

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2004-CA-000881-MR

ANDY NEW, JR., AND FERN L. NEW, HIS WIFE;  
AND OTHER UNKNOWN DEFENDANTS COMPRISING  
ALL PHYSICAL OCCUPANTS OF THE REAL PROPERTY  
WHICH IS THE SUBJECT OF THIS ACTION;  
HELEN GOOSLIN RINEHART; FERN G. NEW;  
ROBIN GOOSLIN; JUDY GOOSLIN;  
RUTHIE J. GOOSLIN NEW;  
JUANITA G. DANIELS; LOUANN GOOSLIN;  
JACKIE GOOSLIN; FRANNIE GOOSLIN;  
BOBBIE GOOSLIN; CONNIE GOOSLIN;  
DUSTY GOOSLIN; DIANN BUMGARDNER<sup>1</sup> RICHARDS;  
CHERYL HURD; SUE PALADINO;  
MICHAEL HALL; DANNY HALL;  
TAMMY HALL; GARY HALL;  
NAMON HALL; ERMA HALL;  
JEFFREY HALL AND DENISE HALL, HIS WIFE;  
GREG HALL; WAYNE RICHARDSON;  
CHRIS RICHARDSON; DEBBIE RICHARDSON;  
RETHEL CHARLES; CORA ANNA SLONE;  
FRANKLIN CHARLES; BRENDA CHARLES, HIS WIFE;  
GEORGE MICHAEL CHARLES AND TERESA CHARLES, HIS WIFE;  
LINCOLN RONNIE CHARLES AND CLARA MAY CHARLES, HIS WIFE;  
EDNA CHARLES MORGAN; ADDIE GOOSLIN; ROBERT D. GOOSLIN;  
MARGARET G. HAGER; STEVE R. GOOSLIN;  
JAY R. HYDEN; CHANDRA CHARLES; AND  
THE UNKNOWN HEIRS OF RICHARD GOOSLIN;  
THE UNKNOWN HEIRS OF JOE GOOSLIN;  
THE UNKNOWN HEIRS OF HARRY GOOSLIN  
THE UNKNOWN HEIRS OF BOBBY J. GOOSLIN;  
THE UNKNOWN HEIRS OF CHARM RICHARDSON;  
THE UNKNOWN HEIRS OF BEVALENE H. BUMGARNER;  
THE UNKNOWN HEIRS OF WILLIS HALL;  
THE UNKNOWN HEIRS OF LEROY HALL;  
THE UNKNOWN HEIRS OF CORA G. CHARLES;

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<sup>1</sup> The Court notes that this name is also spelled "Bumgarner" in the Notice of Appeal.



BEFORE: BARBER AND JOHNSON, JUDGES; HUDDLESTON, SENIOR JUDGE.<sup>2</sup>

BARBER, JUDGE: Appellant, Andy New, Jr. (New), appeals the decision of the Pike Circuit Court vacating a supplemental judgment which purported to provide New with a monetary recovery for prejudgment and postjudgment interest in an adverse possession action. We affirm the trial court's vacation of the supplemental judgment.

Prior to 1943, J.E. Gooslin and his heirs have been in possession of a tract of property in Pike County. New and his fellow Appellants are heirs to the Gooslins. Appellees, Herbert Farley and others are heirs to the alleged sellers of the property, (the Farleys). The Farleys asserted that the property was never conveyed to the Gooslin heirs and filed an ejectment action. The Farley heirs (Appellees herein), claimed ownership of the property.

A coal company desired to put in a coal hauling road over the tracts of land. A wheelage agreement was entered into by the Gooslin and Farley heirs. Both parties agreed to the sum of the wheelage to be paid \$157,000.00. The initial wheelage to be paid for the coal hauled over the disputed property was put in an interest bearing escrow account with the court. The coal

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<sup>2</sup> Senior Judge Joseph R. Huddleston sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

company continued to deposit wheelage payments in the account during the pendency of the action.

After a jury trial on the property ownership the court entered a judgment finding the Gooslin heirs to be the owners of the property. No damages were requested or awarded in the action. The royalties paid by the coal company were ordered to be paid to the Gooslin heirs. The sum of the wheelage on that date was \$253,480.14. That judgment was entered July 11, 2001. A timely appeal was taken by the Farley heirs. A supersedeas bond was filed by one of the Farley heirs in the sum of \$200,000.00. The Gooslin heirs computed all the funds due them, including interest on the initial \$157,000.00 in wheelage and the additions to the account during the pendency of the action, and demanded an increase in the supersedeas bond. The court denied that motion. The record shows that the account was increased by interest payments while it was held in escrow.

This Court entered an Opinion finding that the Gooslin heirs properly had title to the land at issue. Upon motion by the Gooslin heirs the court then entered a supplemental judgment finding the Gooslin heirs entitled to \$43,699.87 in interest from the Farley heirs, in addition to the sums already held on account. The Gooslins claim that the Farleys instituted the action without legal basis and therefore, should be forced to

pay prejudgment and postjudgment interest on the wheelage held by the court during pendency of the action.

Upon motion by the Farley heirs, the Pike Circuit Court vacated the judgment against the Farley heirs for interest on the escrowed funds, holding that the initial judgment "did not include any monetary amount against the Plaintiffs nor did it provide for any interest." The court recognized that the judgment entitled the Gooslin heirs to the escrowed funds, but held that the escrowed funds were from the coal hauling company, and had nothing to do with the Farley heirs. The Gooslin heirs argue that they received a judgment upon which prejudgment interest may properly be awarded.

The initial judgment stated:

All funds held by the Pike Circuit Court, and any future funds from the coal agreement are adjudged to be the property of the Heirs of Nora Gooslin, the Defendants on counterclaim [Appellants herein] and the same shall be held by the Court pending intervening orders of this Court once this action either attains finality or appropriate supersedeas is not filed.

The funds in the account were not placed there by either party. The funds were directly deposited with the court by the coal company, who was a party to the action solely to deposit any wheelage payments into the interest bearing escrow account. The Farley heirs did not have access to the escrowed

funds and made no claim upon them during the pendency of the action.

The Gooslins allege that the terms of the judgment included a monetary amount upon which prejudgment interest may be granted. The Farley heirs claim that the judgment against them was for property rights only and that they should not have to pay interest on monetary sums they had nothing to do with. The Gooslins claim that they would have had access to the money years earlier had the Farleys not improperly claimed ownership of the land.

The purpose of prejudgment and postjudgment interest has been found to be that "equity and justice demand that one who uses the money or property of another for his own benefit, particularly in a business enterprise, should at least pay interest for that use." Curtis v. Campbell, 336 S.W.2d 355, 361 (Ky. 1960). In the present case, the only party actually using the land was the coal company, who paid an agreed upon sum for that use. Those funds were placed into an interest bearing escrow account. The Gooslin heirs were granted all funds in that account, including regular interest payments thereon, once the action was final. The Gooslins did not lose funds based on the Farley heirs' claim. The Farleys claimed an interest in the Gooslin land, but the Farleys did not receive any benefit for that claim during the pendency of the action. As the Farleys

were not using funds or property of the Gooslins during the pendency of this action, an award of prejudgment and postjudgment interest against the Farleys was clearly in error. The trial court acted properly in setting aside the order granting such interest to the Gooslins.

An award of interest is a matter left to the sound discretion of the trial court. Nucor Corp. v. General Elec. Co., 812 S.W.2d 136 (Ky. 1991). An order of the trial court will not be overturned absent a showing of an abuse of discretion. The Kentucky Supreme Court has found that the test for an abuse of discretion is "whether the trial court's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles." Commonwealth v. English, 933 S.W.2d 941, 945 (Ky. 1999).

The Gooslin heirs have failed to show that the court's decision to set aside the award of prejudgment and postjudgment interest was an abuse of discretion, therefore, the trial court's order is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANTS:

Lawrence R. Webster  
Pikeville, Kentucky

BRIEF FOR APPELLEES:

Regena Triplett  
Pikeville, Kentucky