

[Cite as *Hallman v. Zipperer-Davis*, 2015-Ohio-2345.]

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

DR. G. DARRYL HALLMAN,	:	APPEAL NO. C-140589
	:	TRIAL NO. A-1104747
Plaintiff-Appellant,	:	
vs.	:	<i>OPINION.</i>
PAMELA E. ZIPPERER-DAVIS,	:	
MILLENIUM RADIOLOGY, INC.,	:	
KEVIN A. AUKERMAN, M.D.,	:	
CHRISTIAN FISHER, M.D.,	:	
MIKAEL GETACHEW, M.D.,	:	
JEREMY GILLIAM, M.D.,	:	
THEODORE KLEIMEYER, M.D.,	:	
SCOTT WELTON, MD.,	:	
and	:	
GEORGE WAGNER, M.D.,	:	
Defendants-Appellees.	:	

Civil Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: June 17, 2015

*Jacobs, Kleinman, Seibel & McNally* and *Mark J. Byrne*, for Plaintiff-Appellant,

*Barron, Peck, Bennie & Schlemmer, L.P.A.*, and *Peter A. Burr*, for Defendants-Appellees.

Please note: this case has been removed from the accelerated calendar.

**FISCHER, Judge.**

{¶1} Plaintiff-appellant G. Darryl Hallman, M.D., appeals the judgment of the Hamilton County Court of Common Pleas in a breach-of-contract action against defendants-appellees Millenium Radiology, Inc., its chief executive officer, and its individual shareholders (collectively, “MRI”).

***Dr. Hallman’s Claims against MRI and the Jury Trial***

{¶2} Dr. Hallman, a radiologist, was employed by MRI under a series of written contracts that were automatically renewed on an annual basis subject to written notice of termination by either party. The parties executed the last of these agreements in June 2009.

{¶3} In January 2011, MRI’s board of directors voted to terminate Dr. Hallman’s employment. In June 2011, Dr. Hallman filed suit against MRI, asserting a number of causes of action including age discrimination, retaliation in violation of R.C. Chapter 4112, and tortious interference with prospective business relationships. Dr. Hallman subsequently amended his complaint to include claims for breach of contract.

{¶4} The case proceeded to a jury trial in 2014. The parties agreed to submit the issue of prejudgment interest on the contract claims to the jury. The court submitted a jury instruction on prejudgment interest to the jury without objection.

{¶5} The jury returned a verdict in favor of MRI on all claims except the breach-of-contract claims against MRI, Inc., for the 2007 and 2009 contracts. In a

jury interrogatory relating to damages and interest, the jury indicated that it was awarding \$130,403.71 for breach of the 2007 contract and \$69,224.07 for breach of the 2009 contract. The response to the interrogatory further stated that “Plaintiff is additionally due interest of \$-0-.” In the general verdict for Dr. Hallman, though, the jury stated that “\$199,627.78 is awarded plaintiff from MRI under one or more of his employment contracts with MRI, *including interest.*” (Emphasis added.) The trial court entered judgment in accordance with the jury’s general verdict on July 8, 2014, with no objection by either party at that time.

{¶6} On July 29, 2014, three weeks after the jury had been discharged, Dr. Hallman filed a “motion for prejudgment interest on his breach of contract claims.” The trial court overruled the motion for prejudgment interest, concluding that the jury had considered the issue of interest by consent of the parties and that Dr. Hallman had failed to preserve any claim of error with respect to the jury’s determination.

#### **Prejudgment Interest and Waiver**

{¶7} In a single assignment of error, Dr. Hallman contends that the trial court erred in overruling his motion for prejudgment interest.

{¶8} R.C. 1343.03(A), governing the accrual of interest in a breach-of-contract claim, provides that when money becomes due and payable upon a judgment “arising out of \* \* \* a contract or other transaction, the creditor is entitled to interest at the rate per annum determined pursuant to section 5307.47 of the Revised Code \* \* \*.” Prejudgment interest in a contract claim compensates the plaintiff for the time between the accrual of the claim and the judgment. *Local Marketing Corp. v. Prudential Ins. Co. of Am.*, 159 Ohio App.3d 410, 2004-Ohio-

7001, 824 N.E.2d 122, ¶ 15 (1st Dist.), citing *J. Richards Industries, LP, v. Stanley Machining, Inc.*, 6th Dist. Lucas No. L-03-1024, 2004-Ohio-3804. Thus, a trial court has no discretion to deny prejudgment interest in such cases. *Local Marketing Corp.* at ¶ 15, citing *Slack v. Cropper*, 143 Ohio App.3d 74, 757 N.E.2d 404 (11th Dist.2001) and *J. Richards Industries, LP*.

{¶9} According to Dr. Hallman, the jury interrogatory in this case established that he was not awarded prejudgment interest and was therefore not fully compensated. MRI responds that the general verdict explicitly provided for prejudgment interest, and the jury award exceeded the amount of damages sought for the breach-of-contract claims themselves. Thus, MRI contends that Dr. Hallman was fully compensated under R.C. 1343.03(A). MRI further argues that, even if there had been a fundamental conflict between the interrogatory and the general verdict, Dr. Hallman waived any error in the jury's computation of the total damages.

{¶10} We agree with MRI that Dr. Hallman waived any claimed error concerning the jury award. Where there is a conflict between two general verdict forms or between a general verdict form and a jury interrogatory, Civ.R. 49(B) mandates that the trial court be given the option of granting a motion for judgment notwithstanding the verdict, of granting a new trial, or of sending the jury back for further deliberations. *See Quantum Chem. Corp. v. Mobil Oil Corp.*, 1st Dist. Hamilton Nos. C-940357 and C-940395, 1995 Ohio App. LEXIS 4557, \*6 (Oct. 18, 1995); *Romp v. Haig*, 110 Ohio App.3d 643, 647, 675 N.E.2d 10 (1st Dist.1995). The failure to raise the issue until after the jury is discharged precludes this last option and results in the waiver of any claimed error. *Id.*; *Alliance Excavating, Inc. v.*

*Triangle Real Estate Servs., Inc.*, 10th Dist. Franklin No. 08AP-535, 2009-Ohio-2761, ¶ 10.

{¶11} In the case at bar, Dr. Hallman did not raise the issue of prejudgment interest when the jury returned its verdict and accompanying interrogatory. Instead, he waited until three weeks after the trial to raise the issue with the court. But after the jury had been discharged, the trial court was no longer afforded the option of requiring further deliberations to resolve the apparent conflict between the verdict and the interrogatory. Therefore, Dr. Hallman waived any error with respect to the jury's alleged failure to award prejudgment interest, and we overrule the assignment of error.

***Conclusion***

{¶12} We affirm the judgment of the trial court.

Judgment affirmed.

**CUNNINGHAM, P.J.**, and **STAUTBERG, J.**, concur.

Please note:

The court has recorded its own entry on the date of the release of this opinion.