

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WOOD COUNTY

Gary L. Franks, et al.

Court of Appeals No. WD-14-035

Appellees

Trial Court No. 91-CV-481

v.

William D. Meyers, et al.

DECISION AND JUDGMENT

Appellants

Decided: February 27, 2015

* * * * *

Kevin R. Eff, for appellees.

Martin J. Holmes, Sr., and Matthew O. Hutchinson, for appellants.

* * * * *

YARBROUGH, P.J.

I. Introduction

{¶ 1} This is an accelerated appeal from the judgment of the Wood County Court of Common Pleas that granted appellees', Gary and Loretta Franks, motion to revive the

default judgment against appellants, Joyce Meyers, William Meyers, and World Eagle Capital Group, Inc. We affirm.

A. Facts and Procedural Background

{¶ 2} The facts in this case are undisputed. On February 19, 1992, appellees were awarded a default judgment against appellants in the amount of \$27,250 plus costs of \$100. On July 24, 1996, appellants made a partial payment of \$6,796.14 toward the accrued interest on the default judgment. No further action was taken to collect on the default judgment and it became dormant. On December 5, 2013, appellees moved to revive the dormant judgment. Appellants opposed the motion, arguing that it was beyond the ten-year statute of limitations in R.C. 2325.18(A). Appellees, on the other hand, argued that R.C. 2325.18(A) was amended in June 2004, that the amendment was not retroactive, and therefore the prior version of the statute applied, which provided for a 21-year statute of limitations.

{¶ 3} On April 30, 2014, the trial court granted appellees' motion to revive the judgment. Further, the court ordered that the amount due and owing on the judgment is the original principle amount of \$27,250, plus interest at the rate of 10% per annum from February 19, 1992 (less the amount of \$6,796.14), plus court costs in both the original litigation and in the action to revive.

B. Assignments of Error

{¶ 4} Appellants have timely appealed the trial court's April 30, 2014 judgment, raising four assignments of error for our review:

Assignment of Error No. 1: The trial court erred when it concluded that Appellee's Motion for Revivor of Dormant Judgment was not time-barred by 10-year statute of limitation.

Assignment of Error No. 2: The trial court erred in awarding interest from the date of judgment to the present, in violation of R.C. 2325.18(B).

Assignment of Error No. 3: The trial court erred in awarding interest at 10 per cent [sic] per annum from the date of judgment to the present instead of the annually determined rate.

Assignment of Error No. 4: The trial court erred in ordering Appellants to pay the costs of the revival action.

II. Analysis

{¶ 5} This appeal turns on the interpretation and application of R.C. 2325.18. Accordingly, we review the trial court's decision de novo. *State v. Straley*, 139 Ohio St.3d 339, 2014-Ohio-2139, 11 N.E.3d 1175, ¶ 9 (interpretation of a statute is a matter of law that is reviewed de novo).

A. Revival of Judgment

{¶ 6} In their first assignment of error, appellants initially argue that under R.C. 2329.07(A)(1),¹ the default judgment became dormant on February 19, 1997, instead of July 24, 2001, because the July 24, 1996 interest payment did not constitute a certificate of judgment or other formal execution of the judgment. We need not address this issue, however, because we find that even if the judgment became dormant on the earlier date of February 19, 1997, appellees' motion to revive the judgment occurred within the applicable 21-year statute of limitations.

{¶ 7} Appellants contend that the trial court erred in applying the pre-2004 version of R.C. 2325.18(A). The pre-amended version, enacted in 1953, stated:

An action to revive a judgment can only be brought within twenty-one years from the time it became dormant, unless the party entitled to bring such action, at the time the judgment became dormant, was within the age of minority, of unsound mind, or imprisoned, in which cases the action may be brought within fifteen years after such disability is removed.

¹ R.C. 2329.07(A)(1) provides,

If neither execution on a judgment rendered in a court of record or certified to the clerk of the court of common pleas in the county in which the judgment was rendered is issued, nor a certificate of judgment for obtaining a lien upon lands and tenements is issued and filed, as provided in sections 2329.02 and 2329.04 of the Revised Code, within five years from the date of the judgment or within five years from the date of the issuance of the last execution thereon or the issuance and filing of the last such certificate, whichever is later, then, unless the judgment is in favor of the state, the judgment shall be dormant and shall not operate as a lien upon the estate of the judgment debtor.

Relevant here, the 2004 amendment replaced the word “twenty-one” with “ten.”

Appellants argue that because the motion for revival was filed after the amendment, the amended version should apply. They conclude that regardless of whether the judgment became dormant on February 19, 1997, or July 24, 2001, the motion for revival—filed on December 5, 2013—was outside of the ten-year statute of limitations.

{¶ 8} Both parties acknowledge that we have already addressed this issue in *Cadles of Grassy Meadows, II, LLC v. Kistner*, 6th Dist. Lucas No. L-09-1267, 2010-Ohio-2251. In *Cadles*, we identified the two-part test to determining whether a statute can be applied retroactively: “There must be a clear, express legislative intent to apply the statute retroactively. If there is, the statute must affect only remedial, not substantive, rights or it will be found to violate Section 28, Article II of the Ohio Constitution.” *Id.* at ¶ 15, citing *State ex rel. Romans v. Elder Beerman Stores Corp.*, 100 Ohio St.3d 165, 2003-Ohio-5363, 797 N.E.2d 82, ¶ 11. We then held,

[T]he current version of R.C. 2325.18, effective June 2, 2004, did not clearly provide for retroactive application of the statute. Accordingly, our inquiry stops there and we need not address the issue of whether the statute affects remedial or substantive rights. This statute was not intended to apply to dormant judgments that existed as of June 2, 2004. Therefore, the prior version of the statute, which provided for a 21-year statute of limitation, controls this case. *Id.* at ¶ 17.

{¶ 9} Appellants attempt to avoid the result required by *Cadles* by arguing that the present facts are distinguishable, and thus the rule in *Cadles* should not apply.

Specifically, appellants note that, in *Cadles*, the judgment became dormant in 1992. *Id.* at ¶ 3. Thus, retroactive application of the 2004 amendment would have resulted in the statute of limitations expiring on that judgment in 2002, thereby destroying the judgment creditor's cause of action without providing a reasonable amount of time within which to seek revival of the judgment. Here, in contrast, the judgment became dormant on February 19, 1997, at the earliest. Consequently, appellants argue that appellees would have had over two years to seek to revive the judgment before the ten-year statute of limitations expired.

{¶ 10} Appellants further cite *Bartol v. Eckert*, 50 Ohio St. 31, 33 N.E. 294 (1893), which was also relied upon in *Cadles*, and which retroactively applied a statute that provided for a 21-year statute of limitations on dormant judgments. In that case, Bartol recovered a judgment against Eckert. The judgment went dormant on February 22, 1863. At the time it became dormant there was no statute of limitations against the revival of a judgment. *Id.* at 40. Subsequently, on March 31, 1876, the legislature passed an act that provided,

[I]n any case in which a judgment has been or may hereafter be rendered in any court, whether a court of record or not, and such judgment is or shall hereafter become dormant, action can only be brought to revive the same within twenty-one years after it became dormant, except the

person entitled to bring such action be, at the same time such judgment became dormant, within the age of twenty-one, insane, or imprisoned.

Every such person shall be entitled to bring such action within fifteen years after such disability shall be removed. *Id.*

Later, in 1878, the act was amended to provide, “No action shall be brought to revive a judgment after twenty-one years after it becomes dormant, unless the party entitled to bring such action was, at the time the judgment became dormant, within the age of twenty-one years, insane, or imprisoned, in which cases the action may be brought within fifteen years after the disability has ceased.” *Id.* On September 24, 1885, Bartol moved to revive the judgment. *Id.* at 39.

{¶ 11} Bartol argued that the amended version of the statute applied only prospectively. Thus, she contended that it did not apply to her pre-existing dormant judgment, and that the revival of the judgment should not be subject to a statute of limitations because none existed at the time the judgment became dormant. The Ohio Supreme Court disagreed, reasoning that if it was intended that the amended version of the statute only be applied prospectively, the judgment would still be subject to the 21-year statute of limitations by way of the 1876 act that applied to “any case in which a judgment has been or may hereafter be rendered in any court, whether a court of record or not, and such judgment is or shall hereafter become dormant.” The court held that the 1876 act barred the right to revive the judgment in 21 years from when the judgment became dormant, and nothing in the 1878 amendment “indicate[d] an intention to change

the limitation for the revivor of any judgment to which the act of 1876 applied at the time of its enactment, or of its amendment or repeal.” *Id.* at 41.

{¶ 12} The *Bartol* decision highlights the distinction present in *Cadles* and here, namely that unlike the 1876 act, the 2004 amendment to R.C. 2325.18(A) did not expressly provide that it applied to dormant judgments already in existence. Thus, we reiterate our holding in *Cadles* that “[R.C. 2325.18(A)] was not intended to apply to dormant judgments that existed as of June 2, 2004. Therefore, the prior version of the statute, which provided for a 21-year statute of limitation, controls this case.” *Cadles*, 6th Dist. Lucas No. L-09-1267, 2010-Ohio-2251 at ¶ 17. Here the judgment was dormant as of June 2, 2004. Moreover, appellees’ motion to revive the judgment was filed within 21 years of the judgment becoming dormant. Therefore, we hold that the trial court did not err when it determined that the motion to revive the judgment was not barred by the statute of limitations. Accordingly, appellants’ first assignment of error is not well-taken.

B. Interest on a Revived Judgment

{¶ 13} In their second assignment of error, appellants argue that the trial court violated R.C. 2325.18(B) when it awarded interest from the date of the original default judgment. R.C. 2325.18(B) provides, “For the purpose of calculating interest due on a revived judgment, interest shall not accrue and shall not be computed from the date the judgment became dormant to the date the judgment is revived.” Notably, R.C. 2325.18(B) was added in the 2004 amendment, and the prior version of the statute contained no provision regarding the accrual of interest on a dormant judgment.

{¶ 14} In *Asset Acceptance LLC v. Mack*, 105 Ohio St.3d 323, 2005-Ohio-1829, 825 N.E.2d 1108, ¶ 21, the Ohio Supreme Court addressed whether interest continues to accrue on a dormant judgment, and held that it does accrue “if [the judgment is] not subject to R.C. 2325.18(B).” In that case, the Ohio Supreme Court determined that R.C. 2325.18(B) did not apply since both the entry of judgment and the revival of that judgment occurred before R.C. 2325.18(B) was adopted. *Id.* at ¶ 5. Here, in contrast, the motion for revival occurred well after the 2004 enactment of R.C. 2325.18(B). Thus, *Asset Acceptance* leaves unresolved the issue we must address, which is whether R.C. 2325.18(B) applies to judgments that were revived after June 2, 2004.

{¶ 15} Appellants cite two cases that have encountered this issue. In *Secrest v. Gibbs*, 11th Dist. Lake No. 2008-L-137, 2009-Ohio-3308, ¶ 13, the Eleventh District stated, “[I]f the motion for revivor is filed after June 2, 2004, interest does not accrue from the date the judgment fell dormant to the date the judgment is revived.” Notably, however, this statement was dicta that was contained in the court’s analysis of *Asset Acceptance* as it related to the appellants’ argument that a revived judgment should be subject to statutory caps on punitive damages that were enacted while the judgment was dormant. In making its statement, the court was characterizing the limited holding of *Asset Acceptance* in an attempt to discount the appellants’ argument that *Asset Acceptance* stood for the sweeping proposition that any legislation enacted prior to the filing of a motion to revive applies to the judgment being revived. *Id.* at ¶ 11-13.

{¶ 16} In *Forg v. Gammarino*, 1st Dist. Hamilton No. C-050871, 2006-Ohio-6977, on the other hand, the First District spoke directly to the issue of whether interest accrued on the dormant judgment. In that case, the judgment was entered on August 15, 1996. On August 31, 2004, the appellee moved to revive the judgment. Regarding interest, the First District stated, with limited analysis, that the appellee “had a substantive right to accrue interest on his dormant judgment from [the date it became dormant] until the effective date of R.C. 2325.18(B), June 2, 2004.” *Id.* at ¶ 12.

{¶ 17} Based on *Secrest* and *Forg*, appellants contend that interest should have accrued only from the date of the judgment, February 19, 1992, to the date it became dormant, February 19, 1997. Alternatively, appellants contend that interest should have accrued until the date of the enactment of R.C. 2325.18(B), June 2, 2004.

{¶ 18} Appellees, in opposition, argue that R.C. 2325.18(B) should not be applied retroactively to judgments that became dormant prior to June 2, 2004. They conclude that *Asset Acceptance*’s implicit determination in 2005 that some dormant judgments are not subject to R.C. 2325.18(B) must mean that the statute does not apply retroactively, otherwise all dormant judgments as of June 2, 2004, would have stopped accruing interest.

{¶ 19} Upon careful consideration, and in accordance with our analysis in *Cadles* as discussed above, we hold that because R.C. 2325.18(B) does not expressly provide that it applies retroactively, it is not applicable to the dormant judgment in this case. In reaching this conclusion, we decline to overturn the precedent established in *Cadles*

based on the dicta in *Secrest*, or the limited reasoning in *Forg*. Therefore, we find that the trial court did not err when it awarded interest from February 19, 1992, the date of the original default judgment. Accordingly, appellants' second assignment of error is not well-taken.

C. Interest Rate Applicable to the Revived Judgment

{¶ 20} In their third assignment of error, appellants argue that the trial court erred in awarding ten percent interest from the date of the original default judgment.

Appellants note that R.C. 1343.03(A) was amended on June 2, 2004, to modify the statutory interest rate on judgments from a fixed ten percent per annum to an annually determined interest rate based on the federal short-term rate. Thus, citing *Maynard v. Eaton Corp.*, 119 Ohio St.3d 443, 2008-Ohio-4542, 895 N.E.2d 145, appellants contend that the trial court should have awarded interest at the annually determined rate for any period after the April 30, 2014 judgment, taking into account that no interest accrued during the period of dormancy.

{¶ 21} As discussed in their second assignment of error, the trial court did not err when it awarded interest during the period of dormancy. Further, relative to the rate of interest, the Ohio Supreme Court, in *Maynard*, held that “the amendment to R.C. 1343.03(A) applies to cases in which the trial court has entered final judgment prior to June 2, 2004, the effective date of the amendment, but the judgment is not yet paid in full and the case was pending on appeal as of that date.” *Id.* at ¶ 15. A case is pending when it is “‘begun, but not yet completed; during; before the conclusion of; prior to the

completion of; unsettled; undetermined; in process of settlement or adjustment. Thus, an action or suit is ‘pending’ from its inception until the rendition of final judgment.’” *Id.* at ¶ 13, quoting *Van Fossen v. Babcock & Wilcox Co.*, 36 Ohio St.3d 100, 103, 522 N.E.2d 489 (1988). Here, however, the judgment was final, and was not on appeal. Rather, it had become dormant. Thus, the action was not “pending” as of June 2, 2004, and consequently the June 2, 2004 amendment to R.C. 1343.03(A) does not apply to the judgment in this case. Therefore, we hold that the trial court did not err when it awarded ten percent interest from the date of the original default judgment. Accordingly, we find appellants’ third assignment of error not well-taken.

D. Costs

{¶ 22} Finally, in their fourth assignment of error, appellants argue that the trial court erred when it ordered them to pay the costs of the revival action in light of the fact that appellees took no formal action to enforce their judgment for over 21 years, and offered no reason for the delay. Civ.R. 54(D) provides, “Except when express provision therefor is made either in a statute or in these rules, costs shall be allowed to the prevailing party unless the court otherwise directs.” “A court’s assessment of costs under Civ.R. 54(D) is reviewed under an abuse of discretion standard.” *Atkinson v. Toledo Area Regional Transit Auth.*, 6th Dist. Lucas No. L-05-1106, 2006-Ohio-1638, ¶ 9, citing *State ex rel. Fant v. Regional Transit Auth.*, 48 Ohio St.3d 39, 548 N.E.2d 240 (1990). An abuse of discretion connotes that a trial court’s attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140

(1983). Here, we find no indication that the trial court abused its discretion in awarding costs to the prevailing party pursuant to Civ.R. 54(D). Accordingly, appellants' fourth assignment of error is not well-taken.

III. Conclusion

{¶ 23} For the foregoing reasons, the judgment of the Wood County Court of Common Pleas is affirmed. Appellants are ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See also 6th Dist.Loc.App.R. 4.

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.

Stephen A. Yarbrough, P.J.
CONCUR.

JUDGE

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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