

Missouri Legal Malpractice Warning: Failure to Timely Request Post-Judgment Interest Results in Forfeiture

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In *SKMDV Holdings, Inc. v. Green Jacobson, P.C.*, — S.W.3d —, No. ED102493 (Mo. App. E.D. Apr. 12, 2016), the Missouri Court of Appeals, Eastern District reversed an award of post-judgment interest because its inclusion in an amended judgment was “untimely, and therefore void.” *Id.* at 38. If the initial judgment does not include an award of section 408.040 post-judgment interest and there is no timely request for such interest in an authorized post-judgment motion, the result is forfeiture of such interest.

Background

On November 10, 2014, the trial court entered a judgment after a jury verdict against defendant-appellant Green Jacobson, assessing the damages of plaintiff SKMDV at \$10.5 million on a legal malpractice claim based on an admitted error in drafting a contract. The judgment did not refer to post-judgment interest; the transcript was void of references to interest. The defendant filed a motion for judgment notwithstanding the verdict or, in the alternative, for a new trial. The plaintiff did not file any written post-judgment motion seeking post-judgment interest. After the trial court denied the defendant’s motion, it entered an amended judgment “stating the counsel for plaintiff and defendant request an amendment to the judgment previously entered, and ordering post-judgment interest to accrue pursuant to Section 408.040 at the rate of 5.25 percent per annum.” *Id.* at 34.

Defendant subsequently filed its notice of appeal and contested the award of post-judgment interest. On appeal, the plaintiff-respondent argued the parties made an authorized after-trial motion to amend the judgment.

Appellate Court’s Analysis

Section 408.040 RSMo governs post-judgment interest in Missouri and is intended to compensate a judgment creditor owed monetary damages for the judgment debtor’s delay in satisfying the judgment pending an

appeal. Nonetheless, even though mandated by statute, the award of post-judgment interest must be included in the original judgment to which it applies or in a timely amendment to that judgment. *Peterson v. Discovery Prop. & Cas. Co.*, 460 S.W.3d 393, 413 (Mo. App. W.D. 2015); *McGuire v. Kenoma, LLC*, 447 S.W.3d 659, 666-67 (Mo. banc. 2014).

In *McGuire*, for example, the trial court's initial judgment after a jury verdict did not include post-judgment interest. "Despite this omission, the plaintiffs did not file a timely post-trial motion" to amend the judgment and include post-judgment interest. *Id.* at 662-63. After the defendant unsuccessfully appealed, the plaintiffs then made a request in the trial court for post-judgment interest by way of an amendment nunc pro tunc, retroactively dating back to the initial judgment. The trial court granted plaintiffs' request, which was affirmed by the Court of Appeals. After accepting transfer, however, the Supreme Court of Missouri found that the failure to award post-judgment interest was a substantive error, such that nunc pro tunc was inappropriate and unauthorized. Significantly, the Court rejected the plaintiffs' arguments regarding the "automatic" and "mandatory" nature of post-judgment interest under section 408.040. *Id.* at 665. The "omission of mandatory statutory language in a judgment is mere error" that must be corrected in a timely filed post-trial motion. *Id.* at 667.

Following *McGuire*, the Court of Appeals in *SKMDV* found the trial court's grant of post-judgment interest in the amended judgment to be void. Because the error regarding the omission of post-judgment was not raised in a timely filed and authorized post-trial motion, the trial court's power to correct, amend, or otherwise modify its November 12, 2014 judgment was limited to 30 days after entry of the judgment (i.e., December 12, 2014). Therefore, the appellate court found the January 6, 2015 amended judgment awarding post-judgment interest to be untimely, and therefore void.

Concluding Thoughts

At first, it may seem unfair that a prevailing plaintiff could find itself without post-judgment interest during the pendency of a defendant's appeal¹. After all, section 408.040 states in pertinent part (for both nontort and tort actions) that "interest shall be allowed on all money due upon any judgment or order of any court from the date judgment is entered by the trial court until satisfaction." 408.040(2), (3)² (emphasis added). Nonetheless, the finality of judgments is of paramount importance in Missouri; under the clear pronouncements of *McGuire* and now *SKMDV*, attorneys must be careful to make a timely request for post-judgment interest.

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¹ In *SKMDV*, for instance, from the date of the initial November 10, 2014 judgment to the issuance of the appellate opinion on April 12, 2016, the plaintiff forfeited approximately \$783,832.19 in post-judgment interest (519 days at 5.25%) due to the failure to make a timely request for post-judgment interest.

² Effective January 15, 2015, a new subsection 1 was added to section 408.040; nevertheless, the subsections pertaining to nontort and tort actions remained unchanged and were merely renumbered to become what are now subsections 2 and 3. See 2014 MO H.B. 1231.