

A10-823

STATE OF MINNESOTA

IN COURT OF APPEALS

TMT Land V, LLC,

Appellant,

vs.

County of Washington,

Respondent.

RESPONDENT'S BRIEF AND APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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STATEMENT OF THE LEGAL ISSUES

Whether the district court abuse its discretion in ordering *nunc pro tunc* entry of judgment as of June 28, 2009.

(1) Description of how issue was raised in the trial court: In response to the Appellant's Motion for an award of pre and post-verdict interest of 10 percent per annum, pursuant to Minn. Stat. § 549.09, subd. 1(c)(2) (2009), the Respondent requested the district court to amend the entry of judgment *nunc pro tunc* effective the date of the jury verdict, June 18, 2009.

(2) Concise statement of the trial court's ruling: The district court ordered entry of judgment *nunc pro tunc* effective June 28, 2009, the date in which the court should have entered judgment, thereby rendering the Appellant's Motion for 10 percent interest as moot.

(3) Description of how the issue was subsequently preserved for appeal: Appellant appealed to this Court of appeals from the judgment entered on March 12, 2010, pursuant to the district court's order filed on March 10, 2010.

(4) List of the most apposite cases and the most apposite constitutional and statutory provisions:

City of Maplewood v. Kavanagh, 333 N.W.2d 857 (Minn. App. 1983).

Mitchell v. Overman, 103 U.S. 62 (1880).

Minn. Stat. § 117.185

Minn. Stat. § 549.09 (2008)

Minn. Stat. § 549.09 (2009)

Minn. R. Civ. P. 58.01

ARGUMENT

The district court did not abuse its discretion in ordering the entry of judgment *nunc pro tunc* to June 28, 2009.

The Appellant misstates the issue in this matter. This is not a case involving statutory construction, rather, it is a review of whether the district court abused its discretion in correcting an injustice caused by an error of the court. Whether the Appellant is entitled to the 10 percent interest rate pursuant to Minnesota Statute Section 549.09, subdivision 1(c)(2) (as amended effective August 1, 2009) is ultimately hinged upon the determination of whether the district court abused its discretion in ordering *nunc pro tunc* entry of judgment to when the judgment should have been entered were it not for the delay of the court. As will be illustrated below, the district court did not abuse its discretion amending the entry of judgment to June 28, 2009, which thereby renders the application of the August 1, 2009 amendment to Section 549.09 as moot.¹ Thus, the district court did not err in denying Appellant's Motion for an award of 10 percent interest rate to the judgment.²

1. The Appellant concedes in his brief that the statutory 10 percent interest rate is only applicable to judgments entered on or after August 1, 2009. App. Brief at 6 (citing 2009 Minn. Laws, Ch. 83, Art. 2, Sec. 35).

2. The Respondent does not dispute or challenge that the Appellant is entitled to the presumed interest rate of four to five percent as set forth in Section 549.09, subdivision 1(c) (2008) (prior to the effective August 1, 2009 amendment). Said funds have already been disbursed to the Appellant, along with the balance of the principal Judgment, in August 2009. App. Brief at 2-3.

1. Standard of Review

The district court has the sound discretion to grant equitable relief and only an abuse of that discretion will warrant a reversal. *Peterson v. Holiday Recreational Industries, Inc.*, 726 N.W.2d 499, 505 (Minn. App. 2007) (citing *Nadeau v. County of Ramsey*, 277 N.W.2d 520, 524 (Minn. 1979)). It has long been recognized that the district court has the discretion to order *nunc pro tunc* entry of judgment. *Wilcox v. Schloner*, 222 Minn. 45, 48, 23 N.W.2d 19, 21 (1946); *see also Plankerton v. Continental Casualty Co.*, 180 Minn. 168, 230 N.W.464 (1930) (*nunc pro tunc* correction and entry of judgment comes within the court's general powers); *Medtronic, Inc. v. Advanced Bionics Corp.*, 630 N.W.2d 438, 447 (Minn. App. 2001) (*nunc pro tunc* orders are proper under Minn. R. Civ. P. 60.01). A *nunc pro tunc* order should be granted as justice requires, in light of the circumstances of the particular case. *Mitchell v. Overman*, 103 U.S.62, 65 (1880).

2. The district court's *nunc pro tunc* entry of judgment effective June 28, 2009 was an appropriate exercise of the court's discretion.

a. *Doctrine of Nunc pro tunc.*

Both the American and English courts have long recognized the maxim that the court has the affirmative duty to see that the parties shall not suffer by the delay of the court. *Mitchell*, 103 U.S.at 64-65; *see also Hampshire Arms Hotel Co. v. Wells*, 210 Minn. 286, 288, 298 N.W. 452, 453 (1941) (“an act of the court shall prejudice no one”).

Where [] delay has been caused either for [the court's] convenience, or by the multiplicity or press of business, either the intricacy of the questions involved, or of any other cause not attributable to the laches of the parties, *the judgment or the decree may be entered retrospectively, as of a time when it should or might have been entered up.*" *Mitchell*, 103 U.S. at 65 (emphasis added).

In other words, where the delay in the entry of judgment is caused by the action or inaction of the court, which prejudices a party to the action, a *nunc pro tunc* entry of judgment should be granted as of the time it should have been entered. *Hampshire Arms*, 210 Minn. at 288, 298 N.W. at 453; *see also Wells v. Geiseke*, 27 Minn. 478, 483, 8 N.W. 380, 381 (1881) (the court has the power to correct "mistakes and *omissions*, and to relieve against defaults and slips in practice" (emphasis added)).

- b. *The district court is mandated by statute and rule to enter judgment upon the rendering of the jury's verdict on June 18, 2009.*

There is no dispute that this action involved the issue of damages in an eminent domain action commenced by the Respondent under Minnesota Statutes Chapter 117, which was ultimately tried before a jury on June 15 through June 18, 2009. App. Brief at 2. As such, the district court was statutorily mandated under Section 117.185 to enter judgment when the jury rendered its verdict awarding damages to the Appellant on June 18, 2009. Accordingly, "[j]udgment *shall be entered upon the verdict* or decision, fixing the amount of damages payable to the several parties concerned . . . and, until reversed or modified in a direct proceeding begun for that purpose, *the judgment shall be binding upon the petitioner and all other parties thereto.*" Minn. Stat. § 117.185 (emphasis

added).³ Moreover, Rule 58.01 of the Minnesota Rules of Civil Procedure provides that the court administrator must enter judgment “*forthwith*” “upon the verdict of a jury.” (emphasis added).⁴

In *City of Maplewood v. Kavanagh*, the Court of Appeals interpreted both Section 117.185 and Rule 58.01 as strictly mandating “entry of judgment *on* the verdict.” 333 N.W.2d 857, 861 (Minn. App. 1983) (emphasis added) (holding that the rights of the parties vests at the time the jury returns the verdict and that the clerk’s delay of entry of judgment four days after the verdict was not “*forthwith*”). No further request or action by the parties is required to enter judgment. *See id.* at 861 (“statute does not provide that judgment shall be entered at the condemnor’s option, nor does it permit abandonment or dismissal after the verdict”). The judgment is binding on the parties as of the time of the verdict until it is either reversed or modified. *Id.* at 862; Minn. Stat. § 117.185.

In the case at bar, the jury rendered its verdict on June 18, 2009. App. Brief at 2. Neither prior to nor subsequent to the verdict did either party move the district court for

3. The parties may also stipulate in lieu of entry of judgment.

4. Appellant mischaracterizes the jury’s verdict in this case as a special verdict, rather than a general verdict, and argues that the district court must first order the court administrator to enter judgment. App. Brief at 9; *see* Minn. R. Civ. P. 58.01. Because the jury in this case rendered a verdict award of “total just compensation” in the form of monetary damages only and disposed of all claims, the verdict was general in nature, thereby triggering the court administrator’s duty to enter judgment “*forthwith*.” *See* App. Add. at 10-11. However, in light of Section 117.185’s mandate for entry of judgment upon the verdict, this distinction is immaterial. Regardless of whether or not an order by the court was required, the entry of judgment must still be entered at the time of the verdict. *City of Maplewood v. Kavanagh*, 333 N.W.2d 857, 861 (Minn. App. 1983).

stay of entry of judgment, nor did either party bring any post-trial motions for new trial or judgment as matter of law.⁵ App. Add. at 7. Therefore, the entry of judgment should have occurred on June 18, 2009 pursuant to statute.⁶

The Appellant attempts to argue that the doctrine of *nunc pro tunc* is inapplicable to this case, citing the holdings of *Hampshire* and *Wilcox*. App. Brief at 8-9. The Appellant's reliance is misplaced. Both *Hampshire* and *Wilcox* are distinguishable from the case at bar because the trial courts in those cases attempted to cure a deficiency or omission caused by one of the parties, not the court. In *Hampshire*, the Supreme Court found the lower court's *nunc pro tunc* order inappropriate when it was made in an effort to save a party's premature appeal. 210 Minn. at 288, 298 N.W. at 453. In *Wilcox*, the trial court improperly amended the record to cure the defendant's omission of moving for

5. Since the Respondent clearly was not challenging the verdict of the jury by way of post-trial motions or direct appeal and unilaterally deposited the balance of the judgment with the district court on August 31, 2009, along with the statutory presumed rate of interest of four to five percent for the relevant years, there no was need for the Respondent to make any extraordinary request to the district court for entry of judgment prior to August 1, 2009. *See also* Resp. Appx. at 5 (according to the Appellant's attorney's affidavit dated Feb. 9, 2010, he believed that the court would prepare and issue the Order for Judgment after the verdict was rendered).

6. The district court in issuing its *nunc pro tunc* order of entry of judgment effective June 28, 2009 held that "forthwith" allowed the court "a reasonable time under the circumstances" to direct entry of judgment and that, given the current staffing and budgetary constraints on the judiciary, the entry of judgment should have been no more than 10 days from the rendering of the verdict. App. Add. at 6. While the Respondent does not take issue with the court's budgetary plight, it is clear based on the above-statutory and case authority, the entry of judgment in this matter must still take effect as of the same day as the verdict, which in this case was June 18, 2009. However, the Respondent is not challenging the June 28, 2009 effective date of the entry of judgment and, thus, is not requesting this Court to remand to change the effective date.

direct verdict prior to the jury's verdict in order to preserve the defendant's motion for judgment notwithstanding the verdict. 222 Minn. at 46-47, 23 N.W. at 20. Unlike both *Hampshire* and *Wilcox*, the district court in the case at bar was mandated by statute to enter judgment upon the rendering of the verdict.⁷ The delay of the entry for over four months was solely caused by the court, not the parties.

c. *Court's failure to enter judgment until October 30, 2009 results in prejudice to the Respondent.*

Notwithstanding that the interest rate as prescribed Section 549.09 is not ultimately conclusive in condemnation actions, but rather, a presumption that it meets the requirements of just compensation,⁸ the Appellant's sole basis for requesting an award of 10 percent interest is that the judgment was over \$50,000 and was entered after August 1, 2009. App. Brief at 7. The Appellant does not even attempt to argue that a 10 percent

7. The Appellant argues in its brief that the doctrine of *nunc pro tunc* only applies to correct the record when "something actually happened," but was not properly recorded. App. Brief at 8. The Appellant apparently does not understand that the jury's rendering of its verdict on June 18, 2009 was the "something [that] actually happened" and that the district court failed to timely enter judgment as mandated by Section 117.185. This is exactly the type of circumstance that the doctrine of *nunc pro tunc* was intended to cure.

8. The Appellant, in its brief, neglects to cite the holding of *Humphrey v. Jim Lupient Oldsmobile Co.*, 509 N.W.2d 361 (Minn. 1993). In *Lupient*, the Supreme Court held that the interest rate as prescribed in Section 549.09 is merely presumed to be reasonable, thereby meeting the requirements of just compensation. *Id.* at 364. However, because the rate of interest on condemnation awards is a judicial decision, the presumption may be rebutted by an affirmative showing that another rate is "reasonable and affords just compensation." *Id.* "In determining a reasonable rate, the trial court should look to rates on investments which guarantee safety of principal." *Id.*

rate (or another rate) is “reasonable” or “affords just compensation.” *See Humphrey v. Jim Lupient Oldsmobile Co.*, 509 N.W.2d 361, 364 (Minn. 1993).

Because the Appellant’s only basis for requesting 10 percent interest on the judgment is simply statutory, the Appellant is obviously not challenging the presumption that the statutory rates as set forth in 549.09 are reasonable and afford just compensation.

See Lupient, 509 N.W.2d at 364. Therefore, it logically follows that had the district court entered judgment on June 18, 2009, as was mandated by statute, the 10 percent provision in Section 549.09, subdivision 1(c)(2) (2009) clearly would not be applicable and the Appellant would have been presumably satisfied with the four to five percent interest rate it is otherwise entitled to under subdivision 1(c) (2008).⁹

d. *Justice requires entry of judgment nunc pro tunc.*

To award the Appellant an additional 6% interest on the judgment would be an unmerited windfall¹⁰ to the detriment of the Respondent due solely to the Appellant’s opportunist exploit of the district court’s failure to timely enter judgment. The Appellant makes no case whatsoever that a 10% interest rate is reasonable or just compensation. It

9. The Respondent does not dispute that the Appellant is entitled to four percent interest rate on the judgment (five percent for 2007) and there has been no challenge or record made that such rates would not represent a reasonable, just compensation. *See* Minn. Stat. § 549.09, subd. 1(c) (2008) (“rate interest of interest shall be based on the secondary market yield of one year [U.S.] Treasury bills, calculated on a bank discount basis”); Minn. R. Civ. P. 54.04 (2010) (Historical Notes).

10. The Respondent estimates that an award of an additional 5-6% interest rate on the judgment would have totaled to approximately \$48,878.22. *See* Resp. Appx. at 1.

certainly would strain the limits of reason and logic to suggest that the “rates of return on investments which guarantee safety of principal” would increase overnight from four to 10 percent on August 1, 2009. *See Lupient*, 509 N.W.2d at 364.

The district court’s *nunc pro tunc* entry of judgment merely places the parties back in the position that they were in at the time of the verdict, when the judgment should have been entered as required by Section 117.185. In other words, the Appellant is no worse off now than it would be had the district court not failed to timely enter judgment.¹¹ Thus, the Appellant cannot seriously complain that it is unfairly prejudiced by retroactive effective date of the entry of judgment.¹²

This case is similar to the facts in *City of Maplewood v. Kavanah*, where the Court of Appeals reversed the district court’s dismissal of a condemnation petition after a jury had assessed damages by verdict, but before entry of judgment. 333 N.W.2d at 858. In *Kavanah*, the jury returned a verdict awarding damages to the landowner on a Thursday. *Id.* at 858. The court administrator did not enter judgment either on that Thursday or the

11. The Appellant’s attorney even claims in his affidavit dated February 9, 2010 submitted to the district court that he was unaware of the 2009 amendment to Section 549.09 until September 9, 2009. Resp. Appx. at 4; *see also* App. Brief at 3 (Appellant first requested the Respondent for 10 percent interest in September 2009). Taking this claim at face value, the Appellant cannot now seriously claim that it relied upon or believed that it was entitled to a 10% interest rate return as just compensation at the time the jury verdict was rendered on June 18, 2009, or even when the Respondent disbursed the judgment on August 31, 2009.

12. After review of the Appellant’s initial pleadings before the district court and its brief to the Court of Appeals, the Appellant does not even argue that it is unfairly prejudiced by the district court’s *nunc pro tunc* order.

next day. *Id.* On the following Monday, the district court ordered entry of judgment, but stayed the order for 30 days upon the city condemnor's request. *Id.* During the pendency of the stay, the contemnor moved for dismissal, which the court granted. *Id.*

The Court of Appeals reversed holding that the rights of the parties to a condemnation action vests at the time of the rendering of the verdict, thereby prohibiting the contemnor from dismissing the proceedings. *Id.* at 862.¹³ The Court reasoned that Section 117.185 and Rule 58.01 mandate that the entry of judgment must be at the time of the verdict and that the clerk's failure to perform the ministerial duty of timely entering the judgment resulted in unfairness and prejudice to the landowners because the delay afforded the contemnor the opportunity to apply for and be granted a stay of the entry. *Id.* The Court recognized that had the district court entered judgment "as mandated by statute . . . , the condemnor could not have abandoned or dismissed the proceedings." *Id.*

Like the facts in *Kavanah*, the district court's failure to timely enter judgment resulted in unfairness and prejudice to the Respondent. Because the district court did not enter judgment until October 30, 2009, over four months from the rendering of the verdict, the presumed statutory interest rate on the judgment arbitrarily increased from four to 10 percent. Similar to *Kavanah*, had the district court entered judgment when the jury rendered its verdict on June 18, 2009, as mandated by Section 117.185, the prejudice to the Respondent would have been avoided because the 10 percent interest rate provision

13. In its holding, the Court recognized the maxim "equity regards and treats that as done which in good conscience ought to be done." *Id.* at 862 (quotes and cite omitted).

in Section 549.09 (2009) did not apply to judgments prior to August 1, 2009. Since the rights of the parties vested when the jury rendered its verdict on June 18, 2009, justice demands that district court cure its error in delaying the entry of judgment and place the parties back in the position they would have been in had the court not delayed the entry of judgment. The equitable remedy to cure such delay is the doctrine of *nunc pro tunc*.

Therefore, the district court did not abuse its discretion in issuing its *nunc pro tunc* order entering judgment effective June 28, 2009.

3. The district court properly dismissed the Appellant's request for 10 percent interest under Minn. Stat. § 549.09, subd. 1(c)(2) as moot.

As illustrated above, the Appellant's request for an award of the 10 percent interest rate on the judgment was purely statutory. The Appellant concedes that Section 549.09, subd. 1(c)(2) (2009) is only applicable to judgments entered on or after August 1, 2009. Therefore, the district court's *nunc pro tunc* order of entry of judgment effective June 28, 2009 renders the Appellant's request as moot and, thus, the district court did not error in denying the Appellant's motion for an award of 10 percent interest.

However, notwithstanding the district court's *nunc pro tunc* entry of judgment, the record reflects that an award of 10 percent interest rate is not reasonable and exceeds just compensation to the Appellant. As cited earlier, the statutory interest rate as set forth in Section 549.09 is not conclusive on eminent domain actions. *Lupient*, 509 N.W.2d at 364. Because both the U.S. and Minnesota constitutions are implicated, "the determination of the rate of interest on condemnations awards is a *judicial decision*." *Id.*

at 363 (emphasis added) (citing *State by Spannaus v. Carney*, 309 N.W.2d 775, 776 (Minn. 1981)). The statute merely creates a presumption, which may be rebutted by evidence of another rate that is on par with “rates on investments which guarantee safety of principal.” *Id.* at 364.¹⁴

In response to the Appellant’s Motion for 10 percent interest before the district court, the Respondent presented evidence that 10 percent was not reasonable and exceeded just compensation. Resp. Appx. at 8-9. When looking at the relevant AAA rated corporate bond rate and U.S. Treasury Bill rates, the prevailing interest rates were four to five percent during the years 2007 through 2009, which happen to be on par with the interest rates as presumed by Section 549.09, subd. 1(c) (2008). *Id.* The Appellant failed to offer any evidence of comparable interest rates to justify a finding that 10 percent interest was reasonable and afforded just compensation.

Because the Appellant did not demonstrate that an award of 10% interest rate was reasonable or afforded just compensation, and the record reflects that the presumed statutory rate of four to five percent as set forth in Section 549.09, subd. 1(c) (2008) is reasonable and justly compensates the Appellant, the district court did not err in denying the Appellant’s Motion for an award of 10 percent interest on the judgment.

14. The *Lupient* Court instructed that the trial court should look to very low risk investments such as certificates of deposit from federally insured banks, U.S. Treasury Bills with maturities within the relevant time period, other government bonds, and long term corporate bonds from AAA rated companies with maturities within the relevant time period. 509 N.W.2d at 364 n. 3; *compare with* Minn. Stat. § 549.09, subd. 1(c) (2008) (the presumed statutory rate is explicitly based on the secondary market yield of one year US Treasury bills).

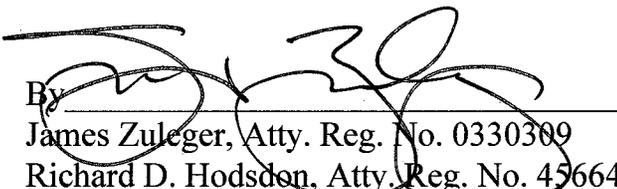
CONCLUSION

For the above-stated reasons, the Respondent respectfully requests the Court to affirm the district court's order *nunc pro tunc* of entry of judgment effective June 28, 2009 and its denial of the Appellant's motion for an award of 10 percent interest rate.

Respectfully submitted,

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Dated this 16 day of
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