Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2017-325

FEBRUARY TERM, 2018

Vera P. Mikhailova v. Andrei V. Babyuk*	}	APPEALED FROM:
	}	
	}	Superior Court, Chittenden Unit,
	}	Family Division
	}	
	}	DOCKET NO. 891-11-14 Cndm
		Trial Judge: James R. Crucitti

In the above-entitled cause, the Clerk will enter:

In this post-divorce enforcement proceeding, husband appeals the superior court's imposition of post-judgment interest at the 12% statutory rate. We affirm.

The parties divorced in October 2015 following a fifteen-year marriage. In the final divorce order, the superior court ordered husband to pay wife, among other things, $200,000 as her share of a stock buyout that husband had received from a former employer during the marriage. The October 12, 2015 final order required husband to make that payment within thirty days of the order. Husband filed a notice of appeal, but the appeal was dismissed by mutual agreement of the parties in February 2016. Later that month, wife filed a motion to enforce the final order. In March 2016, per order of the court, husband paid wife $112,000 of the $200,000 award. At the same time, he filed a motion asking the court to reduce his obligation to wife based on certain payments he had made and to interpret the applicable provision of the final order to require a payment of $175,000 rather than $200,000. In a June 28, 2016 order, the court rejected husband's interpretation of the provision and required him to pay the remainder of the $200,000, less permitted deductions, within ten days of the date of the order. A three-justice panel of this Court affirmed that order. Mikhailova v. Babyuk, No. 2016-272, 2017 WL 253582 (Vt. Jan. 12, 2017) (unpub. mem.), https://www.vermontjudiciary.org/LC/unpublishedeo.aspx [https://perma.cc/FV96-CJVV].

In April 2017, wife filed a renewed motion to enforce and for contempt. In May 2017, a month before the scheduled hearing on the motion, husband paid wife an additional $38,204 of the original $200,000 award. In a June 21, 2017 order, the court concluded that husband still owed wife $13,550. The court further concluded that wife was entitled to reasonable attorney's fees in the amount of $10,060 and that, considering the delay in payment, interest at the statutory rate was appropriate. The court also scheduled a later hearing on wife's contempt motion. At that hearing, husband paid the full amount due, but moved to reduce the amount of attorney's fees and the rate of post-judgment interest. The court denied the motion, stating that, considering its findings in prior enforcement proceedings in this case, the order issued was appropriate.

On appeal, husband argues that the superior court abused its discretion by awarding wife post-judgment interest at the statutory rate. According to husband, because wife did not present any evidence that the delay in her receiving the award denied her an opportunity for financial gain, imposing the statutory interest rate in this case amounted to a punitive measure against him and a windfall for her. He argues that

the court abused its discretion by failing to examine the actual impact of the delay in wife receiving the award. He acknowledges that this Court has recently rejected a constitutional challenge to the statutory rate, see Concord Gen. Mut. Ins. Co. v. Gritman, 2016 VT 45, 202 Vt. 155 ("[A]though we acknowledge that the statutory rate is incongruous in the context of today's market conditions, we conclude that the 12% rate is reasonably related to the purpose of the statute."), but asserts that Gritman is not applicable here because wife sought relief under a judicial rule rather than the statute construed in Gritman.

We find no basis to overturn the superior court's imposition of post-judgment interest at the statutory rate. In Gritman, we rejected the defendant's constitutional challenge to the 12% rate for prejudgment interest set forth in 9 V.S.A. § 41a(a) and for post-judgment interest set forth in 12 V.S.A. § 2903(c), concluding that "the 12% rate is reasonably related to making plaintiffs whole, and as a result, passes rational-basis review." Id. ¶ 35. Husband argues that the deferential review we applied in Gritman should not apply here because in this case wife sought relief under Rule 16 of the Vermont Rules for Family Proceedings, which governs contempt proceedings and was promulgated by judicial, rather than legislative, process.

This argument is unavailing. Husband is appealing a civil judgment in a post-divorce enforcement proceeding in which "[e]ither party may file any post-trial motions under the Vermont Rules of Civil Procedure." 15 V.S.A. § 554(b) (stating that "decree of divorce shall constitute a civil judgment under the Vermont Rules of Civil Procedure"); see Richard v. Richard, 2014 VT 58, ¶ 8, 196 Vt. 531 ("Vermont Rules of Civil Procedure apply to family court judgments in actions for divorce."); V.R.F.P. 4.0(a)(2)(A) ("The Vermont Rules of Civil Procedure apply to actions under this rule . . . expect as provided in [other specific rules]."). Vermont Rule of Civil Procedure 69 provides, with respect to enforcement of judgments, that post-judgment interest shall be "calculated on the full amount of principal included in the judgment at the maximum rate allowed by law." Section 2903(c) of Title 12 provides that "[i]nterest on a judgment lien shall accrue at the rate of 12 percent per annum." "When a debt becomes payable, if the contract does not stipulate a rate of interest, the statutory or legal rate applies." New England P'ship, Inc. v. Rutland City Sch. Dist., 173 Vt. 69, 78 (2001) (quotation omitted). Divorce decrees are construed as contracts, Flanagan v. duMont, 2016 VT 115, ¶ 19, and husband does not contend that the divorce decree in this case provides for a different interest rate.

To the extent the superior court had any discretion to diverge from the statutory rate, it acted within such discretion in concluding that that rate was appropriate, given husband's conduct in failing to provide the sums owed to wife in a timely manner as set forth in the final divorce order. Imposition of the statutory rate was not dependent on wife showing how she would or could have used the money had she received it as ordered by the court or how she was harmed by not having obtained the money within the time frame ordered by the court.

Affirmed.

BY THE COURT:

_____
Marilyn S. Skoglund, Associate Justice

_____
Beth Robinson, Associate Justice

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Harold E. Eaton, Jr., Associate Justice