fireman's Fund* was paid by one insurance carrier to another, based on a judgment entered after trial in the coverage action, not the personal injury case. It was not interest paid by one settling party to another after entry of judgment under section 664.6. *Fireman's Fund*, therefore, does not support appellant's contention that prejudgment interest may be awarded where one party to a

settlement delays paying the other. "An opinion is not authority for a point not raised, considered, or resolved therein." (*Styne v. Stevens* (2001) 26 Cal.4th 42, 57.)

Civil Code section 3287 requires an award of prejudgment interest in any case where the amount of damages is certain and the prevailing party's right to recover those damages "vested in him upon a particular day . . . ." (Civ. Code, § 3287, subd. (a).) Appellant contends the statute mandates an award of prejudgment interest here because the amount due under the settlement agreement is certain and his right to recover that amount "vested" on the day the settlement was placed on the record. We are not persuaded.

"It is well established that prejudgment interest is not a cost, but an element of damages." (*North Oakland Medical Clinic v. Rogers* (1998) 65 Cal.App.4th 824, 830.) In the settlement agreement, appellant released all claims he and Bryce had or may have relating to Bryce's personal injuries. He could only be entitled to recover additional damages if respondents breached the settlement agreement itself. But there has been no judgment or finding that a breach occurred. Respondents objected to approval of the minor's compromise for reasons we ultimately found unpersuasive. But their objection was more like a request for a declaration of the parties' rights and obligations under the settlement agreement than it was a repudiation of that agreement. Without a finding that a breach occurred, there is no basis for an award of damages for breach of contract. We conclude the trial court properly denied appellant's request for an award of prejudgment interest.

The judgment is affirmed. Costs on appeal to respondents

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

Dodie A. Harman, Judge

Superior Court County of San Luis Obispo

Kevin Patrick McVerry, for Appellant.

Greg A. Coates and Tana L. Coates; Coates Coates, for Respondents.