

IN THE OREGON COURT OF APPEALS OF THE STATE OF OREGON

Jeanyne James; Robin Colbert; Jane Drevo; Sam Drevo; Brooke Edge and Bill Edge, Sr.; Lori Fowler; Iris Hampton; James Holland; Rachelle McMaster; Kristina Montoya; Northwest River Guides, LLC; Shariene Stockton and Kevin Stockton, Victor Palfreyman; palfreyman Family Trust; and Duane Brunn, individually and on behalf of all others similarly situated,  
Plaintiffs-Respondents,

and

Mary Kathleen Becherer et al.,  
Plaintiffs,

and

Oregon Department of Justice,  
Creditor-Respondent,

v.

PacifiCorp, an Oregon Corporation, and Pacific Power an Oregon registered electric utility and assumed business name of Pacificcorp,  
Defendants-Appellants.

Multnomah County Circuit Court No. 20CV33885

Court of Appeals No. A183140

**ORDER ALLOWING RECONSIDERATION AND DENYING MOTION FOR STAY  
PENDING APPEAL**

This matter is before the court on defendants' petition for reconsideration of an order of the Appellate Commissioner that denied defendants' motion for a stay pending appeal. For the reasons that follow, the court allows reconsideration to consider, on its own motion, whether defects in the limited judgment entered by the trial court deprive this court of jurisdiction over this appeal. See *Lee v. Secretary of State*, 324 Or App 275, 278, 526 P3d 775 (2023) (recognizing that the Court of Appeals has an independent obligation to consider issues pertaining to its own jurisdiction). For the reasons that follow, the court concludes that, although the limited judgment on appeal improperly purports to resolve portions of some parties' claims, that error does not deprive this court of jurisdiction over this appeal and also does not deprive the trial court of jurisdiction over the claims of those parties improperly included in the limited judgment. Defendants therefore are not entitled to a stay on the ground that the trial court currently lacks jurisdiction over the claims of the parties improperly included in the judgment. Further, assuming without deciding the limitations on this court's jurisdiction on appeal of a limited judgment do not preclude it from staying proceedings over which the trial court retains jurisdiction under ORS 19.270(7), the court is not persuaded that a discretionary stay of proceedings is warranted in this case.

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This is a class action arising out of 2020 forest fires. Defendants PacifiCorp and Pacific Power appeal what the trial court designated as a Limited Judgment and Money Award, entered following the first part of a bifurcated trial. In the first part of the trial, a jury resolved the claims of the individually named plaintiffs, determining both liability and, where applicable, damages. The same jury also determined defendants' liability to class members on the claims alleged. As to the class members, the judgment recites that "damages for each class member (not including their punitive damages multiplier, which has already been determined), other than [p]laintiffs, will be determined at another phase of the case to be ordered by the [c]ourt." Although the issue of damages on those claims on which the jury found defendants liable to the class has not yet been resolved as to the class members, the judgment nonetheless states, among other things, that the class members are entitled to judgment in their favor on those claims:

"Plaintiffs and the entire class shall have judgment in their favor and against Defendants on the First Claim for Relief (Count I) (Common Law Negligence), the Second Claim for Relief (Gross Negligence), the Third Claim for Relief (Private Nuisance), the Fourth Claim for Relief (Public Nuisance), and the Fifth Claim for Relief (Trespass)."

In addition to ordering judgment in favor of the class members on yet-to-be-resolved claims, the judgment additionally orders that "[c]lass members shall be awarded" damages of various kinds in amounts to be determined during the second phase trial or trials. The judgment also states that it is awarding "post-judgment interest to each class member, from the date of entry of judgment with a money award to the class member, until the entire award is paid."

Defendants have moved for a stay pending appeal of the damages trials for the class members. The Appellate Commissioner denied the motion and defendants petitioned for reconsideration.

Defendants first argue that the appeal has deprived the trial court of jurisdiction over those trials and that a stay is warranted for that reason. Although defendants acknowledge that the judgment contemplates bifurcated trials, defendants argue that by issuing a judgment that, on its face, recites that it is entering judgment in favor of the class members, in addition to the individual plaintiffs, the appeal of the judgment has deprived the trial court of jurisdiction over the class members' claims. Because, in defendants' view, their appeal, given the form of judgment, deprived the trial court of jurisdiction over the class members' claims, this court must stay the trial court proceedings. Alternatively, citing ORS 19.350, defendants request that the court issue a discretionary stay of the class damages trials pending appeal.

In response, without meaningfully addressing the wording of the judgment and, in particular, the fact that the judgment, by its plain terms, purports to enter judgment in

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favor of the class members on certain of plaintiffs' claims, plaintiffs argue that the judgment resolves only the claims of the individual class members and, therefore, the appeal did not deprive the trial court of jurisdiction over the damages trials for the class members. See ORS 19.270(7) ("If a limited or supplemental judgment is appealed, the jurisdiction of the appellate court is limited to the matters decided by the limited or supplemental judgment, and the trial court retains jurisdiction over all other matters in the proceeding."). Plaintiffs argue further that the statute on which defendants rely in support of their argument for a discretionary stay, ORS 19.350, does not authorize the stay of proceedings that defendants seek, and also argue that the court should not exercise its discretion to order a stay.

In reply, defendants point out that plaintiffs specifically requested the trial court to enter a limited judgment that applied to the entire class, over defendants' objection that judgment on the class claims could not properly be included in a limited judgment because those claims had yet to be resolved. Defendants acknowledge that the judgment is "defective," but argue that plaintiffs invited the defect and, therefore, should bear what is, in defendants' view, the proper consequence: the loss of trial court jurisdiction over the class claims upon the filing of the notice of appeal. Defendants argue that, regardless of the statutory citation, this court has inherent authority to stay the proceedings in the trial court and, further, that this court should exercise this authority.

The parties' arguments regarding the form and function of the judgment raise the question of whether the judgment is a proper limited judgment and, if not, whether this court has jurisdiction over this appeal. For that reason, the court allows reconsideration to consider, on its own motion, whether it has jurisdiction over this appeal and if so, whether a stay must, can or should be granted.

As defendants correctly point out, a limited judgment cannot properly resolve a portion of a claim. *Steele v. Mayoral*, 231 Or App 603, 611-12, 220 P3d 761 (2009). Instead, "a limited judgment must dispose of a whole claim or all claims against a party." *Id.* at 611; see also *Interstate Roofing, Inc. v. Springville Corp.*, 341 Or 144, 152, 218 P3d 113 (2009) ("A purported judgment document must reflect the concluding decision of one or more claims, or it does not meet the statutory definition of 'judgment document.'"). Because the class members' claims have not been resolved, then, the inclusion in the judgment document of provisions purporting to resolve those claims in part was improper.

The next question is how, if at all, the improper inclusion of those provisions affects this court's jurisdiction over this appeal. Is the judgment as a whole invalid, requiring dismissal of the appeal? See, e.g., *Hooker Creek Companies, LLC, v. Central Oregon Land Development, Inc.*, 279 Or App 117, 121-124, 380 P3d 304 (2016) (describing circumstances in which a limited judgment is invalid and, therefore, not appealable). Or does the court have jurisdiction over the appeal insofar as the judgment is a proper limited judgment as to some of the claims and parties?

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This court's decision in *Steele* answers that question. *Steele* involved a limited judgment that dismissed a portion of the plaintiff's sexual harassment claims and dismissed in full the plaintiff's negligence and certain statutory claims. *Steele*, 231 Or App at 611. This court concluded that, to the extent the limited judgment purported to resolve a portion of the sexual harassment claims, it was invalid, and the court lacked jurisdiction to review the trial court's rulings as those claims. *Id.* This court further concluded that the improper "portion of the limited judgment should be vacated." *Id.* at 611-12 (citing *Bertram v. Malheur County*, 341 Or 392, 143 P3d 544 (2006)). The court then proceeded to address the merits of the claims properly resolved by the limited judgment. *Id.* at 612-20. The court took a similar approach in *Hooker Creek*, concluding that a limited judgment was valid insofar as it conclusively resolved some claims, but was a "nullity" and "simply not valid" to the extent that it purported to operate as a partial resolution of "yet unresolved claims." *Hooker Creek*, 279 Or App at 122.

Taking the same approach here, the court concludes that the portions of the judgment that enter judgment in the class members' favor on the claims on which the jury found defendants liable to the class members are not valid and are nullity. As in *Steele*, "the limited judgment from which [defendants] appeal cannot and therefore did not dispose of a portion" of the class members' claims. *Id.* at 611. When this case ultimately is returned to the trial court, those portions of the judgment purporting to award judgment to the class members against defendants should be vacated to reflect that they were not properly included in the limited judgment. As in *Steele* and *Hooker Creek*, this court has jurisdiction over the appeal to address the merits of the claims properly resolved by way of the limited judgment.

Turning to the motion for a stay pending appeal, because the claims of the class members were not properly included in the limited judgment and, thus, are not properly before this court, the appeal does not operate to deprive the court of jurisdiction to resolve the remaining issues with respect to the class members' claims. The court's jurisdiction is "limited to the matters" properly decided by the limited judgment, and the trial court retains jurisdiction to decide the remaining issues with respect to the class members' claims. ORS 19.270(7).

Because the court has concluded that the trial court retains jurisdiction to resolve the class members' claims, defendants are not entitled to a stay on the ground that the trial court lacks jurisdiction to resolve the class members' claims during this appeal.

The remaining issue is whether the court can, and should, grant a discretionary stay. In support of their stay request, defendants initially cited ORS 19.350. But as plaintiffs point out, that provision provides authority to stay a judgment. Here, defendants do not seek a stay of the limited judgment on appeal; they seek a stay of the proceeding in the trial court on matters that were not resolved by the limited judgment. Effectively conceding that point in their reply, defendants argue that this court has the inherent authority to issue a discretionary stay. Defendants further argue that the

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factors identified in ORS 19.350 are probative on the question of whether a stay should be granted.

Although neither party addresses the issue, regardless of this court's inherent authority to issue a stay pending an appeal over which it has jurisdiction, it is far from clear that this court's jurisdiction on appeal of a limited judgment encompasses the power to stay trial court proceedings pertaining to matters unrelated to those resolved by the limited judgment. As mentioned, ORS 19.270(7) limits the scope of this court's jurisdiction on appeal of a limited judgment to addressing claims conclusively resolved by the limited judgment: "If a limited \* \* \* judgment is appealed, the jurisdiction of the appellate court is limited to the matters decided by the limited \* \* \* judgment." ORS 19.270(7). That express statutory limitation on the court's jurisdiction would appear to preclude the court from granting a stay of those proceedings over which the trial court retains jurisdiction, and over which this court lacks jurisdiction.

Finally, assuming without deciding that this court would have the inherent authority to stay further proceedings in the trial court pending resolution of the appeal of the limited judgment, notwithstanding the limitations on jurisdiction imposed by ORS 19.270(7), and having considered the parties' respective arguments for and against a discretionary stay, the court is not persuaded that a stay is warranted under the circumstances of this case.

Reconsideration allowed; motion for stay pending appeal denied.



Erin C. Lagesen  
Chief Judge  
2/14/2024

c: Brad Daniels  
Yoona Park  
Per A Ramfjord  
Reilley Keating  
Daniel Mensher  
Keith A Ketterling  
Denise Fjordbeck  
Matthew Preusch

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