

Nos. A11-202 and A11-496

State of Minnesota
In Court of Appeals

Andrew Jay Redleaf, petitioner,

Appellant,

vs.

Elizabeth Grace Redleaf,

Respondent.

RESPONDENT'S BRIEF

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INTRODUCTION

Appellant appeals from the District Court's ruling that Minn. Stat. § 549.09 means what it says: the trial courts of Minnesota must apply a post-judgment interest rate of 10% to money judgments exceeding \$50,000. Appellant interprets the *Johnson v. Johnson* case as freeing family law courts from obeying that statute, but overlooks that *Johnson* only concerned a special species of **equitable pre-judgment** interest. *Johnson* applied the hornbook rule of equity that, in any case where a plaintiff has been defrauded of money, a trial court has discretion to include within the judgment an award of pre-judgment interest from the date of the fraud, using an equitably-set interest rate to accomplish a restitution. The Minnesota Supreme Court held before *Johnson* that **post-judgment** interest on divorce judgments accrues at the statutory rate, and *Johnson* did not question that. This Court has held multiple times since *Johnson* that a trial court must apply the statutory post-judgment interest rate to a money judgment in a divorce case. Appellant has cited only a single unpublished opinion that clearly held the contrary. That lone opinion is simply mistaken, and is not precedential.

Apart from its reliance on the inapposite Johnson case, Appellant's argument consists of repeated assertions that the Legislature ignored market rates and was "arbitrary" in enacting a 10% post-judgment interest rate. The relevance of those assertions is unclear; Appellant has mounted no constitutional challenge to the

statute. In any event, Appellant is wrong that the only possible purpose of post-judgment interest is to compensate the creditor for loss of use of money. Other legitimate purposes, which can be effected by setting an above-market rate, include encouraging prompt payment of judgments, penalizing judgment debtors who bring meritless appeals, and harmonizing a state's statutory rate with those of neighboring states. Legislative history shows the Legislature considered those purposes before enacting Minnesota's 10% interest rate provision.

ARGUMENT

I. Standard of Review.

Respondent agrees with Appellant that review of the October 4, 2010 Order is de novo.

II. The *Johnson* case did not concern post-judgment interest.

Appellant's argument primarily rests on his misreading of Johnson v. Johnson, 84 N.W.2d 249 (Minn. 1957). Appellant fails to recognize that Johnson involved pre-judgment interest that was granted as equitable restitution to compensate for a fraud. Its interest-rate holding was based on principles of equity and restitution that apply in all cases involving fraud, not just divorce cases.

In Johnson, a divorced wife had brought a successful action to reopen and modify her divorce decree. The trial court found that four years earlier the husband had fraudulently undervalued his estate in the original divorce proceeding,

resulting in a divorce decree that had undervalued the wife's share of property by \$29,850.41. Id. at 251-52. To compensate the wife for the fraud, the trial court modified the original decree to additionally include that amount plus pre-judgment interest:

Upon the net sum of \$29,850.41, the court allowed defendant interest from the date of the original divorce decree (February 21, 1947) at the rate of 6 percent for an accrued additional amount of \$16,044.56.

Id. at 252.

Before discussing whether the trial court used a correct interest rate, Johnson first made clear that, because the pre-judgment interest was awarded to compensate for fraud, it was an equitable award, not a legal award. Johnson noted the longstanding rule of equity that “when a party obtains money by his own fraud, he is chargeable with interest from the time of obtaining it.” Id. at 255-56; see also I.L. Corse & Co. v. Minnesota Grain Co., 102 N.W. 728, 731 (Minn. 1905) (cited with approval by Johnson, and explaining that such an award of interest is a restitution, not legal damages); see generally Restatement of Restitution § 156 (1937) (one who must make equitable restitution worth a certain value may be “under a duty to pay interest upon such value from the time he committed a breach of duty...”). Thus, “the court sat as a court of equity charged with the function

of doing justice so as to grant the wife **restitution** of what she had been denied because of the husband's fraud." Johnson at 256 (emphasis added).¹

The only interest-rate issue decided by the Johnson court was whether a trial court should apply the "full legal rate" of interest or some other rate when awarding pre-judgment interest as restitution pursuant to principles of equity. See Johnson at 256. As Appellant notes, the 6% interest rate used by the trial court in Johnson was the rate set by the general interest-rate statute for "[t]he interest for any legal indebtedness." See 1923 Minn. Sess. Laws ch. 70, sec. 1 (version of Minn. Stat. § 334.01 then in effect); App. Br. 5. Johnson held the trial court erred by mechanically applying this "legal" interest rate when its interest award was given as an equitable restitution for fraud:

Restitution neither justifies nor requires the imposition of a penalty on the husband but requires only that the wife be restored to the position she would have enjoyed under the original decree if a truthful disclosure had then been made of the value of the husband's estate. 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

¹ Johnson further noted that, because the fraud had involved the husband's personal assets, it had triggered application of a (since repealed) family-law statute granting a broad discretion that also authorized an award of equitable pre-judgment interest in such circumstances. Johnson at 253-54, 256 (discussing Minn. Stat. § 518.22 (1945), repealed by 1951 Minn. Sess. Laws ch. 551, sec. 15).

not particularly skilled in investing money, would have earned interest at an average rate of approximately 3 percent.^[2]

Id.; cf. Rochester Carting Co. v. Levitt, 326 N.E.2d 808 (N.Y. 1975)

(“Prejudgment interest is awarded ... on the theory that it is necessary to give full compensation for the loss sustained.... Post-judgment interest, on the other hand, is awarded on a different theory, that is, as a penalty for delayed payment on the judgment.”).

Johnson’s historical context likewise makes clear that its interest-rate holding is limited to equitable awards of pre-judgment interest. Two decades before Johnson, the Minnesota Supreme Court held that the post-judgment interest statute that was then in effect (and remained in effect until 1979) applied to divorce judgments. Bickle v. Bickle, 265 N.W. 276, 277 (1936) (“Under statutes allowing interest on a money judgment, such as we have in this state, interest is allowed on a judgment for alimony.”); see also County of Blue Earth v. Williams, 265 N.W. 329, 331-32 (Minn. 1936) (opinion from the same term discussing the general applicability of the post-judgment interest statute then in effect); 1909 Minn. Sess. Laws ch. 371, sec. 1 (post-judgment interest statute in effect from 1909 to 1979).

² If the Court were to agree with Appellant that Johnson does govern the setting of post-judgment interest in all divorce cases, Respondent notes that the last sentence of the above-quoted passage would logically require every divorce case ending in a money judgment to be followed by an evidentiary hearing to determine whether the prevailing party and the party’s professional investment advisors possess merely “ordinary” investment skills, as a prelude to the trial court determining the appropriate post-judgment interest rate.

Johnson nowhere mentions the post-judgment interest statute then in effect, nor suggests that it overruled Bickle. To the contrary, Johnson cites Bickle with approval. Johnson, 84 N.W.2d at 256 nn. 8, 9.

III. This Court has repeatedly held that the statutory post-judgment interest rate applies to a money judgment in a divorce case.

This Court has issued three published opinions that, along with Bickle, are dispositive of this appeal. In Riley v. Riley, 385 N.W.2d 883 (Minn. App. 1986), the Court held that an award of money as part of a property division in a marital dissolution action is a “judgment ... for the recovery of money” and thus subject to the post-judgment interest rate set in Minn. Stat § 549.09. Id. at 888. Riley remanded the case to the trial court for entry of a judgment for interest at the statutory rate. Id.; see also Merickel v. Merickel, 401 N.W.2d 90, 91 (Minn. App. 1987) (following Riley); Fernandez v. Fernandez, 373 N.W.2d 636, 638 (Minn.

App. 1985) (district court erred by not using Section 549.09's rate). The Court has held the same in several unpublished opinions as well.³

Appellant has identified only a single, unpublished opinion that clearly holds the contrary. Tarlan v. Sorensen, No. C1-00-982, 2001 WL 185098 (Minn. App. Feb. 27, 2001). Tarlan tersely states that “[t]he district court has discretion to set the interest rate on a dissolution judgment,” but provides only a “Cf.” citation to Johnson as authority for that proposition. Id. at *4. Since Johnson did not concern post-judgment interest, and since the Tarlan court appears to have been unaware of Bickle and of this Court's precedents on that issue, its interest-rate holding was clearly mistaken. Furthermore, the unpublished Tarlan opinion warns the reader to beware of citing it as precedent:

To support her argument, appellant cites an unpublished opinion. Unpublished opinions are of limited value in deciding an appeal. See Minn. Stat. § 480A.08, subd. 3(c) (1998) (“[u]npublished opinions of the court of appeals **are not precedential**”) (emphasis added);

³ See Baudhuin v. Baudhuin, No. A07-0156, 2008 Minn. App. Unpub. LEXIS 247, at *19 (March 11, 2008) (following Riley); Huntsman v. Huntsman, No. A05-2168, 2006 Minn. App. Unpub. LEXIS 1099, at *12-*13 (Sep. 26, 2006) (“[I]nterest [on a dissolution judgment] is not a discretionary directive from the district court; it is statutorily based.”); Levine v. Levine, No. C2-01-29, 2001 WL 978851, at *4 (Min. App. Aug. 28, 2001) (remanding with order to court administrator to apply the statutory rate; “there is no distinction between an award of money in a dissolution action and a judgment for recovery of money in any other type of case”); Doyle v. Doyle, No. C0-95-2013, 1996 Minn. App. LEXIS 593, at *9 (May 21, 1996) (following Riley); Orstad v. Orstad, No. C9-91-1272, 1991 Minn. App. LEXIS 1253 at *6 (Dec. 30, 1991) (district court erred by departing from the statutory rate). As discussed below these unpublished opinions are not precedential.

Dynamic Air, Inc. v. Bloch, 502 N.W.2d 796, 801 (Minn. App. 1993) (stating dangers of miscitation and unfairness associated with use of unpublished opinions and that while persuasive, “[t]he legislature has unequivocally provided that unpublished opinions are not precedential.”).

Id. at *1 n.1 (emphasis and brackets by court). The Court should follow Tarlan’s advice and not regard Tarlan as precedent.

Appellant also relies on a second unpublished opinion: Haefele v. Haefele, No. C9-02-1818, 2003 WL 21524868 (Minn. App. July 8, 2003) [hereinafter Haefele II”]; see also Haefele v. Haefele, 621 N.W.2d 758 (Minn. App. 2001) (earlier opinion in same case supplying relevant background facts) [hereinafter “Haefele I”]. Like in Johnson, the Haefele II court was reviewing a trial court’s decision to enter a modified divorce judgment that included an award of equitable interest to a wife from the date of the original marital settlement, after the trial court found the parties’ original August 18, 1997 settlement had undervalued her share of the property as a result of mutual mistake. See Haefele I at 763-764 (affirming trial court’s finding of mutual mistake); Haefele II at *9-*10 (reviewing trial court’s subsequent award of interest from August 18, 1997). Haefele II does contain a broad statement suggesting that Johnson grants discretion to a trial court in any dissolution proceeding to depart from the interest rates set by Minn. Stat. § 549.09—but that statement is an oversimplified characterization of Johnson’s holding: “In a dissolution action, the district court is ‘vested with a broad

discretion' in setting an equitable interest rate where interest is due." Id. at *9 (citing Johnson). Haefele II leaves unsaid what Johnson was careful to expressly note: that in Johnson equitable interest **was** due under the rule of equity awarding pre-judgment interest as restitution for fraud. See Johnson, 84 N.W.2d at 255.

Since the award of interest in Haefele II was, in fact, based on an equitable ground (mutual mistake), Haefele II was correct to rely upon and apply Johnson to the facts before it. But Haefele II's loose characterization of Johnson is mere dicta in an unpublished, nonprecedential decision to the extent it suggests that Johnson applies beyond the special circumstance where a district court is reopening and modifying a previous judgment on grounds of fraud, mutual mistake, or similar equitable grounds, and is including pre-judgment interest within the modified judgment to accomplish an equitable restitution.⁴ See generally Minn. Stat. § 518.45, subd. 2 (equitable grounds for reopening a divorce judgment). Haefele II and Tarlan weigh little in the balance against Bickle and this Court's multiple

⁴ The Haefele II opinion should also be viewed with caution because its discussion and holding repeatedly conflate pre-judgment interest with post-judgment interest, treating them as analytically indistinguishable. See, e.g., Haefele II at *10 (treating Section 549.09 as setting a unitary "judgment interest rate" applicable to the trial court's entire interest award, when that award included both pre- and post-judgment interest components). This error likely arose from the case's statutory and factual context. At the time of the Haefele II trial court's ruling, Minn. Stat. § 549.09 set an identical market rate for both types of interest. 1994 Minn. Sess. Laws ch. 465, art. 1, sec. 58. Likewise, the Haefele II trial court awarded the wife both pre-judgment and post-judgment interest using one interest rate. See Haefele II at *9 (trial court awarded 8% interest "accrued since August 18, 1997 and accruing on the unpaid balance until paid in full").

published and unpublished opinions holding that a trial court must apply Section 549.09's post-judgment interest rate to a money judgment in a divorce case.

IV. The statute's requirement of a 10% post-judgment interest rate is unambiguous and rational.

The plain words of Section 549.09 are also dispositive of this appeal:

During each calendar year, interest **shall** accrue on the unpaid balance of the judgment or award from the time that it is entered or made until it is paid, **at the annual rate provided in subdivision 1**. The court administrator **shall** compute and add the accrued interest to the total amount to be collected when the execution is issued and compute the amount of daily interest accruing during the calendar year.

Minn. Stat. § 549.09, subd. 2 (2009) (emphasis added). Subdivision 1 provides:

“For a judgment or award over \$50,000, other than a judgment or award for or against the state or a political subdivision of the state, **the interest rate shall be ten percent per year** until paid. *Id.*, subd. 1(c). (emphasis added). As to pre-judgment interest, the statute permits trial courts to depart from the statutory rate when “otherwise provided by contract or allowed by law,” but grants no such permission as to post-judgment interest. *Id.*, subd. 1(b). As the District Court concluded, the statute's text is “clear” and confers no discretion on the judicial branch to vary the post-judgment interest rate on judgments exceeding \$50,000. Add. 3, ¶ 12.

Appellant suggests this Court should nonetheless refuse to follow the statute's plain language because its 10% interest rate supposedly is “arbitrary” and

“has nothing to do with market forces.” App. Br. 7, 10. But Appellant has mounted no constitutional challenge to the statute, and cites no authority suggesting that the Legislature is constitutionally required to defer to “market forces” in setting a post-judgment interest rate. “As for interest on a judgment, there is no common-law right [citation omitted]. Post-judgment interest, owing its existence to statute, is subject to reasonable statutory regulation limited only by constitutional interdiction.” Rochester Carting Co., 326 N.E.2d at 810.

Moreover, Appellant is wrong to assume that the only rational purpose of a post-judgment interest statute is to compensate the creditor for the loss of use of money. “Post-judgment interest is awarded **as a penalty** for a delayed payment on the judgment.” 47 C.J.S. *Interest & Usury* § 110 (2005 & 2010 Supp.) (emphasis added); see also Rochester Carting Co. at 810 (same); cf. Minn. Stat. § 65B.54, subd. 2 (imposing 15% interest rate on overdue payments of insurance benefits).⁵ The Legislature considered the benefits of an above-market rate before enacting Minnesota’s 10% rate provision. In a hearing on that legislation, witnesses and legislators spoke approvingly of how an above-market rate would lower the

⁵ Appellant cites one case for the proposition that “interest is not a penalty, but rather is the payment of a reasonable sum for the loss of use of money,” but that opinion was discussing the presumed purpose of a statute imposing interest on delinquent property taxes. App. Br. 9-10 (citing Arcadia Development Corp. v. County of Hennepin, 528 N.W.2d 857, 861 (Minn. 1995)). Arcadia nowhere suggested that it was enouncing a constitutional limitation on the Legislature’s authority to set interest rates.

burdens on this Court by encouraging prompt payment of judgments and penalizing judgment debtors who bring meritless appeals, and noted a 10% rate would bring Minnesota's post-judgment interest rate closer to the 12% rate used by Wisconsin.⁶ See Wisc. Stat. § 815.05(8). As one legislator stated:

To the extent that we're giving people the proper incentive to settle claims that should be settled, pay things that you owe and then get out of court, and let somebody else have the stage for what should be a real serious dispute where there are really issues in dispute, that that's a good thing for us to do for the whole court system.

Hearing Recording at 59:33-59:54. During the Legislature's 2010-2011 session, companion bills were introduced in the House and Senate that would have repealed the 10% rate provision and set post-judgment interest at market rates for all money judgments, but the Legislature chose not to do so. See H.F. 770 & S.F. 530, 87th Leg., Reg. Session (Minn. 2011).

Appellant has burdened this Court with an appeal on an issue that is already settled by this Court's published precedents and the plain language of a statute. If Section 549.09 imposes a "penalty" rate, then in this case it is functioning as intended.

⁶ The hearing was held on H.F. 1611 on April 2, 2009 before the House's Public Safety Finance Division Committee. A recording of that hearing is available online from the House's website at: <<http://www.house.leg.state.mn.us/comm/minutes1.asp?comm=86122&id=2019>> [Hereinafter the "Hearing Recording."] The relevant portion of the hearing begins 46 minutes and 25 seconds into the recording and lasts approximately 14 minutes.

CONCLUSION

For all the foregoing reasons, Respondent respectfully requests the Court to affirm the District Court's October 4, 2010 Order.

August 11, 2011

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