

IN THE COURT OF APPEALS OF IOWA

No. 3-112 / 12-0928
Filed May 15, 2013

GAILA M. EHLERS,
Plaintiff,

vs.

GERALD K. SCHIMMELPFENNIG,
Defendant-Appellant,

vs.

**EAGLE NATIONAL ASSURANCE
CORPORATION, n/k/a CAMERON
MUTUAL INS. CO.,**
Third-Party Defendant-Appellee.

Appeal from the Iowa District Court for Jefferson County, Dan F. Morrison,
Judge.

Gerald K. Schimmelpfennig appeals from the district court ruling on his
indemnification request. **AFFIRMED.**

Gregg Pieper, Iowa City, for appellant.

Michael M. Moreland and Heather M. Simplot of Harrison, Moreland,
Webber & Simplot, P.C., Ottumwa, for appellee.

Considered by Eisenhauer, C.J., and Danilson and Bower, JJ.

BOWER, J.

Gerald K. Schimmelfennig appeals from the district court ruling on his indemnification request. Schimmelfennig argues that the district court failed to award attorney fees, and interest. Schimmelfennig also requests appellate attorney fees. Because we find that all amounts owed have been paid, we affirm.

I. Background Proceedings and Facts

This dispute makes its second appearance before this court, and has once appeared before our supreme court. At issue is the payment of attorney fees and interest due under the indemnification clause of an insurance contract.

The parties have been adversaries since 1997. Schimmelfennig was, along with Cameron Mutual Insurance Company, a defendant in the initial action.¹ The first appeal, to this court, resulted in the grant of a new trial to the plaintiff, reversed a ruling granting a new trial to Cameron Mutual, and assessed costs of the appeal to Schimmelfennig. Cameron Mutual filed a motion to determine the amount of attorney fees owed. The district court determined the amount to be \$14,673. After a motion to reconsider was denied, Schimmelfennig appealed to our supreme court which issued a detailed opinion concerning the amounts owed. Cameron Mutual argues they have overpaid the amount ordered by our supreme court.

Nearly ten years after the opinion, Schimmelfennig filed a motion requesting indemnification for unpaid fees and interest. The district court denied

¹ Eagle National Assurance Corporation, the defendant in the original action, is now known as Cameron Mutual. Cameron Mutual is the party to this action.

the motion, finding no basis to grant the request. After a motion to reconsider was denied, Schimmelpennig appealed.

II. Standard of Review

We review the question of interest for errors at law. *Opperman v. Allied Mut. Ins. Co.*, 652 N.W.2d 139, 142 (Iowa 2002).

III. Discussion

Schimmelpennig's arguments on appeal are unclear and difficult to follow.² Though he fails to set forth a concise statement of his argument, it appears his contention is that the district court erred in failing to order an additional award of interest since our supreme court's opinion of April 3, 2002. See *Schimmelpennig v. Eagle Nat. Assur. Corp.*, 641 N.W.2d 814 (Iowa 2002).

In the earlier appeal, our supreme court awarded fees and interest as follows:

Schimmelpennig is entitled to recover interest on the \$67.45 deposition cost from September 10, 1997, the time of payment, at the rate of five percent per annum. He is entitled to interest on the payment of \$1926 for lost wages and medical expenses from July 31, 1996, the time of payment, at the rate of five percent per annum. That interest should run from the dates indicated until March 20, 2000, and be aggregated with the principal amount of

² We note a number of substantial issues with Schimmelpennig's briefing on appeal. Schimmelpennig fails to cite authority for any of his arguments. His statement of the case fails to set out the relevant events from prior proceedings and he fails to give a statement of facts as required by our rules. Iowa R. App. P. 9.603(2)(e), (f). More importantly, he fails to explain how issues were preserved for review and, until the closing page of his reply brief, fails to argue in favor of a standard of review. Iowa R. App. P. 9.603(2)(g). We also note that Schimmelpennig cites to the our rules of appellate procedure under a numbering scheme we have abandoned, and does not properly cite to the North Western Reporter as required by rule 6.904(2). Schimmelpennig's briefing in this case fails to adhere to nearly every standard we have set for proceedings before this court rendering proper and efficient review of his appeal substantially more difficult.

the March 20, 2000 judgment. The aggregated total shall draw interest from that date at the rate specified in section 535.3. On return of the procedendo, a corrected judgment shall be entered.

Id. at 816. Cameron Mutual's Exhibit H accurately sets out the timeline of payments and amounts due in the case. Cameron Mutual tendered a payment of \$10,000 on December 27, 1999.³ The district court, on March 20, 2000, determined that the amount due was \$14,673.45. Cameron Mutual made a payment one week later of \$4673, plus an additional payment of \$60 on October 4, 2000. Our supreme court required an additional \$363.88, which was overpaid on June 13, 2002 by a payment of \$381.93. Schimmelfennig has apparently refused to cash this check and, nearly ten years later, wishes to collect interest on the amount paid him because he does not agree with the interest calculation. Schimmelfennig has been unable, however, to provide an alternative calculation. We agree with the district court that all amounts due have been paid and we can find no basis upon which an additional payment of interest could be ordered.

Schimmelfennig also requests an award of fees for the district court proceedings in this case, as well as for the costs of this appeal. The district court did not address a request of fees and Schimmelfennig did not request a ruling on that issue in his motion to reconsider. Because the issue was not raised and

³ Schimmelfennig appears to believe this tender of \$10,000 was an offer of settlement. Whether that is true or not is immaterial and irrelevant. The check was eventually cashed by Schimmelfennig to satisfy a portion of the amount due. Schimmelfennig may not continue to run up interest charges after receiving the funds, whatever the purpose of the original tender.

decided by the district court, it is not preserved for our review. See *Lamasters v. State*, 821 N.W.2d 856, 862 (Iowa 2012).

Cameron Mutual also requests an award of fees in connection with having to defend this appeal. Fee awards rest with our discretion. *McKee v. Dicus*, 785 N.W.2d 733, 740 (Iowa 2010). We decline to grant the requested attorney fees in this matter.

AFFIRMED.