STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0211

In re the Marriage of:
Kari Jo Soeffker, petitioner,
Respondent,

vs.

Jay Adrian Soeffker,
Appellant.

Filed November 19, 2012
Reversed and remanded
Cleary, Judge

Ramsey County District Court
File No. 62-F6-07-000558

R. Daniel Rasmus, Rasmus Law Office, LLC, Minneapolis, Minnesota; and

Andrew Birkeland, Andrew G. Birkeland, P.C., Minneapolis, Minnesota (for respondent)

Jay Adrian Soeffker, St. Paul, Minnesota (pro se appellant)

Considered and decided by Peterson, Presiding Judge; Bjorkman, Judge; and Cleary, Judge.

U N P U B L I S H E D O P I N I O N

CLEARY, Judge

Appellant challenges the district court's determination that he is not entitled to interest on the marital property equalizer awarded in the original judgment and decree issued in the parties' marital dissolution proceeding. We reverse and remand.

FACTS

Appellant Jay Soeffker and respondent Kari Soeffker were married in 1991 and separated in 2007. In 2009, the district court issued a judgment and decree dividing the parties' assets, which included their homestead (Bates property), rental properties, retirement accounts, automobiles, personal property, checking and savings accounts, and respondent's saving bonds and life insurance policy. The court awarded the Bates property to respondent, the rental properties to appellant, and split the retirement accounts equally. Respondent was also awarded her savings bonds and life insurance policy. Each party was awarded the automobiles in his or her possession and the checking and savings accounts in his or her name. The parties agreed to a division of all of their personal property except four items, which the court determined would be divided by a coin toss. The court calculated, based on the value of the assets as divided, that respondent owed appellant a marital property equalizer of $122,923.15. The court noted:

> Said equalizer shall be paid via a refinancing of the [Bates property] and/or liquidation of [respondent's] savings bonds. [Respondent] shall take steps to secure this refinancing within ninety (90) days of the date of this [o]rder, and shall keep [appellant] informed as to her progress.

The judgment and decree was entered by the family court administrator on November 3, 2009.

In December 2009, appellant appealed the district court's decision, arguing that the court abused its discretion when it awarded the Bates property to respondent; that the district court erred in determining the value of the Bates property; and that the district court erred when it found that he did not have a nonmarital interest in the Bates property.

In April 2011, this court held that the district court did not abuse its discretion by awarding the Bates property to respondent and did not err when determining the value of the property. *Soeffker v. Soeffker*, No. A09-2353, 2011 WL 1364237, at *1 (Minn. App. Apr. 12, 2011). The court further held that appellant sufficiently demonstrated, by a preponderance of the evidence, that he had a 9.5% nonmarital interest in the Bates property. *Id.* at *8. The court remanded the matter to the district court to calculate appellant's monetary interest in the Bates property based on that percentage. *Id.* The court also awarded appellant $4,799.19 for costs related to the appeal.

In May 2011, the district court issued an amended order which calculated appellant's nonmarital interest in the Bates property to be $26,807.12. This figure was added to the original amount respondent owed appellant for the marital property equalizer, bringing the new total to $149,730.27. Including the award for costs issued by this court, respondent owed appellant a total of $154,545.46.

In July 2011, appellant docketed the original judgment with the court administrator. Also in July 2011, respondent sent appellant four checks. One check, in the amount of $4,815.19, satisfied the amount this court awarded appellant for costs related to his appeal.[1] Another check, in the amount of $26,807.12, satisfied the portion of the property equalizer judgment calculated by the district court on remand. The third and fourth checks, in the amounts of $60,000 and $13,000, were applied to the original judgment of $122,923.15.

[1] A small amount of interest accrued on the amount respondent paid appellant for his costs related to the appeal, increasing the amount paid from $4,799.19 to $4,815.19.

In August 2011, respondent filed a motion in the district court to determine, among other requests, that she did not owe interest on the original judgment. Appellant filed his own motion and a responsive motion requesting, also among other things, that the court deny respondent's motion in its entirety. In a decision issued in December 2011, the court found that respondent still owed petitioner $49,923.15 from the original judgment of $122,923.15.[2] The court also held that the two newer judgments were satisfied and that appellant was not entitled to interest on the original judgment. The court noted that, while a decree of dissolution is generally final when entered, "this finality is subject to the right of appeal." The court stated that everything in a judgment and decree, *other than* the finality of the dissolution, can be appealed and is not final during the pendency of the appeal.

The court observed that appellant did not request payment during the pendency of his appeal, and even when respondent asked appellant what to do about the judgment during the appeal, she received no answer. The court noted that equity favored not awarding interest and concluded that "[b]ut for [appellant's] appeal, the judgment would have been satisfied and no interest would have been assessed . . . [respondent] should not be punished and [appellant] should not be awarded for exercising his right to appeal."

This appeal followed.

[2] Minn. Stat. § 549.09, subd. 1(c)(2) (2010), provides for a ten percent interest rate per year "until [the judgment of over $50,000] is paid." Consequently, the fact that respondent reduced the judgment to under $50,000 through partial payments does not change the interest rate. It remains ten percent per year until paid.

D E C I S I O N

The application and interpretation of a statute are questions of law that appellate courts review de novo. *Goldman v. Greenwood*, 748 N.W.2d 279, 282 (Minn. 2008). "Application of a statute to the undisputed facts of a case involves a question of law, and the district court's decision is not binding on this court." *Davies v. W. Publ'g Co.*, 622 N.W.2d 836, 841 (Minn. App. 2001), *review denied* (Minn. May 29, 2001). When a judgment or award is for the recovery of money, "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." Minn. Stat. § 549.09, subd. 2 (2010).

Discretion of the District Court to Ignore Minn. Stat. § 549.09

Respondent first argues that "when reviewing a district court's division of marital assets the appellate court reviews for an abuse of discretion." Respondent relies on a recent decision by this court in an action to enforce payment due under a dissolution agreement. *See Redleaf v. Redleaf*, 807 N.W.2d 731 (Minn. App. 2011).

In *Redleaf*, this court determined that a district court did not err by concluding that it was bound to apply the statutory postjudgment interest rate to obligations due in a dissolution judgment. *Id.* at 733–35. The appellant challenged the rate of interest the district court imposed, claiming that the ten-percent rate dictated by the statute for judgments over $50,000 was inequitable in light of the market interest rate. *Id.* at 732. The appellant argued that the court was required to "exercise discretion and set an equitable interest rate" based on its statutory obligations "to divide marital assets in a just and equitable manner." *Redleaf*, 807 N.W.2d at 734 (citing Minn. Stat. § 518.58, subd. 1

(2010)). The court noted that the underlying action in the district court was a motion to enforce the dissolution judgment, and that deciding that motion "did not demand consideration of the equities as it would in an initial property division." *Id.* at 735. The court held that the district court did not "have the discretion to ignore the unambiguous statutory mandate" under Minn. Stat. § 549.09, subd. 1(c)(2) (2010).

Similarly here, the issue in this appeal is satisfaction of the marital property equalizer due appellant. The division of the marital assets was determined by the original judgment and decree, and, upon remand from this court, the amended order. Appellant's and respondent's motions here sought enforcement of the various provisions of the judgment and decree. The district court did not have the discretion to ignore Minn. Stat. § 549.09.

Timing of the Entry and Docketing of the Judgment

Respondent next argues that the judgment and decree was not final until this court issued its opinion in April 2011. Respondent relies on Minn. Stat. § 518.145, subd. 1 (2010), which states:

> A decree of dissolution of marriage or of legal separation is final when entered, subject to the right of appeal. . . . An appeal from the decree of dissolution that does not challenge the finding that the marriage is irretrievably broken does not delay the finality of that provision of the decree which dissolves the marriage beyond the time for appealing from that provision.

Minn. Stat. § 549.09, subd. 1(a) (2010), states that, when a judgment is for the recovery of money, the court computes the interest "from the time of the verdict, award, or report until judgment is finally entered." Minn. Stat. § 549.09, subd. 2, notes that

"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."

Respondent argues that, in this case, all of the terms of the judgment and decree are appealable other than the dissolution of marriage, and, therefore, those terms are not final during the pendency of the appeal. Minn. Stat. § 549.09 does not mention the pendency of an appeal in the provision determining when interest accrues. The accrual of interest on the unpaid balance of the judgment begins at the time the judgment is entered, *see* Minn. Stat. § 549.09, subd. 2, and the judgment here was entered November 3, 2009.

In a similar case, this court ordered a party to pay postjudgment interest on part of a property settlement ordered in a judgment and decree. *Riley v. Riley*, 385 N.W.2d 883 (Minn. App. 1986). In *Riley*, the parties were appealing their marriage dissolution for the second time. *Id.* at 884–85. The parties' marriage was dissolved by a judgment and decree entered in August 1984. *Id.* at 888. The respondent was ordered to pay the appellant $30,000 within 30 days of the entry of the judgment and decree; the respondent did not pay the judgment until December 1985. *Id.* In the first appeal, both parties appealed different parts of the judgment and decree, and this court affirmed in part, reversed in part, and remanded the case to the district court. *Id.* at 885. Upon remand, the district court issued additional findings of fact, affirmed its opinion, and denied the appellant's motion for interest on the $30,000 awarded in the original decree. *Id.* In the second appeal, this court held that the respondent was responsible for interest on the $30,000, stating "Minnesota law provides that interest shall accrue on unpaid balances of judgments from the time the judgment is entered until it is paid." *Id.* at 888. Although

the specific argument at issue in *Riley* was not identical to the present case, it is clear that this court considered the date of the original judgment and decree to be the beginning of the accrual period for the unpaid judgment.[3]

Respondent also argues here that appellant did not enter the judgment until July 2011. "The judgment in all cases shall be entered and signed by the court administrator in the judgment roll; this entry constitutes the entry of the judgment; and the judgment is not effective before such entry." Minn. R. Civ. P. 58.01. Respondent's argument is without merit because the judgment and decree was entered by the court administrator on November 3, 2009. Although the judgment was not docketed until July 2011, the judgment was effective upon entry.

Respondent's reliance on *In re Marriage of Opp*, 516 N.W.2d 193 (Minn. App. 1994), *review denied* (Minn. Aug. 24, 1994), is unpersuasive. The district court's judgment in *Opp* was not entered until over ten years after it was ordered. *Opp*, 516 N.W.2d at 194. In contrast, the judgment and decree here was entered and signed by the court administrator the same day the court ordered it.

Equitable Concerns

Respondent argues that equity favors the conclusion that appellant is not entitled to postjudgment interest because appellant caused the interest-accruing delay. There is no Minnesota caselaw directly on point. Respondent cites other jurisdictions that do not

[3] This court ordered the district court to enter a judgment for interest from September 10, 1984, through December 1, 1985, when the respondent paid the $30,000. *Riley*, 385 N.W.2d at 888. The accrual period started on September 10, 1984, because the respondent had 30 days from the entry of the judgment and decree on August 10, 1984, to pay appellant. *Id.*

apply postjudgment interest when the judgment creditor is the appellant. *See, e.g.*, *Jesser v. Mayfair Hotel, Inc.*, 360 S.W.2d 652, 665 (Mo. 1962) ("Where a judgment creditor appeals on the grounds of inadequacy from a recovery in his favor, and the judgment is affirmed, he is not entitled to interest pending the appeal.").

Respondent argues that she fully intended to pay the entire judgment, but that she was waiting for the outcome of the appeal. She argues that *City of Rochester v. People's Co-op, Power Ass'n, Inc.*, 567 N.W.2d 764 (Minn. App. 1997), addressing the timeliness of payment during the pendency of an appeal, is comparable to the situation here. Both respondent and the district court incorrectly state that this court in *People's Co-op* held that the appellant was not entitled to interest. Under the eminent-domain statute at issue in *People's Co-op*, an award was vacated and the proceedings against the land were dismissed if the award was not paid in a timely manner, as dictated by the statute. *Id.* at 765. However, the court did not address the accrual of interest in its opinion. *Id.* at 764–767. Rather, the court held that the appellant's pending appeal suspended the respondent's obligation to make payment until a reasonable time after the appellate process was terminated. *Id.* at 766. The court noted, "There is no indication in the record that the [respondent], by delaying its payment of the compensation award, was acting in bad faith. Rather, the record indicates that the [respondent] fully intended to pay the judgment but was awaiting the outcome of the anticipated appeal." *Id.* at 766. Similarly here, the court found that respondent "made every effort to timely satisfy the judgments" and pay appellant in full.

In contrast to the *People's Co-op*, the statute at issue here is not the eminent-domain statute, it is Minn. Stat. § 549.09, which mandates that "interest shall accrue on the unpaid balance of the judgment or award from the time that it is entered . . . until it is paid." *See Redleaf*, 807 N.W.2d at 735. Further, the imposition of interest is not a penalty against respondent and her good faith is not at issue here. Historically, the purpose of postjudgment interest was to compensate the judgment creditor for the loss of use of the money. *See McCormack v. Hankscraft Co.*, 281 Minn. 571, 573, 161 N.W.2d 523, 524 (1968) ("We hold that interest is not . . . simply a penalty but is rather a payment of a reasonable sum for the loss of the use of money to which [judgment creditor] has been entitled since the time the verdict was rendered."). This court in *Redleaf* observed that, in recent amendments to the statute, the legislature intended not only to compensate individuals for the loss of the use of the money, but it also intended to "encourage prompt payment of judgments, penalize judgment debtors who bring frivolous appeals, and equalize Minnesota's postjudgment interest rate with neighboring states." *Redleaf*, 807 N.W.2d at 735. Appellant here received $122,923.15 in the original judgment and decree and did not collect the money for almost two years. He lost the use of that money during the pendency of the appeal. In *Riley*, even though these particular facts were not at issue, this court noted that "A dissolution judgment awarding money to a party accrues interest on the unpaid balance from the time the judgment says payment is due until it is paid." 385 N.W.2d at 884. The court held that postjudgment interest accrued from 30 days after the entry of the original judgment and decree until the respondent paid the judgment. *Id.* at 888.

Appellant here was entitled to the marital property equalizer and lost the value of that money from the time the judgment was entered until respondent paid the judgment. Appellant is entitled to interest on the judgment from 90 days after the entry of the original judgment and decree until the judgment was paid in full. We remand to the district court to calculate interest on the original marital property equalizer commencing February 1, 2010.

Reversed and remanded.