STATE OF MICHIGAN

COURT OF APPEALS

ERNEST I. YOUNG and SSP, INC.,

Plaintiffs-Appellees,

v

SAULT STE MARIE TRIBE OF CHIPPEWA INDIANS, doing business as SAULT STE MARIE ECONOMIC DEVELOPMENT COMMISSION,

Defendant-Appellant,

and

SPECIAL PLASTIC PRODUCTS ENGINEERING, LLC

Defendant.

UNPUBLISHED
February 12, 2004

No. 244434
Oakland Circuit Court
LC No. 98-003943-CZ

Before: Fort Hood, P.J., and Bandstra and Meter, JJ.

PER CURIAM.

Defendant Sault Ste. Marie Tribe of Chippewa Indians ("defendant") appeals as of right from a lower court order awarding plaintiff Ernest I. Young ("plaintiff")[1] interest on a judgment at a rate of twelve percent under MCL 600.6013.

This matter was previously before this Court following the trial court's confirmation of an arbitration award in favor of plaintiff for breach of an employment contract. At that time, this Court determined that plaintiff was entitled to twelve percent interest on the judgment under the prior version of MCL 600.6013(5), reasoning that the employment agreement on which the award was rendered was a "written contract." See *Young v Sault Ste Marie Tribe of Chippewa*

[1]It appears from the record and the briefs that the instant appeal pertains only to the award of interest to Plaintiff Ernest Young. Thus, this opinion will refer to the singular "plaintiff."

Indians, unpublished opinion per curiam of the Court of Appeals, issued May 11, 2001 (Docket No. 214136).

Following the denial of defendant's application for leave to appeal in the Michigan Supreme Court and the denial of its petition for writ of certiorari in the United States Supreme Court, plaintiff moved to execute on defendant's appeal bond, seeking interest on the judgment at a rate of twelve percent under current MCL 600.6013(5). Defendant, however, asserted that interest should be calculated at the variable rate provided for in current MCL 600.6013(8). The trial court granted plaintiff's motion, awarding him interest at a fixed rate of twelve percent. Thereafter, the trial court denied defendant's motion for a stay pending appeal.

As noted, this Court previously ruled that plaintiff was entitled to interest at the twelve-percent rate provided in former MCL 600.6013(5) because the judgment in his favor was a judgment on a written instrument as required by that section. At the time of this Court's ruling, subsection (5) applied to all complaints filed after January 1, 1987, and on which judgment was rendered on a written instrument. However, between the time of this Court's prior ruling and the trial court's hearing on plaintiff's motion, MCL 600.6013 was amended, effective in March 2002. MCL 600.6013 now provides, in relevant part:

> (5) *Except as provided in subsection (6),* for a complaint filed on or after January 1, 1987, but before July 1, 2002, if a judgment is rendered on a written instrument, interest is calculated from the date of filing the complaint to the date of satisfaction of the judgment at the rate of 12% per year compounded annually, unless the instrument has a higher rate of interest. . . .
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> (6) For a complaint filed on or after January 1, 1987, but before July 1, 2002, *if the civil action has not resulted in a final, nonappealable judgment as of July 1, 2002,* and if a judgment is or has been rendered on a written instrument that does not evidence indebtedness with a specified interest rate, interest is calculated as provided in subsection (8).
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> (8) Except as otherwise provided in subsections (5) and (7)[2] . . . for complaints filed on or after January 1, 1987, interest on a money judgment recovered in a civil action is calculated at 6-month intervals from the date of filing the complaint at a rate of interest equal to 1% plus the average interest rate paid at auctions of 5-year United States treasury notes during the 6 months immediately preceding July 1 and January 1, as certified by the state treasurer, and compounded annually, according to this section. [MCL 600.6013(5),(6)(8) (emphasis added).]

[2] MCL 600.6013(7) is not applicable to the instant case.

Plaintiff filed his complaint in February 1998. Therefore, the parties frame the question before this Court as whether plaintiff's action resulted in "a final, nonappealable judgment as of July 1, 2002," under MCL 600.6013(6). As noted, this Court issued its opinion affirming the trial court's confirmation of the arbitration award in favor of plaintiff on May 11, 2001. The Michigan Supreme Court denied defendant's application for leave to appeal that decision on March 4, 2002. Defendant then, on June 3, 2002, filed a petition for writ of certiorari in the U.S. Supreme Court, and this petition was denied on October 7, 2002. Plaintiff argues that a final, nonappealable judgment existed on March 4, 2002, while defendant argues that a final, nonappealable judgment did not exist until October 7, 2002.

This issue involves statutory interpretation. We review questions of statutory interpretation de novo. *Yaldo v North Point Ins Co*, 457 Mich 341, 344; 578 NW2d 274 (1998).

The primary goal of statutory interpretation is to give effect to the Legislature's intent. *Id.* at 346. When determining that intent, a court is to look first at the language of the statute. *Id.* "If the language is clear and unambiguous, judicial construction is not permitted. If reasonable minds can differ regarding its meaning, then judicial construction is appropriate." *Id.* "[U]nless defined in the statute, every word or phase of a statute should be accorded its plain and ordinary meaning, considering the context in which the words are used." *Lewis v LeGrow*, 258 Mich App 175, 183; 670 NW2d 675 (2003). Stated differently, "[i]f the language used is clear and the meaning of the words chosen is unambiguous, a common-sense reading of the provision will suffice, and no interpretation is necessary." *Karl v Bryant Air Conditioning*, 416 Mich 558, 567; 331 NW2d 456 (1982). A court may consult a dictionary to determine the ordinary meaning of undefined words in the statute. *Lewis, supra* at 183.

The Legislature did not define the phrase "final, nonappealable judgment" in MCL 600.6013. Still, we find that the language of MCL 600.6013(6), as applied to the instant case, is clear and unambiguous, and therefore we will apply the plain and ordinary meaning of the phrase to the instant circumstances.

Black's Law Dictionary (6th ed) defines an appeal as

> [r]esort to a superior (*i.e.*, appellate) court to review the decision of an inferior (*i.e.*, trial) court or administrative agency. A complaint to a higher tribunal of an error or injustice committed by a lower tribunal, in which the error or injustice is sought to be corrected or reversed. . . . An appeal may be as of right (*e.g.*, from trial court to intermediate appellate court) or only at the discretion of the appellate court (*e.g.*, by writ of certiorari to the U.S. Supreme Court).

"-Able" is a suffix meaning "capable of, susceptible of, fit for, tending to, given to . . . ." *Random House Webster's College Dictionary* (2001). "Non-" is a prefix meaning "not," which usually has "a simple negative force, as implying mere negation or absence of something . . . ." *Id.* Therefore, a commonsense reading indicates that "appealable" means capable of or fit for being appealed, and "nonappealable" means not capable of being so appealed. Thus, the judgment in this case was a final, nonappealable judgment before July 1, 2002, if it was not capable of being appealed on that date.

MCR 7.215(F) states, in part:

> (1) *Routine Issuance.* Unless otherwise ordered by the Court of Appeals or the Supreme Court or as otherwise provided by these rules,
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> (a) the Court of Appeals judgment is effective after the expiration of the time for filing a timely application for leave to appeal to the Supreme Court, or, if such an application is filed, after the disposition of the case by the Supreme Court[.]

Under this court rule, the earlier Court of Appeals opinion in this case became effective on March 4, 2002, when the Michigan Supreme Court denied defendant's application for leave to appeal. The pertinent question is whether the judgment for plaintiff remained appealable at that time. We conclude that it did not. Indeed, the United States Supreme Court *denied* defendant's petition for writ of certiorari. In doing so, the Supreme Court implicitly concluded that the case was not "capable of" or "fit for" being appealed. While it is true that this conclusion by the Supreme Court was reached and communicated after July 1, 2002, the pertinent facts and history of the case were the same *before* July 1, 2002, as they were *after* July 1, 2002. The case simply was not appealable as of July 1, 2002, because the United States Supreme Court, albeit in a later order, determined that the case was not amenable to review. Therefore, the court correctly awarded interest at the rate of twelve percent under MCL 600.6013.[3]

Defendant also argues on appeal that it was an abuse of discretion by the trial court, and by this Court, to deny its motions for a stay of execution pending appeal. However, this Court need not consider this issue; defendant has paid the judgment against it and, therefore, the issue is moot. *Jackson v Thompson-McCully* Co, 239 Mich App 482, 493; 608 NW2d 531 (2000). Moreover, this Court, at an earlier date, denied defendant's motion for reconsideration of the order denying the stay, and "[t]he clerk will not accept for filing a motion for reconsideration of an order denying a motion for reconsideration." MCR 7.215(I)(4).

Affirmed.

/s/ Karen M. Fort Hood
/s/ Patrick M. Meter

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[3] Because the issue is not before us, we express no opinion regarding the proper outcome of this case should the writ of certiorari have been granted. In other words, because it is not necessary for us to do so, we express no opinion regarding whether a "final, nonappealable judgment" exists if (1) no appeal of right exists but (2) a court subsequently grants leave to appeal. Plaintiff appears to contend that "nonappealable" in MCL 600.6013(6) simply means "not capable of being appealed as of right." We decline to reach this broad issue.