

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE
Court of Appeals of Indiana

Lawrence (Lee) Ross Gotfried,
Appellant-Defendant

v.

Nick Popovich,
Appellee-Plaintiff

April 26, 2024

Court of Appeals Case No.
23A-CC-1666

Appeal from the Porter Superior Court
The Honorable Jeffrey W. Clymer, Judge

Trial Court Cause No.
64D02-1312-CC-10744

Memorandum Decision by Judge Foley
Judges Pyle and Tavitas concur.

Foley, Judge.

- [1] Lawrence (Lee) Ross Gotfried (“Gotfried”) defaulted on a promissory note that he executed, promising to pay Nick Popovich (“Popovich”) \$10,000.00 plus interest at the rate of ten-percent per annum on the unpaid balance. Popovich filed a claim against Gotfried, and the trial court entered a default judgment against Gotfried in the total amount of “\$10,000.00 plus interest and late fees.” Appellant’s App. Vol. 2 p. 10. Gotfried made some payments towards the judgment, then stopped making payments. Popovich then filed a “Petition to Revive the Judgment” seeking a calculation of prejudgment interest. The trial court granted the request and issued an order including a calculation of prejudgment interest. Gotfried then filed a motion for relief under Indiana Trial Procedure Rule 60(B) from the trial court’s order for prejudgment interest, which was subsequently denied. Gotfried appeals and raises the following restated issue for our review: whether the trial court abused its discretion when it denied his motion for relief from the judgment. We affirm.

Facts and Procedural History

- [2] On January 9, 2007, Gotfried executed a promissory note wherein Gotfried promised to pay Popovich “the sum of . . . \$10,000.00 . . . together with interest thereon at the rate of 10% per annum on the unpaid balance” (“the note”). *Id.* at 19. The payment of all principal and interest was due on March 9, 2007. The note also provided that: “Payments not made within five . . . days of due date shall be subject to a late charge of 5% of said payment.” *Id.*

[3] Gotfried failed to make the payment of principal and interest on March 9, 2007, and defaulted on the note. For seven years, Popovich sought to collect the balance due under the note, but Gotfried failed to make any payments. On December 6, 2013, Popovich filed a complaint requesting a judgment for the sums due under the note. Gotfried failed to file an appearance nor an answer, resulting in a default judgment against him “in the total amount of \$10,000.00 plus interest and late fees, plus \$141.00 in filing fees, plus \$88.00 in service fees” (“the Original Judgment”). *Id.* at 10. Subsequent to the entry of the Original Judgment, Popovich engaged in proceedings supplement and eventually Gotfried entered into a voluntary wage assignment. Between May 23, 2014, and May 9, 2016, a total of \$3,315.00 was collected, but when Gotfried changed jobs, the wage garnishment terminated, and Gotfried failed to make any further payments.

[4] In 2022, Popovich filed a “Petition to Revive Judgment” and related pleadings regarding the Original Judgment, which asserted that “prejudgment interest accrued at the rate of 10% until the date the judgment was entered, at which time interest began accruing at the statutory rate of 8%.” *Id.* at 12. Subsequently, Popovich filed a motion to supplement the petition in order to attach a revised exhibit with the correct calculation of the total unpaid judgment through July 6, 2022. The motion further provided that: “[T]he total amount outstanding is \$32,092.61, which includes the outstanding principal of \$10,000.00, interest in the amount of \$21,282.87, late fees in the amount of \$508.33, court filing fees in the amount of \$141.00, and service fees in the

amount of \$88.00.” *Id.* at 16. Attached to the petition was the following corrected exhibit containing calculations supporting the request:

Gotfried Note Interest and Amounted Owed Calculations

6-Jul-22

	<u>Pre</u>	<u>Post</u>
	<u>Judgement</u>	<u>Judgement</u>
Interest Rate	10.00%	8.00%
Interest for short periods calculated using actual days over 365.		
Default Judgement Date 01/02/2014		

Principal and Interest

Period Start	Period End	Beginning	Interest	Payments	Ending	
Date	Date	Outstanding			Outstanding	<u>Notes</u>
		Balance			Balance	
1/9/2007	1/9/2007	10,000.00	0.00	0.00	10,000.00	Opening Balance
1/9/2007	3/9/2007	10,000.00	166.67	0.00	10,166.67	1
3/9/2007	3/9/2008	10,166.67	1,016.67	0.00	11,183.33	
3/9/2008	3/9/2009	11,183.33	1,118.33	0.00	12,301.67	
3/9/2009	3/9/2010	12,301.67	1,230.17	0.00	13,531.83	
3/9/2010	3/9/2011	13,531.83	1,353.18	0.00	14,885.02	
3/9/2011	3/9/2012	14,885.02	1,488.50	0.00	16,373.52	
3/9/2012	3/9/2013	16,373.52	1,637.35	0.00	18,010.87	
3/9/2013	1/2/2014	18,010.87	1,475.41	0.00	19,486.28	2
1/2/2014	1/2/2015	19,486.28	1,558.90	0.00	21,045.18	3
1/2/2015	1/2/2016	21,045.18	1,683.61	1,215.00	21,513.80	
1/2/2016	1/2/2017	21,513.80	1,721.10	2,100.00	21,134.90	
1/2/2017	1/2/2018	21,134.90	1,690.79	0.00	22,825.69	
1/2/2018	1/2/2019	22,825.69	1,826.06	0.00	24,651.75	
1/2/2019	1/2/2020	24,651.75	1,972.14	0.00	26,623.89	
1/2/2020	3/23/2020	26,623.89	472.67	0.00	27,096.56	4
3/23/2020	8/14/2020	27,096.56	0.00	0.00	27,096.56	5
8/14/2020	8/14/2021	27,096.56	2,167.72	0.00	29,264.28	
8/14/2021	7/6/2022	29,264.28	2,090.99	0.00	31,355.27	6

Other Amounts

5% Late Fee on 3/9/2007 Due Date	508.33
Filing Fees	141.00
Sheriff's Fees	88.00
Total Due	<u>32,092.61</u>

Notes

- 1 Accrual to original due date of Note. 2 of 12 months interest.
- 2 Accrual to judgement date (299 days).
- 3 Post judgement interest accrued at 8% under Indiana law.
- 4 Accrual to start of interest tolling date (81 days)
- 5 Interest tolled to 8/14/2020.
- 6 Interest to July 6, 2022 (326 days)

Id. at 18.

[5] On August 4, 2022, the trial court issued its Revival of Judgment (“the Revived Judgment”), which stated that the unpaid balance of the Original Judgment, as of July 6, 2022, “including interest, late fees, court filing fees and services fees [wa]s \$32,092.61[,]” and that the Original Judgment was “revived in the amount of \$32,092.61.” *Id.* at 21. Gotfried filed his “Defendant’s Ind. R. Tr. P. 60(B) Motion for Relief From Order of August 4, 2022” on May 11, 2023. The motion asserted that the Revived Judgment was “entered due to the mistake of [Popovich] in asserting prejudgment interest not granted in the [O]riginal [J]udgment, as a surprise, given the judgment of January 2, 2014, and/or due to the fraud, misrepresentations and/or misconduct of [Popovich].” *Id.* at 23. The motion further asserted that the trial court added “prejudgment interest clearly not awarded [in the Original Judgment].” *Id.* at 22. Popovich filed a response, requesting that the trial court deny Gotfried’s motion for relief because, when the Original Judgment was entered, the trial court awarded interest. The trial court conducted a hearing and heard argument from the parties. The trial court noted that the Original Judgment “says ‘plus interest,’ it doesn’t say prejudgment, doesn’t say post-judgment. All it says is plus interest.” Tr. Vol. II p. 9. At the conclusion of the hearing, the trial court stated that it was “not finding that anybody has committed anything fraudulent or knowing – pulled a fast one on the Court.” *Id.* at 21. The trial court took the matter under advisement and then entered its “Order Denying Defendant’s Motion For Relief From Order of August 4, 2022[,]” finding that: “Although the [Original] Judgment could have stated with more clarity the exact amount of prejudgment interest awarded, and the Complaint could have advised

[Gotfried] of the amount sought for prejudgment interest, it was not legally required.” Appellant’s App. Vol. 2 pp. 8–9. The trial court denied Gotfried’s motion, stating that the prejudgment interest “was a figure that would have been easy to calculate, i.e. 10% interest times \$10,000.00 times the number of years.” *Id.* at 8. Gotfried now appeals.

Discussion and Decision

[6] Procedurally, Gotfried is appealing from a denial of his motion to set aside the Revived Judgment under Indiana Trial Procedure Rule 60(B). At the hearing, the trial court specifically stated that there was no fraud committed in this case, and before us, Gotfried does not assert any viable grounds for relief under Trial Rule 60(B). Instead, both parties address the substantive issue of whether Popovich was entitled to prejudgment interest. We turn to that issue below.

[7] At the outset, we address Gotfried’s contention that the trial court abused its discretion when it denied his motion for relief from the Revived Judgment because “the [t]rial [c]ourt lacked any authority to enter” the Revived Judgment, and Popovich “never properly invoked the jurisdiction of the [t]rial [c]ourt to enter such an [o]rder.” Appellant’s Br. p. 10. Gotfried’s argument rests on the premise that Popovich should have asked the trial court to modify, not revive, the Original Judgment in order for the trial court to award prejudgment interest to Popovich. We disagree and note that the Revived Judgment simply clarified an ambiguity contained in the Original Judgment and calculated the balance due. *See Gilbert v. Gilbert*, 777 N.E.2d 785, 790–92 (Ind. Ct. App. 2002) (concluding that the trial court’s order was ambiguous

after both parties reached conflicting conclusions based on their interpretation of the trial court's order). During the hearing, the trial court noted the ambiguity when it stated that the Original Judgment says "plus interest" not prejudgment or post-judgment interest. Tr. Vol. II p. 9. Therefore, when the trial court issued the Revived Judgment, it clarified that the Original Judgment included prejudgment interest and calculated the balance currently due.

[8] Gotfried claims that the trial court abused its discretion when it awarded prejudgment interest to Popovich in its Revived Judgment. Indiana Code section 34-6-2-113 provides: "Prejudgment Interest' . . . means interest on the amount of a judgment that is computed for a period preceding the date that the court returns a verdict or finding in the proceeding." Prejudgment interest is "awarded to fully compensate an injured party for the lost use of money." *Fackler v. Powell*, 923 N.E.2d 973, 977 (Ind. Ct. App. 2010). Prejudgment interest is computed from the time the principal amount was demanded or due and is allowable at the permissible statutory rate when no contractual provision specifies the interest rate." *Id.* Here, the rate—ten percent—is specified in the note.

[9] Regarding prejudgment interest, we have explained that

an award of prejudgment interest in a contract action is warranted if the amount of the claim rests upon a simple calculation and the terms of the contract make such a claim ascertainable. The test for determining whether an award of prejudgment interest is appropriate is whether the damages are complete and may be ascertained as of a particular time. The

award is considered proper when the trier of fact need not exercise its judgment to assess the amount of damages. Finally, an award of prejudgment interest is generally not considered a matter of discretion.

Noble Roman's, Inc. v. Ward, 760 N.E.2d 1132, 1140 (Ind. Ct. App. 2002)
(internal citations omitted).

[10] Here, Popovich is entitled to prejudgment interest based on the plain terms of the note. Gotfried does not dispute that he signed the note, agreeing to repay the principal amount of \$10,000.00 plus ten-percent interest. Gotfried had the ability to avoid the accrual of prejudgment interest by paying off the note when it became due, but he defaulted on the note. The goal of prejudgment interest is to fully compensate an injured party for the lost use of money, and thus Popovich is entitled to the benefit of his bargain, repayment of principal and ten-percent interest until entry of the judgment. *See Fackler*, 923 N.E.2d at 977 (holding that the party was entitled to prejudgment interest at the rate stated in the promissory note until the date of the entry of the judgment). Therefore, the trial court did not abuse its discretion when it awarded the prejudgment interest to Popovich. *See R.K.W. Homes, Inc. v. Hutchison*, 198 N.E.3d 405, 414 (Ind. Ct. App. 2022) (concluding that the appellant was entitled to prejudgment interest because the jury was able to calculate the amount of money owed, making the damages readily ascertainable at a particular time).

[11] Based on the foregoing, we conclude that the trial court did not abuse its discretion when it denied Gotfried's Trial Rule 60(B) motion for relief from the Revived Judgment.

[12] Affirmed.

Pyle, J., and Tavitas, J., concur.

ATTORNEY FOR APPELLANT

Patrick B. McEuen
McEuen Law Office
Portage, Indiana

ATTORNEY FOR APPELLEE

Jaime L. Turley Perz
Sage-Popovich, Inc.
Valparaiso, Indiana