STATE OF MICHIGAN

COURT OF APPEALS

JERRY JUAREZ,

Plaintiff-Appellee,

v

JOHN JAMES HOLBROOK, ALL-IN-ONE DISPOSAL CORP, d/b/a ASSET MANAGEMENT INC, and ALL ONE DISPOSAL INC,

Defendants-Appellants,

and

TECHNICAL LOGISTIC CORP,

Defendant.

UNPUBLISHED
July 1, 2008

Nos. 275040; 276312
Wayne Circuit Court
LC No. 05-501601-NI

Before: O'Connell, P.J., and Borrello and Gleicher, JJ.

PER CURIAM.

In Docket No. 276312,[1] defendants appeal as of right an order granting defendants' motion for case evaluation sanctions under MCR 2.403(O) in the amount of $73,230.50.[2] The order also contained a judgment in favor of plaintiff in the amount of $307,793.31.[3] We affirm, but remand for correction of the verdict and recalculation of the reduction of plaintiff's damages to present value. On remand, the trial court shall comply with the prohibition of interest on future damages contained in MCL 600.6013(1).

[1] The parties stipulated to dismiss the cross-appeal in Docket No. 275040, and this Court entered an order of dismissal on November 30, 2007.

[2] The case evaluation sanction amount includes $68,893.50 in attorney fees and $4,337 in costs.

[3] This amount included a $306,011.03 judgment in favor of plaintiff that was entered on November 14, 2006, plus $1,782.28 in interest that accrued on the judgment from October 28, 2006 to December 7, 2006.

I. Facts and Procedural History

This case is the result of an automobile accident that occurred on July 7, 2004, when plaintiff was a passenger in an automobile that was struck by a garbage truck driven by defendant John Holbrook after Holbrook failed to stop for a red traffic signal. Plaintiff filed suit against defendants, alleging negligence, vicarious liability and negligent entrustment. Defendants admitted liability, and the only issue at trial was damages. The jury awarded plaintiff damages in the amount of $300,000. The verdict included $100,000 for past non-economic damages, $100,000 for future non-economic damages ($50,000 for 2007 and $50,000 for 2008), and $100,000 for future economic damages ($20,000 per year for 2006, 2007, 2008, 2009 and 2010). After the verdict was returned, defendants moved for sanctions under MCR 2.403, and the trial court granted the motion.

II. Analysis

A. Future Economic Damages

Defendants argue that plaintiff's future economic damages for 2006 ($20,000) and the first half of 2007 ($10,000) should not have been included in the judgment against defendants. In the alternative, defendants contend that the $30,000 in future economic damages awarded for 2006 and the first half of 2007 should have been subtracted from the total judgment based on the collateral source statute, MCL 600.6303(1).

Whether the $20,000 in future economic damages awarded for 2006 and the $10,000 in future economic damages awarded for the first half of 2007 were properly awarded is a matter of statutory interpretation. Similarly, whether the $30,000 at issue should have been subtracted from the total judgment based on the collateral source statute is a matter of statutory interpretation. This Court reviews de novo issues of statutory interpretation. *Miller v Miller*, 474 Mich 27, 30; 707 NW2d 341 (2005).

Under MCL 500.3107(1)(b), work loss benefits are payable by the first party insurer "during the first 3 years after the date of the accident . . . ." Thereafter, under MCL 500.3135(3)(c), additional work loss damages are recoverable from the tortfeasor. The automobile accident in this case occurred on July 7, 2004. Thus, plaintiff was entitled to receive first party work loss benefits until about July 7, 2007, under MCL 500.3107(1)(b), and then could recover additional work loss damages from defendants beginning on about July 8, 2007, under MCL 500.3135(3)(c). The verdict form submitted to the jury included the years 2006 and 2007 in the future economic damages section. Based on MCL 500.3107(1)(b) and MCL 500.3135(3)(c), the verdict form should not have included the year 2006 at all and should have only included approximately half of 2007, beginning on July 8, 2007, because plaintiff would have been receiving work loss benefits from his first party no-fault insurer until then. The parties agree that the verdict form was in error in this regard. Relying on the verdict form, the jury actually awarded plaintiff future economic damages in the amount of $20,000 for 2006 and $20,000 for 2007, which included $10,000 that was properly awarded for damages incurred beginning July 8, 2007.

At a hearing on November 3, 2006, following the jury verdict, the parties agreed that it was error to include the year 2006 and the entire year for 2007 on the verdict form for future

economic damages, and the trial court acknowledged as much. At the hearing, counsel for plaintiff characterized the error as a "clerical error on the jury verdict form" and stated: "We put in a verdict from an incorrect line that shouldn't have been there. And, frankly, we all missed it." Counsel for plaintiff observed that the jury was consistent in awarding $100,000 each for past non-economic damages, future non-economic damages, and economic damages, and the trial court responded: "Which is why I think they [the jury] had a number in their mind and they divided it out and put it in the wrong place, or we had it—it was there for them to put it in the wrong place." The trial court ruled:

> Everybody was running around drafting this verdict form. It just happened to come out of his [counsel for plaintiff's] office. Everybody had input into it, and everyone approved it. And we all missed it. I don't think that should go to punishing the plaintiff. . . .

Although the verdict form awarded damages that were not permitted by law, the total $100,000 future economic damages portion of the judgment is not improper because the verdict form contained an error that allowed the jury to award wage loss damages for all of 2006 and half of 2007. Reversal of the jury verdict is not warranted in this case because both parties contributed to the error regarding the verdict form. Although counsel for plaintiff prepared the erroneous final verdict form that was given to the jury, defendants also contributed to the error by failing to recognize the error and bring it to the trial court's attention before it was submitted to the jury. Error requiring reversal must be that of the trial court and not that to which the appellant contributed by plan or negligence. *Farm Credit Services of Michigan's Heartland, PCA v Weldon*, 232 Mich App 662, 684; 591 NW2d 438 (1998); *Weiss v Hodge (After Remand)*, 223 Mich App 620, 636; 567 NW2d 468 (1997). In this case, both parties were mistaken in believing that the verdict form submitted to the jury was proper, when it was not. If the parties had discovered the mistake in the verdict form before the jury awarded damages based on the improper form and substituted the proper form, the jury would have allocated the $20,000 for 2006 and the $10,000 for the first half of 2007 to years that plaintiff was not precluded from recovering such damages. Based on the fact that the jury awarded $100,000 each for present and future non-economic damages, the trial court's conclusion that the jury intended to award a total of $100,000 for future economic damages as well and that had it not been misled by the mistaken verdict form, it would have awarded the $30,000 in 2011 and 2012, is not improper.

Because the parties' mistake renders it impossible to determine if the jury would have re-allocated the work loss damages improperly awarded for 2006 and 2007, we decline to disturb the $100,000 damage award for future economic damages. However, the jury verdict cannot stand as it is because, as defendants point out, allowing plaintiff to recover work loss damages for 2006 and half of 2007 poses a problem under the collateral source statute, MCL 600.6303(1), and would essentially permit plaintiff a double recovery for that time period because plaintiff, at least in theory, was collecting first party no-fault wage loss benefits through July 7, 2007 under MCL 500.3107(1)(b). Therefore, we affirm the $100,000 future economic damages award, but remand for the trial court to perform the ministerial task of correcting the verdict form. On remand, the trial court should also recalculate the reduction to present cash value of plaintiff's damages. Furthermore, to the extent that the trial court included prejudgment interest on any future damages awarded to plaintiff, the trial court shall recalculate prejudgment interest and

exclude such interest on any award for future damages, as such interest is prohibited by MCL 600.6013(1).

B. Case Evaluation Sanctions

Defendants next argue that the trial court abused its discretion in awarding them actual attorney fees as case evaluation sanctions under MCR 2.403(O). According to defendants, the trial court erred in awarding them attorney fees at the rate of $97.50 per hour, which is the discounted rate that defense counsel charged the insurer, rather than at a higher, more reasonable rate. Defendants also argue that the trial court's decision to award defendants attorney fees for the high number of total number of hours for which defense counsel sought to be compensated (706.6), which plaintiff challenged, but at a low hourly rate ($97.50) was an unfair compromise that rendered the attorney fee award unreasonable.

This Court reviews de novo a trial court's decision to grant or deny case evaluation sanctions. *Campbell v Sullins*, 257 Mich App 179, 197; 667 NW2d 887 (2003). The amount of sanctions imposed by the trial court is reviewed for an abuse of discretion. *Id.* The abuse of discretion standard recognizes "'that there will be circumstances in which there will be no single correct outcome; rather, there will be more than one reasonable and principled outcome.'" *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006), quoting *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). Under this standard, "[a]n abuse of discretion occurs when the decision results in an outcome falling outside the principled range of outcomes." *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006).

Both plaintiff and defendants rejected the $650,000 unanimous case evaluation award. The jury awarded plaintiff damages in the amount of $300,000. Defense counsel thereafter moved to be awarded attorney fees under MCR 2.403(O) in the amount of $172,419 for 706.6 hours for six different attorneys, at hourly rates ranging from $160 per hour to $250 per hour. The actual hourly rate received by defense counsel from the insurer was $97.50. According to defense counsel, this is a discounted rate that defense counsel charged the insurer. Plaintiff did not object to the $97.50 per hour rate, but contended that the total number of hours claimed by defense counsel was excessive and duplicative of work that was or would have been done before case evaluation. The trial court held a hearing on the matter on December 8, 2006, and awarded attorney fees to defendants in the amount of $68,893.50 for 706.6 hours based on an hourly rate of $97.50. The trial court's statements on the record indicate that in awarding attorney fees, the trial court attempted to strike a balance by awarding defense counsel the full number of hours claimed, which plaintiff asserted was high, but at a lower hourly rate:

> [D]efendants are entitled to a reasonable attorney fee based on a reasonabl[e] hourly or daily rate. . . . The professional standing and experience of attorneys, no one doubts that here. Both defense attorneys have good reputations and have a great deal of experience in trial work. The skill time and labor involved in this case, I'm sorry I'm not believing that it took this 200—let's see, we have six attorneys. . . .
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> * * *

> One attorney spent 322 hours. There was another attorney, 247. Five hours, 45 hours, an hour and-a-half, and five hours. I sat through this case. I cannot believe that it took five attorneys to defend this case. . . .
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> Difficulty of the case, the only people who made this case difficult were the defense attorneys. This was not difficult. There was a lot of money at stake, but this isn't anything like a medical malpractice case, employment cases that are very difficult.
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> The nature and length of the professional relationship with the client, it's the defense firm here who chooses to have the professional relationship that they have with this particular client, and they charge them 91 or $97 an hour. And that's the attorney fee I'm awarding.
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> I'm not going to reduce the hours at this point because I'm not going to go through and question each and every one. I think it balances out by awarding $97 or whatever it is.

Plaintiff does not dispute that defendants were entitled to case evaluation sanctions under MCR 2.403(O). Under MCR 2.403(O)(1), plaintiff must pay defendants' "actual costs." "Actual costs" are "a reasonable attorney fee based on a reasonable hourly or daily rate as determined by the trial court for services necessitated by the rejection of case evaluation." MCR 2.403(O)(6)(b). In support of their argument that the $97.50 hourly rate awarded by the trial court in this case was unreasonably low, defendants cite *Cleary v The Turning Point*, 203 Mich App 208; 512 NW2d 9 (1994). In *Cleary*, this Court held that "[n]othing in the language of MCR 2.403(O) requires a trial court to find that reasonable attorney fees are equivalent to actual fees." *Cleary*, *supra* at 212. Thus, this Court concluded in *Cleary* that the trial court did not abuse its discretion in awarding an attorney fee calculated at an hourly rate that was higher than the actual rate charged by counsel. *Id.*

The trial court in this case recognized that it had the discretion to award attorney fees at an hourly rate that was higher than the discounted rate defense counsel charged and received from the insurer. However, the trial court also correctly noted that this Court's holding in *Cleary* permits, but does not require, the court to award attorney fees at a higher rate than the reduced rates that attorneys commonly charge insurance companies. The trial court's award of attorney fees compensated defense counsel for the total number of hours that they claimed they performed at the hourly rate they charged the insurer. Thus, they were completely compensated for the work they performed. Furthermore, when evaluating the reasonableness of an attorney fee, the trial court should consider the following factors: "(1) the professional standing and experience of the attorney, (2) the skill, time, and labor involved, (3) the amount in question and the results achieved, (4) the difficulty of the case, (5) the expenses incurred, and (6) the nature and length of the professional relationship with the client." *Campbell*, *supra* at 199. Review of the trial court's statements on the record reveals that the trial court considered these factors. Specifically, the trial court properly considered the nature and difficulty of the case, the experience and reputation of defense counsel, the number of hours defense counsel spent on the case, and the nature of the professional relationship with the client. See *id.*

Defendants suggest that the trial court should have carefully gone through plaintiff's documentation regarding the number of hours expended on the case "to determine the reasonable number of hours expended." Defendants cite no authority to support their suggestion that such a detailed inquiry is required. Counsel for plaintiff noted that defense counsel's billing records contained "over 500 entries of billing." In light of the extremely large volume of billing records relating to defense counsel's representation of defendants, the trial court's striking of the balance between the high number of hours claimed by defense counsel and the relatively low hourly rate was a sensible compromise that reasonably and completely compensated defense counsel for the work performed. Although the trial court had the discretion to award attorney fees at an hourly rate greater than the actual rate charged by counsel, the trial court was not required to award attorney fees at this higher rate. The trial court's award of attorney fees at the rate of $97.50 per hour is within the range of reasonable and principled outcomes and was not an abuse of discretion. *Maldonado*, *supra* at 388; *Woodard*, *supra* at 557.

C. Prejudgment Interest

Defendants finally argue that the trial court should have awarded them prejudgment interest on the case evaluation sanctions awarded to them under MCR 2.403 or that, in the alternative, the trial court should have reduced the verdict amount by the amount the case evaluation sanctions awarded to defendants before assessing prejudgment interest.

This Court reviews de novo a trial court's grant of prejudgment interest under MCL 600.6013. *Phinney v Perlmutter*, 222 Mich App 513, 540; 564 NW2d 532 (1997).

Interest on a judgment is only allowed where it is specifically authorized by statute. *Dep't of Transportation v Schultz*, 201 Mich App 605, 610; 506 NW2d 904 (1993). Under MCL 600.6013(1), "[i]nterest is allowed on a money judgment recovered in a civil action, as provided in this section. . . ." MCL 600.6013(8) provides:

> Except as otherwise provided in subsections (5) and (7) and subject to subsection (13), 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. *Interest under this section is calculated on the entire amount of the money judgment, including attorney fees and other costs. The amount of interest attributable to that part of the money judgment from which attorney fees are paid is retained by the plaintiff, and not paid to the plaintiff's attorney.* [Emphasis added.]

The purpose of prejudgment interest is to compensate the prevailing party for the delay in recovering money damages and for expenses incurred in bringing actions for money damages. *Phinney*, *supra* at 540-541.

Defendants rely on *Ayar v Foodland Distributors*, 472 Mich 713, 715; 698 NW2d 875 (2005), in support of their contention that they are entitled to prejudgment interest on their case evaluation sanctions. In *Ayar*, the Supreme Court held that a *plaintiff* could recover prejudgment

interest from the date of filing the complaint under MCL 600.6013(8) for costs and attorney fees ordered as mediation sanctions under MCR 2.403(O):

> The statute [MCL 600.6013(8)] plainly states that interest on a money judgment is calculated from the date of filing the complaint. We find this language to be clear and unambiguous . . . . [T]he statute makes no exception for periods of prejudgment appellate delay . . . . Similarly, the statute makes no exception for attorney fees and costs ordered as mediation sanctions under MCR 2.403(O).
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> * * *
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> The mediation process is an integral part of the proceeding commenced when plaintiffs filed their complaint. The realization of mediation sanctions is tied directly to the amount of the verdict rendered with regard to that complaint. MCR 2.403(O)(1). Indeed, the award of prejudgment interest on mediation sanctions is part of the final judgment against defendants. . . .
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> * * *
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> We conclude that, under MCL 600.6013(8), judgment interest is applied to attorney fees and costs ordered as mediation sanctions under MCR 2.403(O) from the filing of the complaint against the liable defendant. This results from a plain reading of the statute. The statute provides no special treatment for judgment interest on mediation sanctions. . . . [*Ayar*, *supra* at 716-718.]

Ayar is partially on point with the instant case because it specifically addresses the issue of prejudgment interest on attorney fees awarded under MCR 2.403(O). However, the issue in *Ayar* was "when [not *if*] interest begins to accrue, pursuant to MCL 600.6013(8), on costs and attorney fees imposed for rejecting a mediation evaluation, MCR 2.403(O)(1), (6)." *Id.* at 714. Moreover, *Ayar* is distinguishable from the facts of the instant case in another important respect: in *Ayar*, the case evaluation sanctions were awarded to the *plaintiff*, whereas in the instant case the case evaluation sanctions were awarded to *defendants*. This distinction is critical to the determination whether prejudgment interest is properly assessed on an award of sanctions under MCR 2.403(O).

Plaintiff cites *Nartron Corp v General Motors Corp*, unpublished opinion per curiam of the Court of Appeals, decided January 6, 2005 (Docket No. 245942), in support of his argument that defendants are not entitled to prejudgment interest on the case evaluation sanctions. In *Nartron*, this Court addressed the propriety of awarding prejudgment interest on an award of costs and attorney fees to the *defendant* for discovery misconduct under MCR 2.313(B)(2) and concluded that the trial court erred in awarding prejudgment interest on such sanctions. This Court framed the issue as "whether prejudgment interest may be awarded pursuant to an award consisting solely of monetary sanctions." In ruling that prejudgment interest is improper under such circumstances, this Court noted that a party "has not obtained a money judgment in a 'civil action' if that party has not filed a complaint in the proceeding" and quoted the following language from our Supreme Court's opinion in *In re Forfeiture of $176,598*, 465 Mich 382, 386; 633 NW2d 367 (2001):

> [T]he language of § 6013 itself indicates that the proceeding here does not constitute a "civil action" for the purpose of that rule. *Subsections (2) through (6) suggest that a complaint must be filed with the court by the person who has recovered the money judgment*. Each subsection begins with the phrase, "for complaints filed," or contains other language referencing the filing of a "complaint." *Wilson did not file any such complaint in this proceeding. Therefore, rather than being the prevailing claimant in a civil action, Wilson was merely the owner of property that the prosecutor unsuccessfully sought to seize in a forfeiture action initiated by the latter*. The trial court's order was not an adjudication of an action for money damages, but rather one for the delivery of property that had been the subject of a forfeiture action.
>
> In other contexts, the case law has denied interest under § 6013 in proceedings that, like drug forfeitures, are not typical civil actions preceding an award of a money judgment. See, e.g., *Reigle v Reigle*, 189 Mich App 386, 392-393; 474 NW2d 297 (1991) (the statute does not apply to money awards in divorce judgments); *Oliver v State Police*, 132 Mich App 558, 572-577; 349 NW2d 211 (1984) (no statutory interest on an award of back pay in a circuit court review of an employee discharge under civil service laws); *In re Cole Estate*, 120 Mich App 539, 548-551; 328 NW2d 76 (1982) (an order awarding a forced share in an estate is not a "money judgment recovered in a civil action" entitling a spouse to an award of judgment interest). [*Nartron*, *supra*, quoting *In re Forfeiture*, *supra* at 387-388 (emphasis added in *Nartron*; footnotes omitted).]

In *In re Forfeiture*, the Supreme Court held that the return of seized currency to a defendant in a forfeiture action did not constitute a "money judgment recovered in a civil action" and that prejudgment interest was not payable. *In re Forfeiture*, *supra* at 383.

We conclude that both the language of MCL 600.6013(8) and the purpose of the statute support the conclusion that prejudgment interest is only proper when costs and attorney fees are awarded to a *plaintiff* under MCR 2.403. The language of MCL 600.6013(8) states that prejudgment interest is allowed "on a money judgment recovered in a civil action." In *In re Forfeiture*, the Supreme Court indicated that a party has not obtained a judgment in a "civil action" if the party has not filed a complaint in the proceeding. *Id.* In this case, defendants did not file a complaint; to the contrary, plaintiff filed a complaint against defendants. In addition, the order awarding case evaluation sanctions to defendants under MCR 2.403 was not an adjudication of an action for money damages or a judgment on the complaint. Therefore, while defendants prevailed in their motion for case evaluation sanctions under MCR 2.403, defendants were not the prevailing claimant in a civil action. Furthermore, awarding defendants prejudgment interest under MCR 2.403 would not further the purpose of MCL 600.6013. MCL 600.6013 "is a remedial statute which is to be liberally construed to give effect to its intent and purposes." *Gordon Sel-Way, Inc v Spence Bros, Inc*, 438 Mich 488, 510; 475 NW2d 704 (1991). The purpose of prejudgment interest is to compensate the prevailing party for the delay in recovering money damages and for expenses incurred in bringing actions for money damages. *Phinney*, *supra* at 540-541. It would not further the policy of compensating the prevailing party for delay in recovering money damages to grant prejudgment interest on costs and attorney fees awarded to a defendant under MCR 2.403(O) because there is no delay in recovering such fees,

which are not awarded until after case evaluation and before trial.[4] It also would not further the purpose of MCL 600.6013 to grant prejudgment interest on costs and attorney fees awarded to a defendant who is not the prevailing party and who did not bring the action. Therefore, in light of the language of MCL 600.6013 and the purpose of awarding prejudgment interest, it makes sense to have a different rule for prejudgment interest on costs and attorney fees awarded under MCR 2.403 for plaintiffs and defendants.

Defendants argue that if they are not entitled to prejudgment interest on the $73,230.50, then that amount should have been subtracted from the amount of the judgment in favor of plaintiff before prejudgment interest was assessed under MCL 600.6013 to "cancel out" the post-complaint interest that plaintiff was inadvertently getting on the $73,230.50." Under MCL 600.6013(8), "[i]nterest under this subsection is calculated on the entire amount of the money judgment[.]" Therefore, we are not persuaded by defendants' argument in this regard.

Affirmed, but remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Peter D. O'Connell
/s/ Stephen L. Borrello
/s/ Elizabeth L. Gleicher

[4] Although we observe that in *Ayar*, *supra*, the Supreme Court held that interest is calculated from the date of the filing of the complaint and that this is true for all parts of the judgment, including attorney fees and costs awarded (to plaintiffs) under MCR 2.403.