

RENDERED: May 5, 2006; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2005-CA-000095-MR

EVAN COLE SKILLMAN, Infant,
AND
JAMES AND LESLIE COLE SKILLMAN

APPELLANTS

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE SHEILA R. ISAAC, JUDGE
ACTION NO. 02-CI-02650

ROBERT P. BELIN, M.D.

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BUCKINGHAM,¹ HENRY, AND VANMETER, JUDGES.

BUCKINGHAM, JUDGE: Evan Cole Skillman, an infant, and his parents, James and Leslie Cole Skillman (hereinafter referred to collectively as the Skillmans), appeal from an order of the Fayette Circuit Court denying interest on a judgment rendered in their favor against Dr. Robert P. Belin. We affirm.

On October 1, 2004, a jury returned a verdict in favor of the Skillmans and against Dr. Belin for \$260,000. On October

¹ This opinion was completed and concurred in prior to Judge David C. Buckingham's retirement effective May 1, 2006. Release of the opinion was delayed by administrative handling.

13, 2004, Dr. Belin's attorney notified the Skillmans of the necessity for having a guardian appointed for the minor child to receive any proceeds on his behalf. The court entered a final judgment in favor of the child on October 21, 2004.

On November 9, Dr. Belin's attorney notified the Skillmans' attorney that Dr. Belin was not going to appeal the judgment and that the Skillmans should have a guardian appointed to receive the funds on behalf of the minor child. After the Skillmans' attorney questioned whether a guardian needed to be appointed prior to the disbursement of funds to satisfy the judgment, the court held a conference on November 22, and determined that the appointment of a guardian was necessary. On the following day, November 23, a guardian was appointed for the child. On November 24, checks were issued by Dr. Belin's insurer to satisfy the judgment and the costs. The checks were hand-delivered to the Skillmans' attorney on November 29.

The Skillmans accepted the payments but maintained that interest was due on the judgment from its date until payment was received on November 29. On December 10, the court held a hearing on the parties' motions concerning the issue. The court found "that any delay in the payment of the judgment was due to the failure of the plaintiff to obtain the necessary guardianship required for the issuance of the judgment proceeds." The court further found that once the guardian was

appointed, Dr. Belin satisfied the judgment within a reasonable time. Citing Young v. Young, 479 S.W.2d 20 (Ky. 1972), the court denied post-judgment interest based on its determination that the awarding of such interest would be inequitable. This appeal by the Skillmans followed.

The Skillmans raise two arguments on appeal. First, they argue that the circuit court erred as a matter of law when it denied post-judgment interest. Second, they argue that even if the denial of post-judgment interest was within the court's discretion, the court erred in the exercise of its discretion based on erroneous findings of fact. For the reasons set forth below, we conclude that the Skillmans' arguments are without merit.

Concerning the Skillmans' argument that the court erred as a matter of law in denying post-judgment interest, the Skillmans assert that the language of KRS² 360.040 mandates the award of such interest. That statute states in relevant part that "[a] judgment shall bear twelve percent (12%) interest compounded annually from its date." Id. The Skillmans ignore, however, the line of cases that holds that the payment of post-judgment interest may be disallowed if there are factors that make such payment inequitable.

² Kentucky Revised Statutes.

In Guthrie v. Guthrie, 429 S.W.2d 32 (Ky. 1968), the court stated that “[t]he rule appears to be that interest should be allowed on such items in the absence of factors making it inequitable.” Id. at 36. In Young v. Young, 479 S.W.2d 20 (Ky. 1972), the court reaffirmed the holding in the Guthrie case. Id. at 22. In Courtenay v. Wilhoit, 655 S.W.2d 41 (Ky.App. 1983), the court again reaffirmed the holding in the Guthrie case.

The Skillmans note that these cases all involve the payment of money in divorce cases. They assert that extending the “inequitable circumstances” test to all judgments in general would render the mandatory language of KRS 360.040 meaningless. However, in Stone v. Kentucky Ins. Guar. Ass’n, 908 S.W.2d 675 (Ky.App. 1995), this court recognized the principle in another fact situation as well. See id. at 677. We noted in Stone that “[t]he language of the statute has been interpreted as requiring the imposition of interest on a judgment unless there are factors which would make an award with interest inequitable.” Id. Based on the aforementioned authorities, we conclude that the circuit court did not err as a matter of law in determining that the award of post-judgment interest was inequitable.

The Skillmans’ second argument is that even if the denial of interest was within the court’s discretion, the court abused its discretion in that it made erroneous findings of

fact. The Skillmans argue that the court erred in finding "that any delay in the payment of the judgment was due to the failure of the plaintiff to obtain the necessary guardianship required for the issuance of the judgment proceeds." They break their argument down into the time period from October 21 until November 9, the period between November 9 and November 22, and the period from November 22 until November 29 when the payment was made.

Concerning the 20-day period between October 21, the date the judgment was entered, and November 9, the date Dr. Belin's attorney advised the Skillmans' attorney that the judgment would not be appealed, the Skillmans argue that Dr. Belin was still contemplating an appeal and obviously had no intent to pay the judgment during this time. Thus, they assert that they should be awarded interest for this time period, even though there was no guardian for the child to accept any proceeds.

Concerning the 13-day period between November 9 and November 22, the Skillmans' argue that Dr. Belin's attorney notified their attorney on November 11 that it would take "about two weeks" before a check could be issued to satisfy the judgment. The Skillmans thus maintain that Dr. Belin could not have tendered payment until at least two weeks after November

11, regardless of whether or not they had a guardian in place to receive the funds.

Concerning the 7-day period between November 22 and November 29, the Skillmans note that the guardian was appointed on November 22 and that payment on the judgment was not received until November 29.³ They claim that they are entitled to interest during this short time period, despite the fact that the Thanksgiving holiday and a weekend were within this period.

Having considered the evidence, we cannot say that the trial court's finding that the delay in the payment of the judgment was due to the failure of the plaintiff to have a guardian appointed until November 23 was clearly erroneous. We understand that Dr. Belin may not have decided not to appeal until November 9. We also understand that there was a delay of approximately two weeks between the decision to satisfy the judgment and the actual delivery of the checks for payment. However, like the circuit court, we view these facts as secondary to the fact that a guardian was not appointed until November 23. Even if Dr. Belin had the money in hand and was prepared to pay on October 21, the date the judgment was entered, there was no guardian appointed for the child to receive the funds until one month later. In short, we conclude

³ The record shows that the guardian was actually appointed on November 23 rather than on November 22.

that the circuit court did not abuse its discretion in determining that it would have been inequitable to require the payment of post-judgment interest.

The order of the Fayette Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANTS:

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BRIEF FOR APPELLEE:

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