IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

ARMEN YOUSOUFIAN, Appellant, v. THE OFFICE OF RON SIMS, COUNTY EXECUTIVE, a subdivision of KING COUNTY a municipal corporation; THE KING COUNTY DEPARTMENT OF FINANCE, a subdivision of KING COUNTY, a municipal corporation; and THE KING COUNTY DEPARTMENT OF STADIUM ADMINISTRATION, a subdivision of KING COUNTY, a municipal corporation, Respondents, and DAVID ALLEN and LESLIE MILLSPAUGH, Respondents.	)	No. 65657-1-I DIVISION ONE UNPUBLISHED OPINION FILED: August 15, 2011

SPEARMAN, J. — After King County failed to comply with a public records request submitted by Armen Yousoufian more than a decade ago, Yousoufian obtained a judgment. The primary question in this appeal is whether Yousoufian was entitled to post-judgment interest retroactive to the date of the judgment. Holding Yousoufian was

entitled to retroactive post-judgment interest, we reverse the trial court and remand.

FACTS

Armen Yousoufian submitted a records request under the Public Records Act ("PRA") to King County more than a decade ago. The County did not comply with the statute, and the trial court awarded statutory penalties. Since then, there have been multiple appeals in this case. In the last supreme court decision, Yousoufian v. Office of Ron Sims, et al., 168 Wn.2d 444, 229 P.3d 735 (2010), ("Yousoufian V"), the Court affirmed our reversal of the trial court's $15 per-day award, but did not remand, and instead set the per-day award at $45. The total award to Yousoufian was thus $371,340. King County had already paid Yousoufian $123,780, which was the entire amount previously awarded by the trial court. After the supreme court's decision, King County paid into the registry of the court the balance of the supreme court-adjusted award ($247,560), plus post-judgment interest running from the date of the March 25, 2010 supreme court decision until the date of payment ($4,639.21). Yousoufian filed a motion seeking post-judgment interest on the additional amount awarded by the supreme court retroactive to August 23, 2005, which was the date of the judgment entered after the supreme court's first remand. The trial court denied the motion for post-judgment interest. Yousoufian appealed, and we granted review.

DISCUSSION

Post-Judgment Interest and Sovereign Immunity

King County argues sovereign immunity precludes an award of post-judgment

interest in this case. Post-judgment interest is governed by RCW 4.56.110. Whether a party is entitled to post-judgment interest involves interpreting RCW 4.56.110, and is thus a question of law that this court reviews de novo. See Sintra, Inc. v. City of Seattle, 96 Wn. App. 757, 761, 980 P.2d 796 (1999). Post-judgment interest is mandatory and retroactive where a judgment is wholly or partially affirmed on review:

> Interest on judgments shall accrue as follows:
>
> . . .
>
> (4) In any case where a court is directed on review to enter judgment on a verdict or in any case where a judgment entered on a verdict is wholly or partly affirmed on review, interest on the judgment or on that portion of the judgment affirmed shall date back to and shall accrue from the date the verdict was rendered.

RCW 4.56.110. King County contends, however, that this statute does not apply "absent a waiver of sovereign immunity and consent to the payment of interest." We disagree for the reasons described herein.

King County is correct that, in general, the "'state cannot, without its consent, be held to interest on its debts.'" Carrillo v. City of Ocean Shores, 122 Wn. App. 592, 615, 94 P.3d 961 (2004) (quoting Our Lady of Lourdes Hosp. v. Franklin County, 120 Wn.2d 439, 455-56, 842 P.2d 956 (1993) and Architectural Woods, Inc. v. State, 92 Wn.2d 521, 524, 598 P.2d 1372 (1979)). This rule appears to have been first announced in Spier v. Dep't of Labor & Indus., 176 Wash. 374, 29 P.2d 679 (1934). In Architectural Woods, the Supreme Court revisited this rule. Although the legislature had, in the years after Spier, generally abrogated sovereign immunity for both the State (former RCW 4.92.090 (1961)) and for municipalities (former RCW 4.96.010 (1967)), the

Supreme Court in Architectural Woods nevertheless adhered to the rule, and held that "the State without its consent cannot be held to interest on its debts." Architectural Woods, 92 Wn.2d at 526.

This rule, however, does not necessarily apply to municipal corporations, which are "creatures of the state" that "derive their authority and powers from the state's legislative body." Carrillo, 122 Wn. App. at 615 (quoting Campbell v. Saunders, 86 Wn.2d 572, 574-75, 546 P.2d 922 (1976)). Washington courts have held for decades that municipal corporations enjoy sovereign immunity only to the extent they are exercising functions delegated to them by the state:

> 'Municipal corporations enjoy their immunity from liability for torts only in so far as they partake of the states [sic] immunity and only in the exercise of those governmental powers and duties imposed upon them as representing the state. In the exercise of those administrative powers conferred upon, or permitted to, them *solely for their own benefit in their corporate capacity, whether performed for gain or not*, and whether of the nature of a business enterprise or not, they are neither sovereign nor immune. They are only sovereign and only immune in so far as they represent the state. *They have no sovereignty of their own*, they are in no sense sovereign *per se*.'

See Carrillo, 122 Wn. App. at 615 (quoting Kelso v. City of Tacoma, 63 Wn.2d 913, 916-17, 390 P.2d 2 (1964) and Hutton v. Martin, 41 Wn.2d 780, 784, 252 P.2d 581 (1953)); see also Hagerman v. Seattle, 189 Wash. 694, 66 P.2d 1152, 110 A.L.R. 1110 (1937).

But whether King County's actions under the PRA are state delegated functions shielded by sovereign immunity is a question we need not decide. Even if sovereign immunity would ordinarily apply in this circumstance, it does not here, because it was

waived when the legislature enacted the PRA. A waiver of sovereign immunity for purposes of post-judgment interest can be either express or implied. Architectural Woods, 92 Wn.2d at 526. An implied waiver can occur when the legislature enacts a statute providing "comprehensive relief to aggrieved claimants." Union Elevator & Warehouse Co., Inc. v. State ex rel., Dep't of Transp., 171 Wn.2d 54, 65, 248 P.3d 83 (2011) (discussing Smoke v. City of Seattle, 132 Wn.2d 214, 937 P.2d 186 (1997)); see also Architectural Woods, 92 Wn.2d at 527 (legislature implied waived immunity for post-judgment interest by enacting RCW 28B.10.300, which permitted state universities to enter into various contracts); Smoke (chapter 64.40 RCW, authorizing suit for damages for land use decisions, impliedly waived immunity for post-judgment interest). In determining whether the legislature has impliedly waived immunity and enacted comprehensive relief to aggrieved claimants, "the focus must be on the statutory language and purpose" of the statute. Union Elevator, 171 Wn.2d at 65. Where a statute includes an attorney fee provision, that is an indicator of legislative intent to provide comprehensive relief. Id. at 64-65.

The legislature intended in enacting the PRA to provide comprehensive relief to the public at large when aggrieved by governmental agencies that fail to disclose publicly owned information. Indeed, one unambiguous purpose of the statute is to hold the government accountable to the people of the State:

> The stated purpose of the Public Records Act is nothing less than the preservation of the most central tenets of representative government, namely, the sovereignty of the people and the accountability to the people of public officials and institutions.

Progressive Animal Welfare Soc. v. University of Washington, 125 Wn.2d 243, 251, 884 P.2d 592 (1994). To that end, the PRA provides for a cause of action against a government agency that violates its provisions, as well as monetary penalties, costs, and attorney fees to the aggrieved member of the public:

> Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record or the right to receive a response to a public record request within a reasonable amount of time shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action. In addition, it shall be within the discretion of the court to award such person an amount not less than five dollars and not to exceed one hundred dollars for each day that he or she was denied the right to inspect or copy said public record.

RCW 42.56.550(4). Thus, in Smoke, the Legislature intended in enacting the PRA to provide comprehensive relief to the public.

The County responds that under Ventoza v. Anderson, 14 Wn. App. 882, 897 545 P.2d 1219 (1976) and Blake v. Grant, 65 Wn.2d 410, 413, 397 P.2d 843 (1964), interest is not allowed where a statute is punitive. But as Yousoufian correctly points out, both of those cases were about the availability pre-judgment interest, not post-judgment interest. Post-judgment interest, unlike pre-judgment interest, is governed by statute and is mandatory under RCW 4.56.110. Womack v. Rardon, 133 Wn. App. 254, 264, 135 P.3d 542 (2006). Moreover, the statute at issue in both Ventoza and Blake was the treble damages portion of the timber trespass statute. Ventoza, 14 Wn. App. at 897; Blake, 65 Wn.2d at 413. A "statutory action for treble damages is in the nature of a penalty[.]" Blake, 65 Wn.2d at 413. By contrast, at issue here is a per-day award of damages that the trial court may order for each day the plaintiff was denied

the right to inspect or copy a public record.

In sum, the legislature impliedly waived sovereign immunity for post-judgment interest when enacting the PRA, a statutory scheme that provides "comprehensive relief to aggrieved claimants." Union Elevator, 171 Wn.2d at 65. As such, we reject the County's arguments on this issue and reverse the trial court order denying post-judgment interest.[1]

Amount of award to which post-judgment interest applies

King County next argues that even if it is not shielded from post-judgment interest by sovereign immunity, Yousoufian is not entitled to interest on the full amount of the award on remand. Specifically, the County argues Yousoufian is entitled to recover only "on that portion of the trial court's judgment affirmed on review[,]" i.e., $123,780. We disagree. The County's position is that where an appellate court *increases* the amount of a judgment on appeal, the debtor is obligated to pay interest only on the original amount awarded by the trial court. But our supreme court has made no distinction in cases where an appellate court has increased the amount of judgment on appeal. See Fulle v. Boulevard Excavating, Inc., 25 Wn. App. 520, 521-23, 610 P.2d 387 (1980) (affirming the trial court's award of post-judgment interest from the date of original judgment where the trial court increased the award in accordance with the appellate court's mandate). We reject this argument.

[1] We also note that although the County made its sovereign immunity argument both here on appeal and to the trial court, it nevertheless paid a small portion of post-judgment interest on the award. Yousoufian contends this amounts to waiver, but he provides little argument on this issue and cites no authority.

Likewise, we reject the County's contention that Yousoufian is not entitled to post-judgment interest because the Supreme Court decision in Yousoufian V was a complete reversal. The County is simply mistaken. The Supreme Court did not reverse. Rather, it "affirm[ed] but modif[ied] the Court of Appeals' decision." Yousoufian V, 168 Wn.2d at 470. And post-judgment interest retroactive to the date of the judgment is mandatory where an appellate court "merely modifies the trial court award and the only action necessary in the trial court is compliance with the mandate." Sintra, Inc., 96 Wn. App. at 763. Here, the Supreme Court in Yousoufian V merely modified the trial court's August 23, 2005 award of $15 per day, ordering instead $45 per day. Post-judgment interest retroactive to August 23, 2005 is thus appropriate, and we reverse the trial court order denying Yousoufian's motion for post-judgment interest.

Attorney Fees

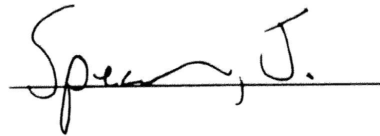
Yousoufian seeks attorney fees and costs, both here on appeal and in the trial court for the motion for post-judgment interest. We grant Yousoufian's request. Regarding fees on appeal, RAP 18.1 authorizes this court to grant attorney fees "[i]f applicable law grants to a party the right to recover reasonable attorney fees or expenses. . . ." RAP 18.1(a). The applicable law here is the PRA, which provides for attorney fees to any person who prevails against an agency in court on a PRA action:

> Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record or the right to receive a response to a public record request within a reasonable amount of time shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action.

RCW 42.56.550(4). To the extent the County argues Yousoufian's fees were not incurred "in connection" with the PRA lawsuit, we reject that argument. As Yousoufian notes, there has been only one superior court cause number for this PRA case; the motion for post-judgment was brought as part of the PRA case; and the arguments about waiver of sovereign immunity for post-judgment interest have involved the PRA.

In short, the motion for post-judgment interest and the appeal therefrom were incurred "in connection" with Yousoufian's PRA suit, and we grant his request for fees in the trial court and on appeal.

Reversed and remanded for further proceedings consistent with this opinion.



WE CONCUR: