

NO. A11-202, A11-496

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State of Minnesota  
**In Court of Appeals**

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In re the Marriage of:  
Andrew Jay Redleaf, petitioner,

*Appellant,*

vs.

Elizabeth Grace Redleaf,

*Respondent.*

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**APPELLANT'S BRIEF**

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## LEGAL ISSUE

Did the trial court err as a matter of law when it concluded that Minn. Stat. § 549.09 divests the trial court of its common law authority in marriage dissolution proceedings to set an equitable interest rate reflective of the rate of return an ordinary investor could expect to receive, thus compelling the trial court to utilize the statutory interest rate of 10 percent set forth in Minn. Stat. § 549.09?

The ruling below: The trial court concluded that it was required to utilize the statutory interest rate of 10 percent pursuant to Minn. Stat. § 549.09.

Apposite Authorities:

Minn. Stat. § 549.09

*Johnson v. Johnson*, 84 N.W.2d 249 (Minn. 1957).

## STATEMENT OF THE CASE

This is a post-dissolution proceeding which relates to the parties' Findings of Fact, Conclusions of Law, Order for Judgment and Judgment and Decree entered February 20, 2008 ("Judgment and Decree"). (Appendix ("APP.") 24). The parties' Judgment and Decree was based upon a Marital Termination Agreement signed by Appellant Andrew Jay Redleaf ("Appellant") and Respondent Elizabeth Grace Redleaf ("Respondent"). (APP. 1). The Judgment and Decree requires Appellant to make payments to Respondent totaling \$140,750,000 pursuant to a payment schedule. Appellant has paid Respondent a total of \$58,250,000 through April 5, 2010 but lacked the ability to make all of the payments. (APP. 52). Appellant did not make the payments of \$1,500,000 for July, August, and September 2010. On September 10, 2010, the trial court heard Respondent's motion seeking entry of judgment in the amount of \$4,500,000 for the payments for July, August, and September 2010. Appellant, among other relief, asked the trial court to exercise its common law authority to select an equitable rate of interest to compensate Respondent for the loss of use of her money. The trial court concluded that it lacked such authority and that it had no choice but to use the rate of interest set by statute. (Addendum ("ADD.") 3). The October 4, 2010 Order denied Appellant's motion and directed entry of judgment in the amount of \$4,500,000 at the 10 percent rate. This appeal followed.

## STATEMENT OF FACTS

The parties separated in the fall of 2006 and a dissolution of marriage action was commenced in August 2007. On February 4, 2008, the parties entered into a Marital Termination Agreement (“MTA”). (APP. 1). Their marriage was dissolved by Judgment and Decree filed February 20, 2008. (App. 24). The Judgment and Decree requires Appellant to make payments to Respondent totaling \$140,750,000. Per the payment schedule, Appellant is required to make two lump sum payments totaling \$20,750,000 in 2008, \$1.5 million monthly payments from March 2008 until March 2013, and one lump sum payment of \$30 million in 2013. (APP. 15).

Appellant complied with this payment schedule through January 2009 but stopped making regular payments after that date because he lacked the income to do so. (APP. 52). As this Court is aware, Appellant brought a motion to reopen the Judgment and Decree, which was denied by the District Court and affirmed on appeal.

Appellant has paid Respondent a total of \$58,250,000 through April 5, 2010 but has lacked the ability to pay to Respondent all of the payments required by the terms of the Judgment and Decree. (APP. 52). Appellant did not make the payments of \$1,500,000 for July, August, and September 2010. On September 10, 2010, the trial court heard Respondent’s motion seeking entry of judgment in the amount of \$4,500,000 for the payments for July, August, and September 2010. Appellant, among other relief, motioned the trial court to exercise its common law authority to select an equitable rate of interest to compensate Respondent for the loss of use of her money. Prevailing short-term market rates of return throughout 2009 and 2010 were consistently below 1 percent.

(APP. 56). Prevailing mid-term and long-term market rates of return for the same period were between 1.65 and 2.87 percent and 2.96 and 4.47 percent, respectively. (APP. 56).

The trial court concluded that it lacked such authority and that it had no choice but to use the rate of interest set by statute. (ADD. 3). The October 4, 2010 Order denied Appellant's motion and directed entry of judgment in the amount of \$4,500,000 at the 10 percent rate. This appeal followed.

## ARGUMENT

### Standard of Review

The trial court's legal conclusions are reviewed *de novo*. *Shirk v. Shirk*, 561 N.W.2d 519, 521 (Minn. 1997).

**The trial court erroneously concluded that Minn. Stat. § 549.09 divests the trial court of its common law authority in marriage dissolution proceedings to set an equitable interest rate reflective of the rate of return an ordinary investor could expect to receive and that the trial court was compelled to utilize the statutory interest rate of 10% set forth in Minn. Stat. § 549.09**

Trial courts in Minnesota historically have been vested with broad discretion in selecting an equitable rate of interest in marriage dissolution proceedings and have not been bound by the interest rate set by statute. The trial court "is vested with a broad discretion which reasonably embraces the fixing of an equitable interest rate where interest is due, and the exercise of that discretion is not controlled by statutory or legal interest rates applicable to other cases." *Johnson v. Johnson*, 84 N.W.2d 249, 256 (Minn. 1957). In *Johnson*, the Minnesota Supreme Court reversed a trial court's award of interest at the "full legal rate of 6 percent" when rates of return during the relevant period of time were only 3 percent. *Johnson*, 84 N.W.2d at 256. The husband in *Johnson* had

defrauded wife by misrepresenting the value of his marital estate during the original dissolution in 1947, and five years later, in 1952, the trial court ordered husband to make an additional property payment to wife. Despite husband's misconduct, the Supreme Court explained that the goal in determining the appropriate interest rate was to fairly compensate wife for the loss of the use of the funds over time, which was accomplished by setting the interest at a rate of return an ordinary investor would expect to earn. *Id.*

When *Johnson* was decided in 1957, interest on judgments was controlled by Minn. Stat. § 334.01, which established an arbitrary fixed rate for legal indebtedness of 6 percent: "The interest for any legal indebtedness shall be at rate of \$6 upon \$100 for a year, unless a different rate is contracted for in writing..." Minn. Stat. § 334.01 (1957).<sup>1</sup> The Minnesota Supreme Court concluded in *Johnson* that the trial court erred when it simply used the statutory 6 percent rate instead of determining what was equitable by considering the interest that wife could reasonably expect to earn during the time period she was deprived of the use of funds by husband:

In view of the interest rates which have prevailed during the period between 1947 and the date of the court's findings, it is only reasonable to assume that the defendant wife, as an ordinary person not particularly skilled in investing money, would have earned interest at an average rate of approximately 3 percent.<sup>2</sup>

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<sup>1</sup> The version of Minn. Stat. § 549.09 in effect at that time did not establish a rate of interest to be applied to judgments.

<sup>2</sup> Although the *Johnson* opinion does not cite the source it reviewed to determine that prevailing interest rates were 3 percent, this figure is consistent with the one year yield for United States Treasury bills for that period, which is the same mechanism used today to adjust the variable statutory judgment interest rate of Minn. Stat. § 549.09, subd. 1(c)(1). See rate history published at [www.federalreserve.gov](http://www.federalreserve.gov) for one year United States Treasury bills at APP. 135.

*Johnson*, 84 N.W.2d at 256.

A little over twenty years after *Johnson* was decided, in 1979, the legislature established a one-tier variable interest rate structure for judgments. The rate is a variable interest rate, as opposed to a fixed rate, because it adjusts annually based on the yield of one year United States Treasury bills and thus reflects market forces. See Minn. Stat. § 549.09, subd. 1(c)(1).<sup>3</sup> In 2003, the Court of Appeals recognized that the variable interest rate of Minn. Stat. § 549.09 implements the mandate of *Johnson* to set an interest rate based upon market rates of return. See *Haefele v. Haefele*, No. C9-02-1818, 2003 WL 21524868 (Minn. Ct. App. July 8, 2003). In *Haefele*, the Court of Appeals reversed and remanded the trial court's award of interest at 8 percent during a period of time when the variable interest rate set forth in Minn. Stat. § 549.09 had fluctuated between 2 and 6 percent.<sup>4</sup> Citing *Johnson*, the Court of Appeals held that the variable interest rate of Minn. Stat. § 549.09 "achieves the standard set in *Johnson* of placing the obligee in the position that would have been enjoyed by a reasonable investor had the property been in the possession of the obligee." *Id.* at \*10.

During the 2009 legislative session, the state legislature created a new two-tiered judgment rate structure that retained the original variable interest rate for judgments of \$50,000 or less<sup>5</sup> but also established an arbitrary fixed 10 percent rate for judgments over

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<sup>3</sup> The judgment interest rate is variable based on the yield of one year United States Treasury bills but the statute sets a 4 percent minimum "floor" which applies.

<sup>4</sup> In accordance with Minn. Stat. § 480A.08(3), a copy of this opinion is provided herewith. (APP. 152).

<sup>5</sup> Minn. Stat. § 549.09, subd. 1(c)(1)

\$50,000.<sup>6</sup> In contrast to the variable interest rate of Minn. Stat. § 549.09, subd. 1(c)(1), which reflects market forces by adjusting annually based on the yield of one year United States Treasury bills, the new 10 percent figure of Minn. Stat. § 549.09, subd. 1(c)(2) is an arbitrary fixed rate which, like the 6 percent arbitrary fixed rate in *Johnson*, has nothing to do with market forces.

The arbitrary fixed rate of 10 percent set by statute in this case is not binding on the trial court just as the arbitrary fixed rate of 6 percent set by statute was not binding in *Johnson*. As explained by the Court of Appeals in *Haefele*, “[w]hile *Johnson* makes clear that the district court is not compelled to use the statutory interest rates applicable in other cases, the district court *is still required* to set a reasonable interest rate that reflects prevailing interest rates for a reasonable investor.” 2003 WL 21524868, at \*10 (emphasis added). Even though an interest rate is set by statute, the trial court must ensure that utilization of that rate is equitable by considering prevailing market interest rates.

In the instant case, Respondent never argued, nor could she, that the arbitrary fixed 10 percent rate is reflective of prevailing market rates of return. Nothing in the October 4, 2010 Order suggests that the trial court believed the arbitrary fixed 10 percent rate was reflective of market rates of return. Prevailing short-term market rates of return throughout 2009 and 2010 were consistently below 1 percent. (APP. 56). Prevailing mid-term and long-term market rates of return for the same period were between 1.65 and 2.87 percent and 2.96 and 4.47 percent, respectively. (APP. 56). There can be no

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<sup>6</sup> Minn. Stat. § 549.09, subd. 1(c)(2)

question that the arbitrary 10 percent fixed rate set by statute is far greater than prevailing interest rates a reasonable investor could expect to receive.

*Haefele* is not the only case to rely on *Johnson* for the proposition that trial courts in dissolution cases have broad discretion to set an equitable interest rate despite the existence of a statutory interest rate. In *Tarlan v. Sorensen*, No. C1-00-982, 2001 WL 185098 (Minn. Ct. App. Feb. 27, 2001), the Court of Appeals expressly rejected an argument that the trial court erred, because it set an interest rate in excess of the statutory rate in a marriage dissolution proceeding.<sup>7</sup> Citing *Johnson*, the Court held that the trial court “has discretion to set the interest rate on a dissolution judgment.” *Id.* at \*4.

However, in two cases, one published and one unpublished, the Court of Appeals reached the opposite conclusion and reversed trial courts for ordering interest in dissolution cases in excess of the statutory rate. See *Fernandez v. Fernandez*, 373 N.W.2d 636, 638 (Minn. Ct. App. 1985) and *Levine v. Levine*, No. C2-01-29, 2001 WL 978851, at \*4 (Minn. Ct. App. Aug. 28, 2001).<sup>8</sup> Neither of these cases, however, cites *Johnson*, and they obviously could not have overturned the Minnesota Supreme Court. Thus, *Johnson* continues to be binding precedent.

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<sup>7</sup> In accordance with Minn. Stat. § 480A.08(3), a copy of this opinion is provided herewith. (APP. 162).

<sup>8</sup> In accordance with Minn. Stat. § 480A.08(3), a copy of this opinion is provided herewith. (APP. 167).

In its October 4, 2010 Order, the trial court concluded that it had no discretion to select an equitable interest rate and concluded that it was required to use the arbitrary fixed 10 percent interest rate set forth at Minn. Stat. § 549.09:

Although the Court appreciates Petitioner's arguments, the cases cited by him are inapposite. The Court must apply the 2009 version of Minn. Stat. § 549.09 which was in effect at the commencement of this action. To do otherwise, the Court would be abrogating the clear intent of the Minnesota Legislature.

October Order, Finding of Fact 12.<sup>9</sup> (ADD. 3).

As such, the trial court did not undertake the analysis required by *Johnson*, because it concluded that it was compelled to utilize the statutory 10 percent rate. This conclusion is wrong. Not only did the trial court clearly have the authority under *Johnson* to select an equitable interest rate which reflected market rates of return, it was obligated to do so. The fixed 10 percent statute is no more binding upon the trial court in this case than the fixed 6 percent statute which existed when *Johnson* was decided.

Ignoring the reality of the marketplace and applying a 10 percent interest rate to Respondent's judgment provides her with a far greater rate of return than she could ever hope to receive in the marketplace. This clearly violates the *Johnson* standard of placing Respondent in the position she would have been in had she received the payments as scheduled. The Minnesota Supreme Court has clearly recognized that interest is intended simply to compensate a person for the loss of funds over time, not to punish the debtor by granting the creditor a windfall. "We have repeatedly recognized that interest is not a

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<sup>9</sup> Although this paragraph appears under the heading "THE COURT FINDS:," the October Order did not include a separate section for conclusions of law and it is clear that this paragraph represents the trial court's legal conclusions and not its factual findings.

penalty, but rather is the payment of a reasonable sum for the loss of use of money.”

*Arcadia Development Corp. v. County of Hennepin*, 528 N.W.2d 857, 861 (Minn. 1995).

Both *Johnson* and *Haefele* rejected the use of interest to penalize creditors, even though the creditors in those cases had engaged in fraud. Appellant, who has engaged in no fraud, certainly ought not to be penalized by using an arbitrary fixed interest rate which is so dramatically out of sync with prevailing market rates and thus does not even remotely approximate “a reasonable sum for the loss of use of money.” Thus, this case must be remanded so that the trial court can exercise its discretion to select an equitable rate of interest as required by *Johnson*.

### CONCLUSION

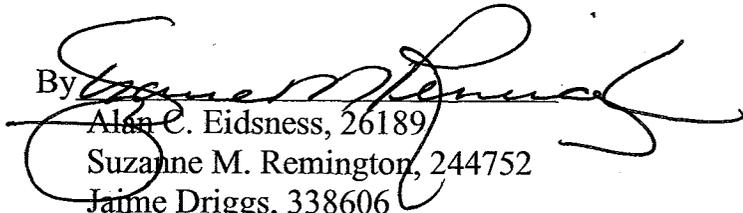
The trial court’s use of the 10 percent statutory interest rate was not a decision made after weighing the equities, as required by the Minnesota Supreme Court in *Johnson*, but simply the mechanical application of the statute based upon the trial court’s erroneous conclusion that the statute divested the trial court of its historical discretion to select an equitable interest rate. This conclusion is error and this case must be remanded so that the trial court can exercise its discretion to select an equitable rate of interest in accordance with *Johnson*.

Dated: March 4, 2011

Respectfully submitted,

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