IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

THOMAS HAROLD MAJOR II,
Plaintiff/Appellee,

v.

SAMUEL JAMES COLEMAN
AND SET FOR SET FITNESS LLC,
Defendants/Appellants.

No. 2 CA-CV 2020-0081
Filed May 5, 2021

Appeal from the Superior Court in Pima County
No. C20184315
The Honorable Cynthia T. Kuhn, Judge

REVERSED AND REMANDED

COUNSEL

Laird Law PLLC, Tucson
By Brian A. Laird
Counsel for Defendants/Appellants

OPINION

Presiding Judge Eppich authored the opinion of the Court, in which Vice Chief Judge Staring and Judge Brearcliffe concurred.

E P P I C H, Presiding Judge:

¶1 Samuel James Coleman and Set for Set Fitness LLC ("Defendants") appeal from the trial court's refusal to issue an order, upon stipulation, dismissing the case with prejudice but retaining jurisdiction to enforce the parties' settlement agreement in the event of a future default in payment. For the reasons discussed below, we reverse and remand.

Factual and Procedural Background

¶2 Thomas Harold Major II filed a civil action against Defendants in Pima County Superior Court. The parties entered into an agreement titled "Settlement Agreement and Mutual General Release of All Claims" ("Settlement Agreement"). The Settlement Agreement provided that Coleman would make settlement payments to Major over time and that, in the event of a default in payment, Major could file a stipulation for entry of judgment and a form of judgment with the trial court.

¶3 Pursuant to the Settlement Agreement, the parties filed a stipulation of dismissal with prejudice and an accompanying form of order. The stipulation to dismiss stated the lawsuit was to be dismissed with prejudice, except "in the event of a default in payment of the settlement amount, [Major] shall have the right to file, and the Court shall have jurisdiction to immediately enter, and shall enter, a Stipulated Judgment held by [Major]'s counsel." The trial court refused to issue the order dismissing the case under the stipulated terms, stating, "The Court finds that the parties' requested relief is not consistent with the Rules of Civil Procedure, and accordingly, DENIES the requested entry of the Stipulation to Dismiss."[1]

¶4 Defendants filed an unopposed motion asking the trial court to reconsider its order or provide clarification. The court denied the motion stating, "A case dismissed with prejudice is an adjudication on the merits and *res judicata*. Thus, it contemplates no further action. The parties, however, request the Court take further action inconsistent with a dismissal." (Citation omitted.) Defendants appealed that order.

¶5 We dismissed that appeal for lack of jurisdiction because appellants did not have "an appealable interlocutory order within the scope

[1]The court did not specify which rules were inconsistent with the request.

of A.R.S. § 12-2101(A)(3)." *Major v. Coleman*, No. 2 CA-CV 2019-0122, ¶¶ 5-8 (Ariz. App. Feb. 27, 2020) (mem. decision). In that decision, we instructed the parties that they could "submit[] a form of order dismissing the case without the language relating to the trial court's continuing jurisdiction." *Id.* ¶ 6. This could then allow them to have a final judgment from which they could contest "appeals from otherwise non-appealable interlocutory orders." *Id.* (quoting *Dowling v. Stapley*, 221 Ariz. 251, n.12 (App. 2009)).

¶6 After we issued the mandate, the parties returned to the trial court and filed a stipulation to dismiss the action with prejudice, reserving the right to appeal all prior orders. The court subsequently dismissed the action with prejudice. Defendants appealed from that order, and we now have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(1).[2]

Discussion

¶7 Defendants ask that we decide whether Arizona law permits "parties to enter into a settlement agreement that provides the action shall be dismissed with prejudice and that the trial court shall retain jurisdiction to enter judgment in accordance with the terms of the settlement agreement in the event of" a breach.[3] Because this case presents a pure question of law, we conduct a de novo review. *Nelson v. Phx. Resort Corp.*, 181 Ariz. 188, 191 (App. 1994); *see also Gonzalez v. Nguyen*, 243 Ariz. 531, ¶ 8 (2018) (we review interpretation of rules of civil procedure de novo).

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[2]On June 10, 2020, we suspended this appeal for twenty days and revested jurisdiction in the trial court to allow counsel to apply for an appropriate final judgment containing language pursuant to Rule 54(c), Ariz. R. Civ. P. On June 24, 2020, the court issued an amended order finding no matters remained pending and entering judgment under Rule 54(c). Because certifying the judgment as final pursuant to Rule 54(c) was a purely ministerial task, this cured the premature notice of appeal. *See McCleary v. Tripodi*, 243 Ariz. 197, ¶ 9 (App. 2017).

[3]Major does not contest Defendants' position and did not file an answering brief. While this failure could be construed as a confession of reversible error, given the issues involved, we exercise our discretion and address the merits of Defendants' arguments. *See DeLong v. Merrill*, 233 Ariz. 163, ¶ 9 (App. 2013) ("Because resolution of cases on their merits is preferred, and because important issues of procedural law are presented in this appeal, in our discretion we address those issues on their merits.").

¶8 "[T]he word 'jurisdiction' means different things in different contexts." *Taliaferro v. Taliaferro*, 186 Ariz. 221, 223 (1996). Jurisdiction can refer to the authority to do a particular thing or to "the power of the court to entertain an action of a particular subject matter." *Id*. The issue presented here centers on whether a superior court has the authority to issue an order retaining jurisdiction for the purposes of enforcement—allowing the parties to come back to it without having to file a new lawsuit. It does not center on subject matter jurisdiction—"the power of a court to hear and determine a controversy." *Grosvenor Holdings, L.C. v. Figueroa*, 222 Ariz. 588, ¶ 13 (App. 2009) (quoting *State v. Bryant*, 219 Ariz. 514, ¶ 14 (App. 2008)).[4]

¶9 No Arizona case has clearly decided this issue, and we are unaware of a statute or Arizona Rule of Civil Procedure expressly allowing or forbidding the superior court to retain jurisdiction in this circumstance. *See* Ariz. R. Civ. P. 1, 41, 54, 58, 59, 60, 62, 70, 82. Defendants argue that we should follow the federal practice and adopt a rule that allows a trial court to retain jurisdiction to enforce the terms of a settlement agreement following a dismissal with prejudice. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994). In *Kokkonen*, the United States Supreme Court examined whether a federal district court could retain jurisdiction to enforce the terms of a settlement agreement—following a dismissal with prejudice—after a dispute arose regarding compliance with the agreement. *Id.* at 376-77. The Court determined the district court in that case did not have jurisdiction because the enforcement action was not "a continuation

[4]"The [subject matter] jurisdiction of the superior court is conferred upon it by the state constitution and statutes." *Id.* (quoting *Schoenberger v. Bd. of Adjustment*, 124 Ariz. 528, 530 (1980)); *see* Ariz. Const. art. VI, § 14 (specifying scope of superior court's jurisdiction); A.R.S. § 12-122 ("The superior court, in addition to the powers conferred by constitution, rule or statute, may proceed according to the common law."); A.R.S. § 12-123 ("superior court shall have original and concurrent jurisdiction as conferred by the constitution" and it "shall have all powers and may issue all writs necessary to the complete exercise of its jurisdiction"). The superior court had subject matter jurisdiction over this case because it involved a matter brought under Arizona's version of the Uniform Declaratory Judgments Act, A.R.S. §§ 12-1831 to 12-1846. *See Café Valley, Inc. v. Navidi*, 235 Ariz. 252, ¶¶ 10-11 (App. 2014) (superior court had jurisdiction to render judgment in a declaratory judgment action based on a justiciable controversy under Arizona's Uniform Declaratory Judgments Act).

or renewal of the dismissed suit, and hence require[d] its own basis for jurisdiction." *Id.* at 378.

¶10 However, the Court observed that the district court could have properly exercised ancillary jurisdiction to enforce the settlement agreement if the obligation to comply with the settlement "had been made part of the order of dismissal." *Id.* at 381. This could have been accomplished through either a "separate provision (such as a provision 'retaining jurisdiction' over the settlement agreement) or by incorporating the terms of the settlement agreement in the order." *Id.* In the absence of expressly retained ancillary jurisdiction, the Court concluded that enforcement of the settlement agreement could only proceed in state court. *Id.* at 382.[5] Although *Kokkonen* does not address a state trial court's jurisdiction, and is therefore not binding precedent on this court, we find it persuasive as to how to approach this issue.

¶11 Several states that have considered this issue under their respective state laws have held that a trial court may expressly retain jurisdiction to enforce a settlement following a dismissal. *See, e.g.*, *Paulucci v. Gen. Dynamics Corp.*, 842 So. 2d 797, 799, 801 (Fla. 2003) (jurisdiction to enforce settlement agreement where court has "incorporated the agreement into a final judgment or approved the agreement by order and retained jurisdiction to enforce it[s] terms" based on Florida caselaw affirming trial court's inherent power to enforce its orders); *Dir. of Ins. ex rel. State v. A & A Midwest Rebuilders, Inc.*, 891 N.E.2d 500, 502-04 (Ill. App. Ct. 2008) (jurisdiction to enforce settlement agreement after dismissal with prejudice based, in part, on Illinois caselaw supporting trial court's inherent authority to enforce its own orders when it intends to retain jurisdiction); *see also Infinite Sec. Sols., L.L.C. v. Karam Props. II, Ltd.*, 37 N.E.3d 1211, ¶¶ 23-25, 30-32 (Ohio 2015) (trial court would have had jurisdiction to enforce settlement agreement after case dismissed if it had expressly stated it retained jurisdiction to enforce agreement); *Condon v. Condon*, 298 P.3d 86, ¶ 18 (Wash. 2013) (recognizing "best practice would have been for the

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[5] Other federal courts have relied on *Kokkonen* in approving this ancillary form of jurisdiction. *See, e.g.*, *Columbus-America Discovery Grp. v. Atlantic Mut. Ins. Co.*, 203 F.3d 291, 299 (4th Cir. 2000) (court had jurisdiction to enforce settlement where dismissal order specifically noted it retained jurisdiction to enforce the settlement of the parties); *Waste Mgmt. of Ohio, Inc. v. City of Dayton*, 132 F.3d 1142, 1144-45 (6th Cir. 1997) (same).

court, at the time of the settlement, to expressly retain jurisdiction for purposes of enforcement or to enter a conditional or delayed dismissal").

¶12 Other states, however, have rejected this approach. *See, e.g.*, *SFPP, L.P. v. Second Jud. Dist. Ct.*, 173 P.3d 715, 717-18 (Nev. 2007) (dismissal with prejudice deprived trial court of jurisdiction and it could not conduct further proceedings with respect to the judgment unless it was first properly set aside or vacated despite parties' stipulation); *Russell v. Bd. of Cnty. Comm'rs*, 1 P.3d 442, n.1 (Okla. Civ. App. 2000) ("Where a case is dismissed as part of the settlement, the trial court loses jurisdiction to enforce the settlement." If that occurs, "an aggrieved party has the option 1) to bring an independent action for specific performance (if otherwise appropriate) of the settlement agreement, 2) to file a motion to vacate the dismissal and reopen the case or 3) to bring an independent action for recision based on mutual mistake." (citations omitted)).

¶13 We find the cases allowing a trial court to retain jurisdiction persuasive and conclude their reasoning is consistent with Arizona law. Although we are unaware of an Arizona case that allows a trial court to exercise its inherent authority to enforce a stipulation after a dismissal, our supreme court has recognized that courts have inherent or incidental powers that "are impliedly given . . . even though the powers may not be catalogued in the constitution or statute." *Owen v. City Ct.*, 123 Ariz. 267, 268-69 (1979). Arizona courts have also recognized that a superior court can issue orders "as an exercise of its inherent authority to take actions necessary to effectuate the administration of justice in cases pending before it." *Arpaio v. Baca*, 217 Ariz. 570, n.3 (App. 2008); *see Gillespie Land & Irrigation Co. v. Narramore*, 93 Ariz. 67, 71 (1963) ("a court of original jurisdiction has inherent power to enforce" a decree); *Holaway v. Realty Assocs.*, 90 Ariz. 289, 293 (1961) ("every regularly constituted court has power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction, and for the enforcement of its judgments and mandates"(quoting former 21 C.J.S. *Courts* § 88)); *see also* 20 Am. Jur. 2d *Courts* § 81 (2021) ("Although the primary jurisdiction of a court is its power to hear and adjudicate the cases brought before it, it also has ancillary jurisdiction to take actions that are incidental to the exercise of its primary jurisdiction.").

¶14 Furthermore, we have previously acknowledged that a trial court, in other circumstances, may dismiss an action while retaining enforcement authority. *Cf. Zenith Elecs. Corp. v. Ballinger*, 220 Ariz. 257, ¶¶ 1-2, 5-6, 26 (App. 2009) (trial court specifically retained jurisdiction "to enforce [its] Protective Order and to make such amendments and

modifications to [its] Order" and could address motion for permissive intervention following settlement and dismissal with prejudice).

¶15 Allowing trial courts to retain ancillary jurisdiction to enforce is even more compelling under these circumstances. Permitting that authority when the parties have stipulated to it encourages settlement by providing parties certainty about the terms of an agreement and a mechanism to easily enforce performance of the agreement. *See Miller v. Kelly*, 212 Ariz. 283, ¶ 12 (App. 2006) (Arizona public policy strongly encourages settlements.). Furthermore, this practice promotes judicial efficiency by enabling a trial court to clear the case from its docket until the time arises, if ever, to enforce the terms of the agreement. *See Infinite Sec. Sols.*, 37 N.E.3d 1211, ¶ 25 (retaining jurisdiction provides most efficient means of enforcing agreement by keeping it in court most familiar with parties' settlement positions and keeping parties from having to file another action). Consistent with other jurisdictions that have adopted this rule, we conclude that retaining jurisdiction to enforce a settlement agreement upon stipulation of the parties can be accomplished through an express provision retaining jurisdiction over the settlement agreement but it is discretionary; trial courts are not obligated to do so.[6] The trial court's judgment here was based on its erroneous view that it was prohibited from retaining jurisdiction under Arizona law. Accordingly, we remand the matter to afford the trial court the opportunity to determine whether it should, in its discretion, accept the parties' stipulation to retain jurisdiction to enforce the Settlement Agreement.

Disposition

¶16 For the foregoing reasons, the judgment of dismissal is reversed, and this matter is remanded to the trial court for further proceedings consistent with this opinion.

[6]Jurisdictions that allow a trial court to retain jurisdiction following a dismissal after a settlement agreement have routinely denied jurisdiction when the court evinces no intent to retain jurisdiction. *See, e.g.*, *Infinite Sec. Sols.*, 37 N.E.3d 1211, ¶¶ 25, 32; *A & A Midwest Rebuilders, Inc.*, 891 N.E.2d at 503-04.