

STATE OF MICHIGAN
COURT OF APPEALS

BRADLEY WHITE, JAMES G. WHITE AND
JOANNE WHITE,

UNPUBLISHED
January 23, 2001

Plaintiffs-Appellants,

v

No. 215585
Genesee Circuit Court
LC No. 97-093138-NI

NUBS NOB, INC.,

Defendant-Appellee.

Before: Talbot, P.J., and O’Connell and Cooper, JJ.

MEMORANDUM.

Plaintiffs appeal by leave granted the trial court’s order awarding interest, pursuant to MCL 600.6013(6); MSA 27A.6013(6), on a judgment confirming an arbitration award. We affirm.

Plaintiffs argue that the trial court erred in assessing an interest rate under subsection (6), which is applicable to judgments in tort actions, rather than the twelve percent interest rate under subsection (5), which governs the award of interest on a judgment entered on a written instrument. Plaintiffs maintain that the parties’ written agreement to arbitrate is a “written instrument” upon which judgment was entered, thereby implicating subsection (5) of the statute. We disagree. We review issues of statutory interpretation *de novo*. *Yaldo v North Pointe Ins Co*, 457 Mich 341, 344; 578 NW2d 274 (1998).

In this case, plaintiffs filed a tort action seeking damages for a personal injury sustained as a result of a snowmobile accident. Plaintiffs’ cause of action does not rely upon any written instrument. Plaintiffs attempt to rely upon the arbitration agreement to effectively convert the nature of their claim from tort to contract. The rationale for awarding a fixed rate of interest to judgments on written instruments, as opposed to a fluctuating interest rate on judgments in other civil actions, is a preexisting relationship between the parties before a controversy arises. *Yaldo*, *supra* at 350. The arbitration agreement upon which plaintiffs rely did not exist prior to the controversy. The judgment entered on the arbitration award was not entered to compensate a contract claimant for a claim arising out of some failure to comply with the terms of the binding arbitration agreement. Rather, the award was entered to compensate a tort claimant for personal injury. The arbitration agreement merely served as the avenue for determining the amount defendant would pay to compensate for the injury. Because plaintiffs’ complaint is based in tort,

the trial court properly assessed a fluctuating rate of interest pursuant to subsection (6). See *Dedes v Asch*, 233 Mich App 329; 590 NW2d 605 (1998).

Affirmed.

/s/ Michael J. Talbot
/s/ Peter D. O'Connell
/s/ Jessica R. Cooper