[Cite as *Myles v. Richardson*, 2009-Ohio-6394.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

AL MYLES	:	
Plaintiff-Appellant	:	C.A. CASE NO. 23186
v.	:	T.C. NO. 98 CVI 01021
SHAWN RICHARDSON	:	(Civil Appeal from Municipal Court)
Defendant-Appellee	:	
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O P I N I O N

Rendered on the 4th day of December, 2009.

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AL MYLES, P. O. Box 462, Dayton, Ohio 45417
Plaintiff-Appellant

SHAWN RICHARDSON, 1829 Auburn Avenue, Dayton, Ohio 45406
Defendant-Appellee

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FROELICH, J.

{¶ 1} Albert Myles, III, pro se, appeals from a judgment of the Dayton Municipal Court, Small Claims Division, which found that Myles was entitled to collect $1,500 on his revived judgment against Shawn Richardson, without interest or court costs, and $167 in collection costs. On appeal, Myles claims that he was entitled to prejudgment and

postjudgment interest. For the following reasons, the judgment will be affirmed in part and reversed in part, and the matter will be remanded for further proceedings.

I

{¶ 2} In January 1998, Myles filed a complaint against Shawn Richardson in the Dayton Municipal Court, Small Claims Division, seeking $3,000 and punitive damages for breach of contract and gross negligence arising out of repairs to Myles' automobile engine. The parties voluntarily participated in mediation, resulting in a "mediation-judgment by agreement", which stated:

{¶ 3} "Money judgement [sic] for the amount of $1,500.00 ~~plus (+) court costs to date~~.[1]

{¶ 4} "The terms of the agreement are:

{¶ 5} "Shawn Richardson agrees to pay Al Myles $1,500 in resolution of this matter. Shawn will initially pay $30 a month while he is seeking employment and until his financial condition improves. The payments will be made by money order to Mr. Myles. The parties may negotiate an accellerated [sic] payment schedule. They will address such issue between themselves if they choose to negotiate.

{¶ 6} "The first payment will be made March 15, and subsequent payments every 15th thereafter."

{¶ 7} The agreement was signed by Myles, Richardson, the mediator, and the co-mediator. On February 25, 1998, the agreement was approved by the small claims magistrate. The municipal court judge also signed the agreement, and it was filed on March

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[1] The phrase, "plus (+) court costs to date," was crossed out by the parties.

2, 1998.

{¶ 8} On March 31, 1998, Myles had a judgment debtor questionnaire sent to Richardson. Richardson failed to answer the questionnaire. According to Myles, no money was collected on the judgment.

{¶ 9} On October 23, 2007, Myles moved to revive the case for purposes of collection, noting that Richardson had recently been found working at Summit Towing. Following a hearing, Myles' motion was granted. Richardson was sent a small claims questionnaire, which he completed and returned. Myles obtained an order to garnish Richardson's wages from Summit Towing, which indicated that Richardson owed approximately $7,858.23, including interest and costs, based on a $3,000 judgment.

{¶ 10} On April 1, 2008, Richardson, through counsel, requested a garnishment hearing, asserting that the amount of the judgment stated in the garnishment order was incorrect. A hearing was scheduled for May 22, 2008. Myles challenged Richardson's request for a hearing as untimely, but his motion to set aside the magistrate's order setting a hearing was denied.

{¶ 11} A hearing before a magistrate was ultimately held on July 24, 2008. The magistrate concluded that Myles was entitled to $1,500 as set forth in the agreed mediation judgment and that he was not entitled to interest and court costs because they were not set forth in the agreement. The court allowed Myles to collect the costs of collection, which Myles represented to be $167 to date. The following day, the magistrate issued a written judgment, stating, in part: "WHEREFORE, the amount now in the possession of the Clerk shall be disbursed to Plaintiff. The amount due noted on the garnishment order is ordered

to reflect the principal amount due of $1,500.00 and only the costs of collections is ordered with no interest."

{¶ 12} Myles requested findings of fact and conclusions of law and filed objections to the magistrate's decision, arguing that he was entitled to statutory postjudgment interest. In the magistrate's findings of fact and conclusions of law, the magistrate explained, in part:

{¶ 13} "After reviewing the Mediation agreement signed by all parties February 25, 1998, the Court found that the agreed judgment amount was $1,500.00, not $3,000.00 as noted by Plaintiff. Furthermore, there was no provision for interest or court costs in the agreement. The Court found no good cause shown and ordered the funds being held by the Clerk released to Plaintiff and further ordered the Garnishment Order to reflect the correct amount due of $1,500.00 with no interest or costs, except for collection costs.

{¶ 14} "The Court finds that the parties agreed to waive trial and settle all claims by mediated agreement for $1,500.00. It is important to note that Plaintiff's original complaint requested punitive damages which are prohibited in a small claims action. Even with a trial on the merits, Plaintiff would not have been granted the $3,000.00 judgment requested and can not now attempt to collect that amount in a garnishment action. The parties did not negotiate any further provisions for breach of the agreement such as post judgment interest or costs. This agreement was signed by all parties and became binding once signed by the Referee on February 25, 1998.

{¶ 15} "The Court finds that the parties are bound by the terms of the original agreement and Plaintiff can not now attempt to collect costs, interest, or a higher judgment amount than that found on the agreement. ***"

{¶ 16} While Myles' objections were pending, he moved for an award of prejudgment interest.

{¶ 17} On November 24, 2008, the trial court overruled Myles' objections, concluding that the magistrate "properly corrected the revived judgment amount to be $1,500, with no interest or court costs. The Court also finds that the Magistrate thoroughly explained why interest could not be collected in the Findings of Facts and Conclusions of Law and at the Hearing."

{¶ 18} Myles appeals from the trial court's November 24, 2008, judgment, raising three assignments of error. The first and second assignments of error will be addressed together.

II

{¶ 19} Myles' first assignment of error states:

{¶ 20} "THE LOWER COURT ERRED BY DECIDING AGAINST WELL-SETTLED PREVAILING LAW OF THE OHIO LEGISLATURE, THE OHIO SUPREME COURT AND FEDERAL LAW AS TO THE ISSUE OF AUTOMATICALLY AWARDING MANDATORY POSTJUDGMENT INTEREST IN ALL NON-DOMESTIC RELATIONS JUDGMENTS."

{¶ 21} Myles' second assignment of error states:

{¶ 22} "THE LOWER COURT ERRED WHEN IT FAILED TO AWARD OR HOLD A CONSTITUTIONALLY PROTECTED HEARING FOR PREJUDGMENT INTEREST."

{¶ 23} In his first assignment of error, Myles claims that the trial court erred in

failing to award him postjudgment interest. His second assignment asserts that the trial court should have awarded him prejudgment interest.

{¶ 24} Prejudgment and postjudgment interest are governed by R.C. 1343.03. When the judgment was entered, that statute provided:

{¶ 25} "(A) In cases other than those provided for in sections 1343.01 and 1343.02 of the Revised Code, when money becomes due and payable upon any bond, bill, note, or other instrument of writing, upon any book account, upon any settlement between parties, upon all verbal contracts entered into, and upon all judgments, decrees, and orders of any judicial tribunal for the payment of money arising out of tortious conduct or a contract or other transaction, the creditor is entitled to interest at the rate of ten per cent per annum, and no more, 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} "(B) Except as provided in divisions (C) and (D) of this section, interest on a judgment, decree, or order for the payment of money rendered in a civil action based on tortious conduct, including, but not limited to a civil action based on tortious conduct that has been settled by agreement of the parties, shall be computed from the date the judgment, decree, or order is rendered to the date on which the money is paid.

{¶ 27} "(C) Interest on a judgment, decree, or order for the payment of money rendered in a civil action based on tortious conduct and not settled by agreement of the parties, shall be computed from the date the cause of action accrued to the date on which the money is paid, if, upon motion of any party to the action, the court determines at a hearing

held subsequent to the verdict or decision in the action that the party required to pay the money failed to make a good faith effort to settle the case and that the party to whom the money is to be paid did not fail to make a good faith effort to settle the case.

{¶ 28} "(D) Divisions (B) and (C) of this section do not apply to a judgment, decree, or order rendered in a civil action based on tortious conduct if a different period for computing interest on it is specified by law, or if it is rendered in an action against the state in the court of claims, or in an action under Chapter 4123. of the Revised Code." Id.[2]

{¶ 29} It is well-established that R.C. 1343.03(A) automatically bestows a right to postjudgment interest. See, e.g., *State ex rel. Shimola v. Cleveland* (1994), 70 Ohio St.3d 110, 112; *Judy v. Ohio Bur. of Motor Vehicles*, 100 Ohio St.3d 122, 2003-Ohio-5277, at ¶32, quoting *S. Farm Bur. Cas. Ins. Co. v. Brinker* (2002), 350 Ark. 15, 21, 84 S.W.3d 846; *State ex rel. Mun. Constr. Equip. Operators' Labor Council v. Cleveland*, 114 Ohio St.3d 183, 2007-Ohio-3831, at ¶84. The fact that a judgment was based on a negotiated agreement does not diminish a party's entitlement to postjudgment interest under R.C. 1343.03. The Supreme Court of Ohio has explained that a prevailing party is entitled to postjudgment interest under R.C. 1343.03(A) even when a settlement agreement has not been reduced to judgment. *Hartmann v. Duffey*, 95 Ohio St.3d 456, 2002-Ohio-2486. "In contrast, R.C. 1343.03(B) is a more narrow provision that is triggered only when a settlement has been reduced to judgment or where there has been a decree or order. In such a case, interest is

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[2]R.C. 1343.03(A) was amended by H.B. 212, effective June 2, 2004. As a result, the fixed statutory rate of interest on judgments was replaced with a variable rate tied to the variable federal short-term rate. See *Maynard v. Eaton Corp.*, 119 Ohio St.3d 443, 2008-Ohio-4542.

computed from the date of the judgment, decree, or order. ***" *Hartmann* at ¶8-9.

{¶ 30} In this case, Myles and Richardson entered into a negotiated settlement agreement, which was reduced to a judgment in Myles' favor in the amount of $1,500. Under the plain language of R.C. 1343.03, Myles was entitled to collect postjudgment interest on that judgment. We appreciate that parties may not always realize that, in most situations, a creditor is statutorily entitled to postjudgment interest and court costs; the parties may agree otherwise, as they did here regarding court costs. Unlike court costs, however, Myles did not expressly disclaim or waive his right to postjudgment interest in the mediated agreement. Accordingly, the trial court erred in holding that Myles was precluded from collecting postjudgment interest from Richardson.

{¶ 31} In reaching this determination, we state no opinion concerning the amount of postjudgment interest that Richardson owes or how that amount should be calculated, particularly given the fact that the judgment was revived. See R.C. 2325.18; *O'Neill v. German* (1951), 154 Ohio St. 565.

{¶ 32} Turning to Myles' request for prejudgment interest, R.C. 1343.03(A) also sets forth an entitlement to prejudgment interest. However, the right to prejudgment interest is not as broad as that for postjudgment interest. For contractual and certain other claims, the right to prejudgment interest under R.C. 1343.03(A) is nondiscretionary. See *Miami Valley Hosp. v. Edwards*, Darke App. No. 07-CA-1717, 2008-Ohio-2721 (holding that the trial court had no discretion to deny prejudgment interest on a hospital's contractual claim on an account). Under R.C. 1343.03(B), however, if there has been a judgment in a civil action based on tortious conduct, interest generally runs from the date of the judgment until the

money owed is paid. R.C. 1343.03(C) sets forth circumstances when a party to a tort action may receive prejudgment interest on the judgment. See *Lehrner v. Safeco Ins./Am. States Ins. Co.*, 171 Ohio App.3d 570, 2007-Ohio-795, at ¶72. However, R.C. 1343.03(C) does not apply when the parties to an action in tort have settled the claims.

{¶ 33} Myles' small claims complaint alleged $3,000 in damages for "Breach of Contract and Gross Negligence in an Agreement for Service for Automibile [sic] Engine Repairs." While the complaint asserts both tort and contractual claims, we need not decide whether R.C. 1343.03(A) or R.C. 1343.03(C) applied. Myles did not request prejudgment interest until September 25, 2008, even though he had sought postjudgment interest prior to that date and had filed objections to the magistrate's decision based on a failure to award postjudgment interest. Myles thus failed to raise prejudgment interest in the trial court in a timely manner. Due to the untimeliness of Myles' request, Myles has waived any alleged error that the trial court committed in failing to award prejudgment interest. *Hiatt v. Giles*, Darke App. No. 1662, 2005-Ohio-6536, at ¶45. Contrast *Martin v. Cincinnati Ins. Co.*, Logan App. No. 8-98-31, 1999-Ohio-779 (stating that trial court did not err in considering motion for prejudgment interest under R.C. 1343.03(A) requested 2½ months after settlement where defendant was on notice that claim for prejudgment interest was outstanding). Accordingly, the trial court did not err in failing to award prejudgment interest and in failing to conduct a hearing on that issue.

{¶ 34} The first assignment of error is sustained. The second assignment of error is overruled.

III

{¶ 35} Myles' third assignment of error states:

{¶ 36} "THE LOWER COURT ERRED BY PREMATURELY ABORTING COLLECTION ACTIVITIES PROTECTED BY LAW."

{¶ 37} In his third assignment of error, Myles claims that the trial court erred in prematurely stopping the garnishment of Richardson's wages.

{¶ 38} According to the court's docket, a check for $1,264.94 was sent to Myles on August 5, 2008. On December 12, 2008, an additional check for $311.59 was sent to Myles, for a total of $1,576.53. Based on the docket, these checks represented the total amount that had been garnished from Richardson's wages. In his appellate brief, Richardson asserts that he has paid $1,667, as required by the trial court.

{¶ 39} Because the record does not reflect that Richardson has paid the amount ordered by the trial court and because the trial court erred in concluding that Myles was not entitled to postjudgment interest, the assignment of error is sustained.

IV

{¶ 40} The judgment of the trial court is affirmed in part and reversed in part, and the matter will be remanded to the trial court for further proceedings.

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GRADY, J. and WOLFF, J., concur.

(Hon. William H. Wolff, Jr., retired from the Second District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

Copies mailed to:

Al Myles
Shawn Richardson
Hon. Dennis J. Greaney