[Cite as *Licking Hts. Local School Dist. Bd. of Edn. v. Reynoldsburg City School Dist. Bd. of Edn.*, 2013-Ohio-3211.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Licking Heights Local School District Board of Education,	:	
Plaintiff-Appellee,	:	No. 12AP-579
v.	:	(C.P.C. No. 11CVH-03-2873)
Reynoldsburg City School District Board of Education,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on July 23, 2013

Bricker & Eckler LLP, *Susan L. Oppenheimer*, and *Jennifer A. Flint*, for appellee.

Pepple & Waggoner, Ltd., *Christian M. Williams*, and *Mark J. Jackson*, for appellant.

APPEAL from the Franklin County Court of Common Pleas

CONNOR, J.

{¶ 1} Defendant-appellant, Reynoldsburg City School District Board of Education, appeals from a judgment of the Franklin County Court of Common Pleas, confirming an arbitration award in favor of plaintiff-appellee, Licking Heights Local School District Board of Education.

I. FACTS AND PROCEDURAL HISTORY

{¶ 2} On June 18, 1991, the parties executed a Territorial Agreement regarding the tax proceeds within their respective school districts. Therein, the parties agreed to trade certain districts and to apportion the tax proceeds for such territories in the manner

prescribed by R.C. 3311.06. A dispute subsequently arose over the apportionment for the years 2001 through 2006. The parties submitted the dispute to arbitration, and the case was heard by hearing officer Robert Barrow. On July 21, 2010, the hearing officer issued a ruling in favor of appellee and awarded appellee $1,108,439.

{¶ 3} On October 21, 2010, appellant filed a motion in the Franklin County Court of Common Pleas, seeking an order vacating the arbitration award pursuant to R.C. 2711.10. The case was assigned case No. 10CVH-10-15429 on the docket of the court.

{¶ 4} On January 11, 2011, the Franklin County Court of Common Pleas issued a decision and judgment entry denying appellee's motion to vacate the arbitration award. Appellant filed a notice of appeal from that decision to this court in *Reynoldsburg City School. Dist. Bd. of Edn. v. Licking Hts. Loc. School Dist. Bd. of Edn.*, 10th Dist. No 11AP-173, 2011-Ohio-5063 ("*Reynoldsburg I*").[1]

{¶ 5} On March 1, 2011, while the appeal was pending in *Reynoldsburg I*, appellee filed a motion in the Franklin County Court of Common Pleas seeking an order confirming the arbitration award pursuant to R.C. 2711.10. Appellant moved the trial court for dismissal of the motion on the grounds that res judicata and collateral estoppel barred appellee from seeking confirmation of the arbitration award in a subsequent proceeding. The trial court denied the motion to dismiss but stayed the case pending the appeal in *Reynoldsburg I*.

{¶ 6} On September 30, 2011, we affirmed the decision of the trial court in *Reynoldsburg I*. The trial court lifted the stay and issued a decision and judgment entry confirming the arbitration award on June 11, 2012. The trial court also awarded "statutory interest * * * beginning July 21, 2010."

II. ASSIGNMENTS OF ERROR

{¶ 7} Appellant timely filed an appeal to this court asserting the following two assignments of error:

> [I.] The Trial Court erred to the prejudice of Defendant-Appellant Reynoldsburg City School District Board of Education by failing to dismiss or deny Plaintiff-Appellee

[1] In an earlier appeal, we held that the trial court had subject-matter jurisdiction of appellant's challenge to the arbitration award inasmuch Territorial Agreement provides for arbitration. *Reynoldsburg City School Dist. Bd. of Edn. v. Licking Hts. Loc. School Dist. Bd. of Edn.*, 10th Dist. No. 08AP-415, 2008-Ohio-5969.

> Licking Heights Local School District Board of Education's Complaint/Application to Confirm the Arbitration Award because Plaintiff-Appellee's Motion to Confirm is barred by the doctrines of *res judicata* and collateral estoppel.
>
> [II.] The Trial Court abused its discretion by awarding Plaintiff-Appellee statutory interest pursuant to O.R.C. § 1343.03(A).

III. STANDARD OF REVIEW

{¶ 8} Typically, our review of a trial court decision to confirm an arbitration award is conducted under the abuse of discretion standard. *See MBNA Am. Bank, N.A. v. Jones,* 10th Dist. No. 05AP-665, 2005-Ohio-6760, ¶ 10, citing *Endicott v. Johrendt*, 10th Dist. No. 97APE08-1122 (Apr. 30, 1998). Under this standard, we will reverse the court's order only if we conclude that the trial court's order was unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore,* 5 Ohio St.3d 217, 219 (1983).

{¶ 9} However, the de novo standard of review is proper when the appeal presents a question of law. *Hudson v. John Hancock Fin. Servs.,* 10th Dist. No. 06AP-1284, 2007-Ohio-6997, ¶ 8 ("trial court's decision granting or denying a stay of proceedings pending arbitration is * * * subject to de novo review on appeal with respect to issues of law, which commonly will predominate because such cases generally turn on issues of contractual interpretation or statutory application"). Accordingly, to the extent that appellant's first assignment of error raises issues of statutory application, we will review the trial court decision de novo.

IV. LEGAL ANALYSIS

{¶ 10} The crux of appellant's first assignment of error is that appellee's motion to confirm the arbitration award, brought pursuant to R.C. 2711.09, was a compulsory counterclaim under the Ohio Rules of Civil Procedure and that appellee's failure to file the motion in *Reynoldsburg I* precludes appellee from seeking confirmation of the arbitration award in a subsequent proceeding. Appellee argues that Civ.R. 13(A) does not apply to proceedings brought pursuant to R.C. 2711.09, and that neither res judicata nor collateral estoppel bar appellant from seeking confirmation in this action.

{¶ 11} Res judicata encompasses both claim preclusion and issue preclusion, commonly referred to as collateral estoppel. *Holzemer v. Urbanski,* 86 Ohio St.3d 129,

133 (1999). Claim preclusion operates where "[a] valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action." *Grava v. Parkman Twp.*, 73 Ohio St.3d 379 (1995), syllabus. Under the doctrine of res judicata, "an existing final judgment or decree between the parties to litigation is conclusive as to all claims which were or might have been litigated in a first lawsuit." *Holzemer*.

{¶ 12} Civ.R.13(A) provides in pertinent part:

> Compulsory counterclaims. A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction.

{¶ 13} Civ.R. 13(A) incorporates the concept of claim preclusion into the rules governing pleadings. *Tomko v. Landmark Properties, Inc,*. 113 Ohio App.3d 158, 161 (8th Dist.1996). The rule requires that "[a]ll existing claims between opposing parties that arise out of the same transaction or occurrence must be litigated in a single lawsuit * * * , no matter which party initiates the action." *Rettig Ent., Inc. v. Koehler*, 68 Ohio St.3d 274 (1994).

{¶ 14} To determine whether the claims arise out of the same transaction or occurrence, the courts apply the "logical relation" test. *Id*. Under the logical relation test: "a compulsory counterclaim is one which is logically related to the opposing party's claim where separate trials on each of their respective claims would involve a substantial duplication of effort and time by the parties and the courts." *Id*. at paragraph two of the syllabus.

{¶ 15} R.C. 2711.13 permits a party to file a motion to vacate, modify or correct an arbitration award in relevant part as follows:

> After an award in an arbitration proceeding is made, any party to the arbitration may file a motion in the court of common pleas for an order vacating, modifying, or correcting the award as prescribed in sections 2711.10 and 2711.11 of the Revised Code.

> Notice of a motion to vacate, modify, or correct an award must be served upon the adverse party or his attorney within three months after the award is delivered to the parties in interest, as prescribed by law for service of notice of a motion in an action. For the purposes of the motion, any judge who might make an order to stay the proceedings in an action brought in the same court may make an order, to be served with the notice of motion, staying the proceedings of the adverse party to enforce the award.

{¶ 16} R.C. 2711.09, pertaining to confirmation of an arbitration award, provides in relevant part:

> At any time within one year after an award in an arbitration proceeding is made, any party to the arbitration may apply to the court of common pleas for an order confirming the award. Thereupon the court shall grant such an order and enter judgment thereon, unless the award is vacated, modified, or corrected as prescribed in sections 2711.10 and 2711.11 of the Revised Code. Notice in writing of the application shall be served upon the adverse party or his attorney five days before the hearing thereof.

{¶ 17} There is little doubt that a motion to confirm an arbitration award brought pursuant to R.C. 2711.09 is logically related to a motion to vacate that same arbitration award under R.C. 2711.10. Consequently, if Civ.R. 13(A) is applicable herein, appellee's motion to confirm the arbitration award must have been filed in *Reynoldsburg I* or it is barred. For the reasons that follow, we hold that Civ.R. 13(A) is inapplicable in an action brought pursuant to R.C. 2711.09.

{¶ 18} Civ.R. 1 defines the scope of the Ohio Rules of Civil Procedure in relevant part as follows:

> (A) Applicability. These rules prescribe the procedure to be followed in all courts of this state in the exercise of civil jurisdiction at law or in equity, with the exceptions stated in subdivision (C) of this rule.
>
> * * *
>
> (C) Exceptions. These rules, to the extent that they would by their nature be clearly inapplicable, shall not apply to procedure * * * (7) in all other special statutory proceedings; provided, that where any statute provides for procedure by a

> general or specific reference to all the statutes governing procedure in civil actions such procedure shall be in accordance with these rules.

{¶ 19} In *MBNA Am. Bank, N.A. v. Anthony*, 5th Dist. No. 05AP09-0059, 2006-Ohio-2032, the court addressed the applicability of the Ohio Rules of Civil Procedure in a case brought pursuant to R.C. 2711.09. In response to the prevailing parties' motion to confirm an arbitration award, the losing party in *Anthony* filed a pre-answer motion for definite statement pursuant to Civ.R. 12(E). The trial court confirmed the arbitration award without ruling on the motion for definite statement. In affirming the trial court, the Fifth District stated:

> Proceedings involving the confirmation or vacation of an arbitration award are special statutory proceedings. Civil Rule 1(C)(7) provides the civil rules are by definition not to apply to procedural matters in special statutory proceedings "to the extent that they would by their nature be clearly inapplicable."
>
> Pursuant to R.C. 2711.09, when a motion is made to confirm an arbitration award * * * [t]he applicable civil rule provisions are those pertaining to motions, rather than those pertaining to commencement of an action. The Civil Rules do not provide for an answer and counterclaim to a motion in such proceedings. Therefore, the trial court did not err in entering final judgment prior to the alleged answer date.

{¶ 20} We applied the same reasoning in our review of the trial court decision in *Reynoldsburg I*. In that case, appellant argued that the trial court erred in denying the motion to vacate the arbitration award prior to the expiration of the discovery cut-off date mandated by Loc.R. 39.05. In rejecting that argument, we cited *Anthony*:

> Loc.R. 39.05 establishes the time limits in the case schedule, including the discovery cutoff. However, R.C. 2711.05 provides that "[a]ny application to the court of common pleas under sections 2711.01 to 2711.15, inclusive, of the Revised Code, shall be made and heard in the manner provided by law for the making and hearing of motions." **Therefore, the applicable rules in both the local rules and Ohio Rules of Civil Procedure are those pertaining to motions rather than those pertaining to the commencement of an action**.

(Emphasis added.) (Citation omitted.)[2] *Reynoldsburg I* at ¶ 15.

{¶ 21} Both the *Anthony* case and our opinion in *Reynoldsburg I* recognize, that by operation of Civ.R. 1(C)(7), the civil rules that apply to special proceedings brought pursuant to R.C. 2711.05 et seq., are those pertaining to motions, not pleadings. Civ.R. 13(A) applies only to counterclaims and cross-claims, both of which are "pleadings" under the Civil Rules. *See* Civ.R. 7(A).

{¶ 22} Based upon the foregoing, we hold that Civ.R. 13(A), pertaining to compulsory counterclaims, does not apply to proceedings on a motion to vacate, modify or correct an arbitration award brought pursuant to R.C. 2711.10. For the same reasons, we find that the federal cases cited by appellee in support of the first assignment of error are distinguishable. In each of those cases, the court relied upon the analogous provisions of Civ.R.13(A) in concluding that res judicata barred subsequent confirmation proceedings. *See, e.g., D.H. Blair & Co. v. Johnson*, S.D.N.Y. No. 95 Civ. 3463 (July 18, 1995); *PMS Distrib. Co., Inc. v. Huber & Suhner, A.G.*, 981 F.2d 1259 (9th Cir.1992); *World Missions Ministries, Inc., v. Gen. Steel Corp.*, D.Md. No. RWT 06-13 (July 28, 2006); *Dzanoucakis v. Chase Manhattan Bank, USA*, E.D.N.Y. No. 06-CV-5673 (Mar. 25, 2008); *In re Intercarbon Bermuda, Ltd.*, 146 F.R.D. 64, 70 (S.D.N.Y.1993).

{¶ 23} As noted above, the two Ohio courts that have considered the issue, including this court, have determined that the applicable civil rules are those pertaining to motions. *See Anthony*; *Reynoldsburg I*. We perceive no compelling reason to depart from the logic of these cases in favor of the federal common law. Moreover, as appellee points out, there is an apparent difference of opinion among federal jurisdictions regarding the applicability of the civil rules in cases brought pursuant to the Federal Arbitration Act [9 U.S.C. 1-16]. *See, e.g., Liberty Mut. Group, Inc. v. Wright*, D.Md. No. DKC 12-0282 (Mar. 5, 2012); *Alstom Power, Inc. v. S & B Engineers & Construction, Ltd.*, N.D.Tex. No. 3:04-CV-2370-L (Apr. 30, 2007).

{¶ 24} In short, res judicata did not present a bar to appellee's motion to confirm the arbitration award. Thus, the trial court did not err in denying appellant's motion to

[2] Civ.R. 3(A) defines "Commencement" as follows: "A civil action is commenced by filing a complaint with the court, if service is obtained within one year from such filing upon a named defendant."

dismiss and ruling on the merits of appellee's motion. Appellant's first assignment of error is overruled.

{¶ 25} In the second assignment of error, appellant challenges the trial court award of interest to appellee. "R.C. 1343.03(A) establishes interest rates for both prejudgment and post-judgment interest in actions based on contract." *Rutledge v. Lilley*, 9th Dist. No. 09CA009691, 2010-Ohio-2275, ¶ 10. The statute provides, in relevant part, as follows:

> In cases * * * when money becomes due and payable upon * * * all judgments, decrees, and orders of any judicial tribunal for the payment of money arising out of * * * a contract or other transaction, the creditor is entitled to interest at the rate per annum determined pursuant to [R.C.] 5703.47 * * *, unless a written contract provides a different rate of interest in relation to the money that becomes due and payable, in which case the creditor is entitled to interest at the rate provided in that contract.

{¶ 26} In his report, the hearing officer stated:

> The calculations of revenue sharing obligations under the Agreement carried out using the terms and conditions contained in this report **shall not be adjusted for interest charges**. **The hearing officer can find no basis in the agreement for such**.

(Emphasis added.)

{¶ 27} The hearing officer did not specify whether he was speaking of prejudgment or postjudgment interest. The trial court, without specifying, found that appellee was entitled to interest on the arbitration award from the date of the hearing officer's decision. "The purpose of postjudgment interest awards is to guarantee a successful plaintiff that the judgment will be paid promptly, and to prevent a judgment debtor from profiting by withholding money belonging to the plaintiff." *Lovewell v. Physicians Ins. Co. of Ohio,* 79 Ohio St.3d 143 (1997). By comparison, the purpose of prejudgment interest is compensation to the plaintiff for the period of time between accrual of the claim and judgment. *Eckel v. Bowling Green State Univ*., 10th Dist. No. 11AP-781, 2012-Ohio-3164. Although the trial court did not specify whether the interest was postjudgment interest or prejudgment interest, it is clear that the award was of postjudgment interest.

{¶ 28} Appellant contends that the trial court erred by awarding interest to appellee inasmuch as appellee did not challenge the hearing officer's determination of the issue in *Reynoldsburg I*. More particularly, appellant argues that the determination of the hearing officer is now the law of the case.[3]

{¶ 29} The hearing officer found that there was "no basis in the agreement" for an award of interest. In discussing an award of postjudgment interest under R.C. 1343.03, the court in *Sargent v. Owen*, 5th Dist. No. 98CA00028 (June 22, 1998), stated:

> R.C. 1343.03 automatically bestows a right to post-judgment interest as a matter of law. State, ex rel. Shimola v. Cleveland, 70 Ohio St.3d 110, 112 (1994), citing Testa v. Roberts, 44 Ohio App.3d 161 (6th Dist.1988). Post-judgment interest is required to be paid even if the party entitled thereto fails to request it or the trial court's entry awarding judgment fails to order a losing party's duty to pay it. Wilson v. Smith, 85 Ohio App.3d 78, 80 (9th Dist.1993).

(Emphasis added.)

{¶ 30} Under the statute, absent an agreement to the contrary, postjudgment interest is payable to appellee as a matter of law. *Id. See also Bertolini v. Whitehall City School Dist. Bd. of Edn.*, 10th Dist. No. 02AP-839, 2003-Ohio-2578, ¶ 55. The hearing officer's finding, in this case, establishes only that the parties made no agreement regarding interest. The fact that the agreement is silent on the issue means that the statute supplies the applicable rate. In short, the determination of the hearing officer had no legal affect on appellee's right to postjudgment interest. Thus, the law of the case doctrine is inapplicable.

{¶ 31} Appellant next contends that appellee is estopped from recovering interest on the arbitration award due to its delay in seeking confirmation of the arbitration award. The court in *Sargent* addressed this very issue:

> The fact the prevailing party appealed from a judgment rendered in its favor does not, of itself, toll the accrual of post-judgment interest under R.C. 1343.03. The determinative

[3]"[T]he [Law of the Case] doctrine provides that the decision of a reviewing court in a case remains the law of that case on the legal questions involved for all subsequent proceedings in the case at both the trial and the reviewing levels." *McGarry & Sons, Inc. v. Marous Bros. Constr., Inc.*, 11th Dist. No. 2011-L-001, 2011-Ohio-6859, ¶ 18.

> issue is not which party appealed, or which party appealed first, but rather which party has the use of the money during the pendency of the appeal. Post-judgment interest continues to accrue during the pendency of an appeal, absent proof of waiver or conduct on the part of the prevailing party estopping it from claiming interest, such as bad faith or want of diligence in prosecution of the appeal. * * * [T]he judgment debtor bears the burden of stopping the accumulation of post-judgment interest pending appeal, which can only be effectuated by tendering unconditional payment in full of the judgment rendered against it.

(Internal citations omitted.)

{¶ 32} As this court has previously ruled, appellee was not legally obligated to seek confirmation of the arbitration award in *Reynoldsburg I*. Rather, appellee was entitled to the full one-year time period in which to seek confirmation. There is no evidence of bad faith on the part of appellee.

{¶ 33} Moreover, appellant could have tolled the accrual of interest by tendering full payment of the arbitrator's award at any time. Appellant elected to retain the funds and to challenge the hearing officer's determination both in *Reynoldsburg I* and in the instant case. Under the circumstances, the trial court did not err in determining that appellee was entitled to postjudgment interest at the statutory rate. Appellant's second assignment of error is overruled.

V. CONCLUSION

{¶ 34} Having overruled each of appellant's assignments of error, we hereby affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

SADLER and DORRIAN, JJ., concur.

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