

2019 IL App (1st) 170043-U

No. 1-17-0043

Order filed June 28, 2019

Fifth Division

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE <i>ex rel.</i> KIMBERLY M. FOXX, State's)	Appeal from the
Attorney of Cook County, Illinois,)	Circuit Court of
)	Cook County.
Plaintiff-Appellant,)	
)	
v.)	No. 01 M1 605300
)	
\$280,020 in UNITED STATES CURRENCY,)	
)	Honorable
Defendant (Shayne Kolody and Stephen M.)	Paul A. Karkula,
Komie, Claimants-Appellees).)	Judge, presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Rochford and Justice Hall concurred in the judgment.

ORDER

- ¶ 1 *Held:* Sovereign immunity prevents the claimants from recovering statutory post-judgment interest on money that the State had seized for purposes of civil forfeiture but later was ordered to return to the claimants.
- ¶ 2 The circuit court ordered the State to (1) return money the State had seized during an illegal search; (2) pay the claimants the interest accrued while the money was in a certificate of

deposit (CD) pending the court proceedings; and (3) pay the claimants statutory post-judgment interest.

¶ 3 On appeal, the State argues that sovereign immunity bars recovery of post-judgment interest in this matter; the court lacked the authority to impose statutory post-judgment interest in this matter; and, regardless of the lack of jurisdiction issue, post-judgment interest would still be improper because the State did not enjoy improper use of the money.

¶ 4 For the reasons that follow, we reverse the portion of the circuit court's judgment that awarded claimants statutory post-judgment interest but otherwise affirm the judgment of the circuit court.¹

¶ 5 I. BACKGROUND

¶ 6 In January of 2001, police officers seized \$280,020 in cash, wrapped in cellophane bundles, from the luggage of Shayne Kolody. The State filed a complaint for forfeiture of the \$280,020 *res*, alleging that the cash had a nexus to illegal drug activity and was subject to forfeiture. Kolody, through his attorney Stephen M. Komie, filed a verified claim for the cash and moved to dismiss the State's complaint for failure to allege sufficient facts to demonstrate a nexus between the money seized and illegal drug activity. Thereafter, Komie filed a verified claim of a one-third ownership interest in the \$280,020 *res*, which he obtained by assignment.

¶ 7 In November 2004, the trial court dismissed the State's complaint for failure to state a cause of action. The State filed a notice of appeal, and the trial court stayed enforcement of judgment and ordered the Chicago Police Department to transfer the \$280,020 *res* to the circuit clerk's office, pursuant to section 108-11 of the Code of Criminal Procedure of 1963 (725 ILCS

¹ In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order.

5/108-11 (West 2002)). To protect the value of the *res*, the court ordered the circuit clerk to deposit the funds in a federally insured interest bearing account or 90-day CD, pursuant to section 2-1011 of Code of Civil Procedure (Code) (735 ILCS 5/2-1011 (West 2002)). On January 10, 2005, the circuit clerk complied with this order, depositing the \$280,020 *res* into a CD.

¶ 8 In 2007, this court reversed the trial court's dismissal of the State's complaint and remanded the cause for further proceedings. *People v. \$280,020.00 in United States Currency*, 372 Ill. App. 3d 785 (2007).

¶ 9 On May 26, 2011, after a trial in this matter, the trial court found that the search was illegal and granted claimants' motion to suppress the seizure of the defendant *res*. The court granted claimants' motion for a directed verdict and found that Kolody had established his claim for return of the *res* to him and his attorney, Komie. The court entered judgment in favor of claimants and against the State in the amount of \$280,020 but stayed the execution of this order pending the State's decision to appeal.

¶ 10 The State appealed, and this court issued an opinion affirming the trial court's judgment. *People v. \$280,020 in United States Currency*, 2013 IL App (1st) 111820. The appellate court mandate was issued on July 25, 2013. Claimants, however, did not attempt to recover the defendant *res* for over two years.

¶ 11 On August 11, 2015, claimants moved the circuit court to file the mandate and re-docket the matter for supplemental proceedings in the court's law division. However, on September 21, 2015, the court denied that motion, ordered that the matter shall remain in the court's forfeiture division, and stated that "[a]ttorney Ste[ph]en Komie objects to a release of defendant *Res* to his

client at this time.” Account statements for the defendant *res* indicated that as of February 9, 2016, the total interest that had accrued on the \$280,020 CD was \$43,324.95.

¶ 12 On April 26, 2016, claimants moved the court to set interest on the defendant *res* and the judgment due. Claimants asserted that the value of the account for the defendant *res* as of the date of the trial court’s May 26, 2011 judgment was \$321,716.92. Claimants argued that this May 26, 2011 account value should be the base judgment upon which the court calculated the amount of post-judgment interest at the rate of 6% per annum pursuant to section 2-1303 of the Code (735 ILCS 5/2-1303 (West 2014)).

¶ 13 The State responded that claimants were not judgment creditors and thus not entitled to prejudgment or post-judgment interest. The State argued, *inter alia*, that no statutory provision allowed for post-judgment interest on a defendant *res* to be paid to a forfeiture claimant, and the law was clear that interest could not be assessed against the State of Illinois, the State’s Attorney of Cook County, or the Clerk of the Circuit Court of Cook County.

¶ 14 On August 25, 2016, the court noted the parties’ agreement that, as of May 26, 2011, the total amount of accrued CD interest (\$41,696.92) and principle (\$280,020) of the defendant *res* account was \$321,716.92. The court directed the circuit clerk to tender \$321,716.92 forthwith to claimants Kolody and Komie. The court also ordered the State to pay claimants, by September 25, 2016, post-judgment interest, pursuant to section 2-1303 of the Code, at 6% per annum on the amount of \$321,716.92, running from May 26, 2011, until the judgment was satisfied.

¶ 15 In September 2016, the State moved the court to reconsider the award of post-judgment interest in the August 25, 2016 order. On October 6, 2016, the circuit clerk tendered a check for

\$321,716.92 to claimants in open court, and the State moved the court to allow the circuit clerk to pay claimants the remaining CD balance of \$1,917.73.

¶ 16 In December 2016, the court denied the State's motion to reconsider and granted the request to allow the circuit clerk to pay claimants the remaining \$1,917.73 CD balance. In January 2017, the State appealed the portion of the August 25, 2016 judgment awarding claimants post-judgment interest. The State also moved the circuit court to stay enforcement of the judgment pending the appeal.

¶ 17 On February 9, 2017, the circuit court entered an order reflecting that the circuit clerk had distributed to claimants all the \$280,020 principle and \$43,614.65 accrued interest from the CD.

¶ 18

II. ANALYSIS

¶ 19 The State contends that the total additional amount of post-judgment interest at issue in this appeal is \$103,601. The State argues that sovereign immunity bars recovery of post-judgment interest in this matter; the circuit court lacked the authority to impose statutory post-judgment interest in this matter; and, regardless of the lack of jurisdiction issue, post-judgment interest would still be improper because the State did not enjoy improper use of the money.

¶ 20 However, before we address the State's arguments on appeal, we review the claimants' motion to dismiss the State's appeal, which we previously ruled would be taken with the case.

¶ 21

A. Motion to Dismiss Appeal

¶ 22 Claimants move this court to dismiss the State's appeal for lack of jurisdiction, arguing that the August 25, 2016 order challenged on appeal was not a final judgment. Claimants argue that the challenged order does not list "a final dollar figure" or "actual money judgment" for the

award of post-judgment interest. Accordingly, claimants contend that the award of post-judgment interest was merely a preliminary order in a supplementary proceeding commenced under Illinois Supreme Court Rule 277 (eff. Jan. 4, 2013), and such orders are interlocutory and not subject to appeal. Claimants argue that the transcript of the December 6, 2016 hearing on the State's motion to reconsider establishes the trial court's intention that the challenged August 2016 order was not final. According to claimants, the transcript indicates that the trial court intended for the parties to calculate, at some point in the future, the precise amount of post-judgment interest due and then the trial court would enter a final judgment on that amount.

¶ 23 In response, the State first explains that its appeal challenges the circuit court's subject matter jurisdiction to impose any order for post-judgment interest, no matter the amount of such interest. Second, the State asserts that the matter before the circuit court was not a Rule 277 supplementary proceeding against a judgment debtor, noting that claimants failed to comply with any of the provisions of Rule 277, including commencing the supplementary proceeding "by the service of a citation on the party against whom it is brought." Ill. S. Ct R. 277(d). Furthermore, the circuit court had denied claimants' motion "to File and Re-docket the Mandate for Supplemental Proceedings in the Law Division," ruling that the matter would remain in the court's forfeiture division. Third, the State argues that claimants' "motion to set interest" was really a motion for an award of post-judgment interest in a non-jury case pursuant to section 2-1303 of the Code, but claimants have no legitimate claim for such an award. Finally, the State asserts the hearing transcript on the State's motion to reconsider establishes that the circuit court did not reserve any substantive issue for future determination. Instead, the court explicitly

directed the parties to “do the math” to calculate the amount of the post-judgment interest award based on the simple parameters contained in the August 25, 2016 order.

¶ 24 We conclude that the August 25, 2016 order challenged on appeal was a final and appealable order. An order is final and appealable where the rights of the parties are clearly allocated. *Lubben v. Lubben*, 135 Ill. App. 3d 302, 302 (1985). “[I]f the matters left for future determination are merely incidental to the ultimate rights which have been adjudicated,” then an order is final and appealable. *In re Marriage of Wenberg*, 125 Ill. App. 3d 904, 928 (1984). The August 25, 2016 order left nothing to be adjudicated; the court defined the exact parameters to calculate the amount of post-judgment interest awarded, directed the parties to make that calculation, and set the deadline for the State to pay that amount.

¶ 25 According, we deny claimants’ motion to dismiss the State’s appeal.

¶ 26 **B. Sovereign Immunity**

¶ 27 In Illinois, “the State or a department of the State cannot be a defendant in an action brought directly in the circuit court, except where the State has expressly consented to be sued.” *Watkins v. Office of the State Appellate Defender*, 2012 IL App (1st) 111756, ¶ 21. This sovereign immunity protects the State from interference with the performance of governmental functions and serves to preserve and protect state funds. *Lynch v. Department of Transportation*, 2012 IL App (4th) 111040, ¶ 21.

¶ 28 Sovereign immunity is a jurisdictional defense that may be raised for the first time in the court of appeals. *Edelman v. Jordan*, 415 U.S. 651, 677-78 (1974). The issue of whether a circuit court has subject matter jurisdiction presents a question of law and is subject to *de novo* review. *Wolinsky v. Kadison*, 2013 IL App (1st) 111186, ¶ 31; see *Hadley v. Department of Corrections*,

362 Ill. App. 3d 680, 683 (2005) (a court lacks jurisdiction over lawsuits barred by sovereign immunity). This court also applies the *de novo* standard of review to the construction of a statute. *Wolinsky*, 2013 IL App (1st) 111186, ¶ 31.

¶ 29 It is well settled that interest is not recoverable absent a statute or agreement providing for it. *Lakefront Realty Corp. v. Lorenz*, 19 Ill. 2d 415, 423 (1960). Here, the trial court awarded claimants post-judgment interest pursuant to section 2-1303 of the Code, which provides:

“Judgments recovered in any court shall draw interest at the rate of 9% per annum from the date of the judgment until satisfied or 6% per annum when the judgment debtor is a unit of local government, as defined in Section 1 of Article VI of the Constitution, a school district, a community college district, or any other governmental entity.” 735 ILCS 5/2-1303 (West 2014).

Furthermore, when a judgment is entered upon any award, the interest under section 2-1303 is computed from the time the judgment was rendered to “the time of rendering judgment upon the same, and made a part of the judgment.” *Id.*

¶ 30 Assuming, *arguendo*, that the judgment awarding claimants the defendant *res* and accrued interest comes within the purview of section 2-1303, this court must determine whether the legislature intended the State to be liable under this statute. *City of Springfield v. Allphin*, 82 Ill. 2d 571, 577 (1980). “Although the State has [sovereign] immunity, the legislature may, by statute, consent to liability of the State. The State’s consent must be, however, clear and unequivocal.” [Citation omitted.] *In re Walker*, 131 Ill. 2d 300, 303 (1989); see also *Department of Revenue v. Appellate Court*, 67 Ill. 2d 392, 396 (1977) (the State’s waiver of immunity must

be expressed through specific legislative authorization and must appear in affirmative statutory language).

¶ 31 Section 2-1303 is an interest statute. Interest statutes are in derogation of the common law and must be strictly construed; nothing shall be read into them by intendment or implication. *Allphin*, 82 Ill. 2d at 577. General legislative enactments do not impair the rights of the sovereign State unless an intent to make the State liable is expressed in the statute. *Id.* at 578. When the legislature intends to impose liability on the State for interest, the legislature affirmatively declares that the burden will fall on the sovereign. *Id.* The Illinois Supreme Court has already ruled that the language of section 2-1303 was not a sufficiently clear reference to the State to constitute a waiver of the State's immunity, and, thus, section 2-1303 does not authorize the imposition of post-judgment interest against the State. *In re Walker*, 131 Ill. 2d at 304.

¶ 32 Consequently, we hold that the trial court could not use section 2-1303 of the Code as authority for assessing post-judgment interest against the State in this case.

¶ 33 III. CONCLUSION

¶ 34 In this appeal, we reviewed only the State's challenge to the portion of the circuit court's August 25, 2016 order that awarded post-judgment interest to claimants. Because there was no method by which post-judgment interest could have been awarded to claimants, we reverse that portion of the judgment.

¶ 35 For the foregoing reasons, we reverse only the portion of the circuit court's judgment that awarded claimants post-judgment interest.

¶ 36 Reversed in part.