2017 IL App (4th) 160909-U

NO. 4-16-0909

FILED
August 4, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: MARRIAGE OF	)	Appeal from
JESSE ALAN KELLER,	)	Circuit Court of
Petitioner-Appellee,	)	Coles County
and	)	No. 13D126
MARY ELLEN KELLER,	)	
Respondent-Appellant.	)	Honorable
	)	Brien J. O'Brien,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Harris and Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in ordering petitioner to pay interest only from the date of the appellate court's mandate affirming the judgment, and not from the date the judgment was originally entered.

¶ 2 Respondent, Mary Ellen Keller, appeals the trial court's order imposing interest, beginning from the appellate court's mandate, upon the amount required to be paid by petitioner, Jesse Alan Keller, as part of the equitable distribution judgment in the parties' divorce proceedings. In this appeal, respondent contends the trial court was *required* to impose interest, pursuant to the judgment interest statute (735 ILCS 5/2-1303 (West 2014)), from the original date of the judgment. Because we find the common law suggests the trial court has the discretion whether to impose interest on marital dissolution judgments, except those judgments pertaining to child-support payments, we affirm.

¶ 3 I. BACKGROUND

¶ 4 In January 2015, the trial court entered a final judgment, dissolving the parties' marriage and ordering an equitable distribution of property, assets, and debts. The judgment ordered petitioner to pay respondent $80,000. Respondent appealed, disputing the court's allocation, but this court affirmed. *In re Marriage of Keller*, 2016 IL App (4th) 150311-U, ¶ 39.

¶ 5 Thereafter, in July 2016, respondent filed a petition for a finding of indirect civil contempt, claiming petitioner was in contempt of court for failing to pay her $80,000 by May 1, 2015, as required by the final judgment. She alleged petitioner was able to make the payment but had "failed and refused to do so." She claimed, with interest, he owed over $88,000. Petitioner filed an objection to the application of the judgment interest statute (735 ILCS 5/2-1303 (West 2014)), asserting the trial court had not imposed interest and any delay in payment was caused by respondent's filing of an appeal.

¶ 6 In September 2016, the trial court conducted a hearing on respondent's petition for indirect civil contempt. Respondent called petitioner as an adverse witness to testify. He admitted he had not paid respondent $80,000, stating he had not "been told to pay" her. After considering the evidence and arguments of counsel, the court found petitioner was not in contempt of court. However, the court ordered petitioner to pay interest to respondent beginning on the date of the appellate court mandate (May 17, 2016), not from the original judgment date. The amount of interest as of the date of the hearing equaled $2,614.11.

¶ 7 Respondent filed a motion to reconsider, claiming the supreme court in *Illinois Department of Healthcare & Family Services ex rel. Wiszowaty v. Wiszowaty*, 239 Ill. 2d 483 (2011), had determined the imposition of interest pursuant to the judgment interest statute (735 ILCS 5/2-1303 (West 2008)) was mandatory, not only for child-support judgments, but also for

all equitable distribution judgments in marital cases. The trial court disagreed with respondent's interpretation of *Wiszowaty* and denied her motion to reconsider.

¶ 8 This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 Respondent argues the trial court erred by not imposing interest on the original judgment. She claims the supreme court in *Wiszowaty* made the imposition of interest mandatory. We, like the trial court, disagree with her interpretation of the *Wiszowaty* decision.

¶ 11 The judgment interest statute provides "[j]udgments recovered in any court shall draw interest at the rate of 9% per annum from the date of the judgment until satisfied." 735 ILCS 5/2-1303 (West 2014). It was thought that this statute did not necessarily apply to marital dissolution cases due to the nature of such cases, which tended to rely on the principles of equity. In fact, in *Finley v. Finley*, 81 Ill. 2d 317, 332 (1980), the supreme court held "the allowance of interest on past-due periodic [child-]support payments" was not mandatory and within the discretion of the trial court. The court provided the following rationale for its decision:

> "This court has held that a divorce proceeding partakes so much of the nature of a chancery proceeding that it must be governed to a great extent by the rules that are applicable thereto. [Citation.] In a chancery proceeding, the allowance of interest lies within the sound discretion of the trial judge and is allowed where warranted by equitable considerations and is disallowed if such an award would not comport with justice and equity." *Finley*, 81 Ill. 2d at 332.

¶ 12 Seven years after *Finley*, our legislature amended section 505(c) of the Illinois Marriage and Dissolution of Marriage Act (Ill. Rev. Stat. 1987, ch. 40, ¶ 505(c)), mandating the

imposition of interest on all past due child-support payments. The legislature indicated that each child-support order would be treated as a "series of judgments," requiring the "full force, effect[,] and attributes of any other judgment of this State." See Ill. Rev. Stat. 1987, ch. 40, ¶ 505(c) (eff. May 1, 1987) (currently codified as 750 ILCS 5/505(d) (West 2014)). The legislature also amended section 12-109 of the Code of Civil Procedure to require that every "child support order shall bear interest as provided in Section 2-1303 commencing 30 days from the effective date of each such judgment." Ill. Rev. Stat. 1987, ch. 110, ¶ 12-109 (eff. May 1, 1987) (currently codified as 735 ILCS 5/12-109 (West 2014)). The legislature did not specifically address judgments not pertaining to child-support payments.

¶ 13 Thus, Illinois courts have continued to find "the decision to award interest on any dissolution judgment, other than a judgment for child support, is a discretionary matter for the trial court." *In re Marriage of Carrier*, 332 Ill. App. 3d 654, 660 (2002); see also *In re Marriage of Polsky*, 387 Ill. App. 3d 126, 141 (2008) ("Interest on dissolution judgments is within the discretion of the trial court."). Further, in *In re Marriage of Ahlness*, 229 Ill. App. 3d 761, 763 (1992), this court emphasized the "broad application" of *Finley* and the importance of equitable considerations in the context of divorce property settlements. In *Ahlness*, we quoted a portion of the *Finley* case, stating: " ' "In a proper case, equitable considerations permit a court of equity to allow or disallow interest as the equities of the case may demand." ' " *Ahlness*, 229 Ill. App. 3d at 763 (quoting *Finley*, 81 Ill. 2d at 332, quoting *Groome v. Freyn Engineering Co.*, 374 Ill. 113, 131 (1940)).

¶ 14 Despite these decisions, respondent insists the supreme court changed the discretionary nature of the imposition of interest on *all* judgments entered in divorce proceedings, whether related to child support or property distribution, when it decided

Wiszowaty. She adamantly argues that *Wiszowaty* imposed a mandatory obligation on the trial courts to impose interest on *all* final judgments, either expressly or implicitly overruling *Finley*. We do not so interpret *Wiszowaty*.

¶ 15 In examining the supreme court's *Wiszowaty* decision, we begin by noting the stated issue in that appeal, as recognized by the court. "At issue in this appeal is whether delinquent child-support payments in Illinois began to bear mandatory interest in 1987 with the passage of Public Act 85-2 (eff. May 1, 1987)." *Wiszowaty*, 239 Ill. 2d at 484. From there, the court discussed the pertinent facts of the case. Suffice it to say that the husband fell behind in court ordered child support payments. The Illinois Department of Healthcare and Family Services (Department) intervened and asked the trial court to enter a judgment for the arrearage amount plus interest from the date of the first missed payment in 1991. *Wiszowaty*, 239 Ill. 2d 485. The husband conceded the arrearage but argued interest should not be imposed on the amount until interest was made mandatory in 2000 with certain statutory amendments. He claimed prior to 2000, the imposition of interest was left to the discretion of the trial court. *Wiszowaty*, 239 Ill. 2d at 485. The Department argued that interest became mandatory in 1987 pursuant to the amendments discussed above. The trial court and the appellate court agreed with the husband, holding that interest was not made mandatory in 1987. *Wiszowaty*, 239 Ill. 2d at 486.

¶ 16 The supreme court analyzed the legislature's 1987 amendments to the relevant statutory sections, recognizing the word "shall," as used in those amendments, referred to the treatment of child-support orders as judgments that "shall bear interest." *Wiszowaty*, 239 Ill. 2d at 487. The court clearly stated: "Accordingly, under the plain and ordinary language of the foregoing statutory amendments, past-due child support payments began to bear mandatory

interest on May 1, 1987." *Wiszowaty*, 239 Ill. 2d at 487-88. The court never addressed, either plainly or implicitly, any other type of judgment, except one pertaining to child support.

¶ 17 We further find *Wiszowaty* did not overrule *Finley*. Instead, the *Wiszowaty* court discussed the fact that, at the time *Finley* was decided, child-support orders were not characterized as judgments and there was no statute referencing the imposition of interest on unpaid support payments. *Wiszowaty*, 239 Ill. 2d at 488. Without a statutory requirement, courts were left to their own discretion on whether equitable considerations in a particular case supported the imposition of interest. *Wiszowaty*, 239 Ill. 2d at 489 (citing *Finley*, 81 Ill. 2d at 332). The *Wiszowaty* court stated:

> "*Finley* thus stands for the proposition that, where there are no controlling statutes [(emphasis omitted)] defining *unpaid support payments* as judgments or providing for interest, interest may be awarded on *those payments* as a discretionary matter because the divorce proceeding may be likened to a chancery proceeding. But *Finley* does not stand for the proposition that interest is left to the discretion of the circuit court even when governing statutes have plainly stated otherwise." (Emphases added.) *Wiszowaty*, 239 Ill. 2d at 489.

¶ 18 Therefore, given the clear amendments to the relevant statutory sections, which pertain *only* to judgments affecting child support payments, and the supreme court's express holding that "interest payments on child[-]support payments became mandatory effective May 1, 1987" (*Wiszowaty*, 239 Ill. 2d at 490), we reject respondent's claim that the supreme court extended its holding in *Wiszowaty* to somehow include the principle that interest is mandatory on *all* dissolution judgments, including those affecting property distribution. Further, we conclude the court did not overrule *Finley*, but instead distinguished *Finley* on the facts.

¶ 19 *Finley* continues to govern the trial court's imposition of interest on property distribution judgments. That is, "the allowance of interest lies within the sound discretion of the trial judge and is allowed where warranted by equitable considerations and is disallowed if such an award would not comport with justice and equity." *Finley*, 81 Ill. 2d at 332. Upon review, the trial court's determination whether to allow interest to accrue will not be set aside absent an abuse of discretion. *In re Marriage of Stone*, 155 Ill. App. 3d 62, 71 (1987). We conclude it was well within the trial court's discretion to order payments without accrual of interest until such time as ordered by the court.

¶ 20 III. CONCLUSION

¶ 21 For the reasons stated, we affirm the trial court's judgment.

¶ 22 Affirmed.