

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2009 CA 2081

MILTON P. TYLER

VERSUS

JOY C. HANCOCK

Judgment Rendered: OCT 22 2010

APPEALED FROM THE TWENTY-FIRST JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF LIVINGSTON
STATE OF LOUISIANA
DOCKET NUMBER 122209, DIVISION "H"

THE HONORABLE ZORRAINE M. WAGUESPACK, JUDGE

Ernest M. Forbes
Denham Springs, Louisiana

Attorney for Plaintiff/Appellant
Milton P. Tyler

A. Todd Caruso
Denham Springs, Louisiana

Attorney for Defendant/Appellee
Joy C. Hancock

BEFORE: WHIPPLE, McDONALD, AND McCLENDON, JJ.

McDONALD, J.

This is a suit on a promissory note filed by Milton P. Tyler against his former wife, Joy C. Hancock. Mr. Tyler and Ms. Hancock were divorced in 1984. Ms. Hancock answered the suit, asserting that she had borrowed only \$1,500.00 from Mr. Tyler, which had been paid in full.

The parties signed a handwritten promissory note on November 25, 2005, which provided in part that Ms. Hancock would pay Mr. Tyler \$15,000.00, at an interest rate of 12 percent, compounded quarterly from the date of the note if Ms. Hancock did not pay the full amount to Mr. Tyler by November 25, 2008.

After trial on the merits, the trial court ruled in favor of Mr. Tyler, finding that Ms. Hancock owed him \$15,000.00 on the promissory note, plus 25% attorney fees (\$3,750.00) and interest. Mr. Tyler is appealing that judgment, asserting that the judgment erroneously assessed interest as due from the date of trial,¹ rather than the date the note was executed.

THE ANSWER TO THE APPEAL AND EXCEPTION OF PRESCRIPTION

Ms. Hancock filed an untimely answer to the appeal, along with an exception of prescription. Thereafter, this court issued a rule to show cause, ordering that the parties show by briefs whether the untimely answer should be dismissed. This court later referred the rule to show cause to this panel. Ms. Hancock thereafter filed a motion to dismiss both her answer to the appeal and her exception of prescription. Ms. Hancock's motion to dismiss both the answer to the appeal and the exception of prescription is hereby granted. Thus, all that is left for our consideration is the appeal filed by Mr. Tyler.

¹ The trial court's reasons for judgment reflect that the interest would run from the date of default, November 25, 2008, rather than the date of trial. However, a trial court's written reasons for judgment form no part of the judgment itself. Where there is a conflict between the judgment and the written reasons, the judgment controls. **Delahoussaye v. Board of Supervisors of Colleges**, 2004-0515 (La. App. 1 Cir. 3/24/05), 906 So.2d 646, 654.

THE APPEAL

In his appeal, Mr. Tyler asserts that the trial court erred in its award of interest on the note. This argument has merit. The trial court rendered judgment in favor of Mr. Tyler and against Ms. Hancock, awarding Mr. Tyler the principal amount due on the note, \$15,000.00, plus 25% of that amount (\$3,750.00) as attorney fees, plus interest on both from date of trial.

However, the note provides that an interest rate of twelve per cent (12%) APR, compounded quarterly from the date of November 25, 2005, became effective if Ms. Hancock did not pay the full amount due on the note by November 25, 2008. Thus, the trial court erred in assessing interest from the date of trial, rather than from November 25, 2005.

Thus, the trial court judgment is amended to provide that the 12% APR interest on the note, compounded quarterly, is due from the date of November 25, 2005 until paid in full. Otherwise, the trial court judgment is affirmed. We decline Mr. Tyler's request for attorney fees for the appeal. Ms. Hancock is cast with the costs of the appeal.

AMENDED, AND AS AMENDED, AFFIRMED.