

IN THE COURT OF APPEALS OF IOWA

No. 9-327 / 08-1078
Filed May 29, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ANTHONY LAMONT JOHNSON,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Gary D. McKenrick,
Judge.

Anthony Johnson appeals from the district court's ruling that he was not
entitled to interest on monies returned to him by the clerk's office. **AFFIRMED.**

Anthony Lamont Johnson, Anamosa, appellant pro se.

Thomas J. Miller, Attorney General, Martha E. Boesen Trout, Assistant
Attorney General, and Michael J. Walton, County Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Potterfield and Doyle, JJ.

POTTERFIELD, J.

Anthony Johnson appeals from the district court's ruling that he was not entitled to interest on monies returned to him by the clerk of court. We affirm.

On February 15, 2008, our supreme court remanded this case to the district court "for further proceedings to enforce the terms of the 1998 order releasing Johnson from any restitution obligation." *State v. Johnson*, 744 N.W.2d 646, 649 (Iowa 2008) (vacating district court's 2006 order nunc pro tunc that attempted to change a 1998 order stating Johnson was "not responsible for any restitution in this matter.").

On April 22, 2008, the district court ordered the clerk of court to "return to [Johnson], the amount paid by him for attorney fees and court costs of \$1245.41." On May 1, 2008, Johnson filed a motion to amend or enlarge in which he acknowledged the return of \$1245.41, but asked for a hearing "to resolve the matter of interest concerning this matter." Citing Iowa Code section 535.3, Johnson argued that interest accrues on judgments even if the judgment itself does not mention interest. The State resisted, arguing that restitution orders are not judgments within the meaning of Iowa Code section 535.3. The district court ruled that Johnson was not entitled to interest on the sum refunded. Johnson filed a motion to reconsider, which was denied.

Johnson now appeals. He contends the district court erred in concluding interest was not available. Johnson relies upon two statutory provisions to support his claim for interest.

Section 535.3 states: "Interest shall be allowed on all money due on judgments and decrees of courts at a rate calculated according to section 668.13

. . . .” Johnson argues the 1998 order stating he was not responsible for any restitution constitutes a judgment for purposes of section 535.3.

Iowa appellate courts have identified exceptions from the requirement of interest in section 535.3. See *In re Marriage of Baculis*, 430 N.W.2d 399, 401-02 (Iowa 1988). Thus, it has been held that prejudgment interest pursuant to section 535.3 is not applicable to awards of punitive damages. See *id.* at 402 and cases cited therein. It has also been held that an order for specific performance was not the equivalent of a money judgment as contemplated under section 535.3. *Id.* (citing *Dillon v. City of Davenport*, 366 N.W.2d 918, 920-21 (Iowa 1985)).

In *State v. Akers*, 435 N.W.2d 332, 335 (Iowa 1989), the Iowa Supreme Court found that “restitution orders are not covered by the reference to ‘judgments and decrees’ in section 535.3, and the imposition of interest on restitution amounts is therefore improper.” We find Johnson’s attempts to distinguish the *Akers* case unconvincing. The supreme court earlier ruled on Johnson’s appeal of a 2006 nunc pro tunc order concerning a 1998 restitution ruling. The *Johnson* court stated: “[W]e conclude the 1998 order in this matter extinguished the State’s right to any restitution from Johnson, including court costs and attorneys’ fees.” *Johnson*, 744 N.W.2d at 650. The court thus remanded to enforce the release of Johnson’s funds from the restitution order. We conclude this ruling is not a judgment or decree for which judgment interest accrues. Rather, it is a restitution order and an order for specific performance of an earlier order, neither of which qualifies for judgment interest.

Johnson also cites Iowa Code section 602.8102(5) as authority for his entitlement to interest. That statutory provision allows interest if the clerk fails to provide notice to the appropriate recipient of money paid by another party to the clerk.¹ The provision is not applicable to Johnson, who provided the funds to the clerk through his inmate account, and had notice that the clerk was holding the funds.

We agree with the district court that Johnson is not entitled to interest on the sum refunded from the clerk's office for amounts taken from his prison account for restitution. We do not address Johnson's claim that the clerk refunded an inaccurate amount as that issue was not addressed by the district court. See *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) ("issues must ordinarily be both raised and decided by the district court before we will decide them on appeal"). We affirm.

AFFIRMED.

¹ The clerk shall:

.....
(5) When money in the amount of five hundred dollars or more is paid to the clerk to be paid to another person and the money is not disbursed within thirty days, notify the person who is entitled to the money or for whose account the money is paid or the attorney of record of the person. The notice shall be given by certified mail within forty days of the receipt of the money to the last known address of the person or the person's attorney and a memorandum of the notice shall be made in the proper record. *If the notice is not given*, the clerk and the clerk's sureties are liable for interest at the rate specified in section 535.2, subsection 1, on the money from the date of receipt to the date that the money is paid to the person entitled to it or the person's attorney.
(Emphasis added.)