

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA06-253

NORTH CAROLINA COURT OF APPEALS

Filed: 19 September 2006

CITY OF GASTONIA,
Plaintiff,

v.

Gaston County
No. 01-CVS-2343

RAYMOND D. HAYES AND CLARA P. HAYES,
Defendants.

Appeal by defendants from judgment entered on 13 October 2003 by Judge Jesse B. Caldwell, III, in Gaston County Superior Court. Heard in the Court of Appeals 24 August 2006.

Whitesides & Kenny, L.L.P., by Terry Albright Kenny, for plaintiff-appellee.

Sigmon, Clark, Mackie, Hutton, Hanvey & Ferrell, P.A., by Forrest A. Ferrell and Jason White, for defendant-appellants.

STEELMAN, Judge.

Plaintiff-appellee, City of Gastonia, (hereinafter, plaintiff) commenced a condemnation action against defendants-appellants, landowners Raymond and Clara Hayes, (hereinafter, defendants) on 11 June 2001. The condemnation action was tried before a jury on 11 August 2003, and the jury awarded defendants the sum of \$263,000.00 as just compensation for the taking by plaintiff. Plaintiff had previously deposited \$155,000.00 to the Clerk of Court of Gaston County, representing its valuation of just compensation for the

property in question. This amount constituted a credit against the verdict. The court entered judgment on 13 October 2003 in defendants' favor for the amount of the difference between the verdict and the previously tendered amount. On 9 March 2004, plaintiff paid \$131,161.00 to the office of Clerk of Court of Gaston County. This amount represented the remaining balance of the jury verdict (\$108,000.00), in addition to appraisal fees (\$8,000.00) and interest calculated at the rate of six percent on the unpaid balance from the date of the taking until the date the judgment was entered.

The defendants filed a motion to recover post-judgment interest on \$108,000.00 from the date of entry of judgment until satisfaction. The trial court denied this motion. Defendants appealed.

The sole issue on appeal is whether the trial court erred in denying the defendants' motion to recover interest upon the judgment from the plaintiff from the date the judgment was filed until the judgment was satisfied. N.C. Gen. Stat. § 40A-53, the statute governing interest as part of just compensation in public condemnations, states, "the judge shall add interest at the rate of six percent (6%) per annum on said amount from the date of taking to the *date of judgment*." N.C. Gen. Stat. § 40A-53 (2005) (emphasis added).

Defendants rely on this Court's decision in *Concrete Machinery Co. v. City of Hickory*, 134 N.C. App. 91, 517 S.E.2d 155 (1999):

Though we are aware that N.C. Gen. Stat. § 24-5(b) (1991) might be construed as allowing interest at the legal rate until the judgment is *satisfied*, N.C. Gen. Stat. § 40A-53 specifically provides for interest in eminent domain actions from the date of judgment until its *satisfaction* at the rate of six percent per annum."

Id. at 99, 517 S.E.2d at 160 (emphasis added).

In *Concrete Machinery Co.*, the issues on appeal were whether a taking had occurred, and if so, whether the trial court erred in awarding the landowners interest at the rate of fourteen percent rather than the six percent allowed under N.C. Gen. Stat. § 40A-53. *Concrete Machinery Co.*, 134 N.C. App. 91, 517 S.E.2d 155. The issue of whether post-judgment interest should be allowed against a public condemnor was not presented to this Court. Since the issue was not presented, it was therefore unnecessary for the Court to rule on post-judgment interest in order to decide the case. The interpretation of N.C. Gen. Stat. § 40A-53 in *Concrete Machinery Co.*, which provides post-judgment interest against a public condemnor in eminent domain actions, is *obiter dictum* and is therefore not binding precedent. *Muncie v. Insurance Co.*, 253 N.C. 74, 79, 116 S.E.2d 474, 477 (1960). We hold that the clear and unequivocal language of N.C. Gen. Stat. § 40A-53 does not provide for post-judgment interest against public condemnors.

Defendants further argue that N.C. Gen. Stat. § 24-5(b) (2005), the general interest statute, requires plaintiffs to pay post-judgment interest. We disagree. The statute provides the following: "[i]n an action other than contract, any portion of a money judgment designated by the fact finder as compensatory damages

bears interest from the date the action is commenced until the judgment is satisfied." N.C. Gen. Stat. § 24-5(b) (2005). "This statute does not operate against the state because 'interest may not be awarded against the State unless the State has manifested its willingness to pay interest by an Act of the General Assembly[.]'" *Shavitz v. City of High Point*, __ N.C. App. __ , __, 630 S.E.2d 4, 18 (2006) (quoting *Yancey v. State Highway Commission*, 222 N.C. 106, 109, 22 S.E.2d 256, 259 (1942)). "[I]t is a known and firmly established maxim that general statutes do not bind the sovereign unless expressly mentioned in them." *Id.* (quoting *Yancey*, 222 N.C. at 110, 22 S.E.2d at 260).

Freedom from post-judgment interest has been extended to political subdivisions of the State. In *Shavitz*, this Court recently held that, "absent a legislative provision to the contrary, a municipality should not be ordered to pay interest pursuant to a general interest statute where the issue which has been litigated involves a governmental function of the municipality." *Shavitz*, __ N.C. App. at __, 630 S.E.2d at 18. In the instant case, plaintiff was exercising a governmental function by condemning land for public use. The general post-judgment interest provisions of N.C. Gen. Stat. § 24-5(b) do not apply.

For the reasons discussed herein, we affirm the trial court's ruling denying defendants' motion for post-judgment interest.

AFFIRMED

Judges LEVINSON and STEPHENS concur.

Report Per Rule 30(e)

