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IN THE
COURT OF APPEALS OF INDIANA

R.K.W. Homes, Inc.,
Appellant-Plaintiff,

v.

Aaron Hutchison and Melissa Burns,
Appellees-Defendants

October 28, 2022

Court of Appeals Case No. 21A-CC-2767

Appeal from the Johnson Superior Court

The Honorable Kevin M. Barton, Judge

Trial Court Cause No. 41D01-1912-CC-2178

May, Judge.

[1] R.K.W. Homes, Inc. ("RKW") appeals the denial of its post-trial motions seeking attorney fees and prejudgment interest from Aaron Hutchison and Melissa Burns. The parties raise four issues for our review:

1. Whether RKW's claims for prejudgment interest and attorney fees merged into the judgment;

2. Whether the satisfaction and release from judgment filed by Hutchison and Burns foreclosed RKW's claims for prejudgment interest and attorney fees;

3. Whether RKW's breach of contract claim for damages was sufficiently ascertainable such that it was entitled to an award of prejudgment interest; and

4. Whether the trial court's denial of RKW's motion for attorney fees was otherwise within its discretion.

We reverse and remand.

Facts and Procedural History

[2] On September 8, 2018, Hutchison and Burns hired RKW to build a house for them in Franklin, Indiana. In the contract, RKW estimated the house would cost $573,295.17 to build, plus a nine percent contractor fee of $51,596.57, for a total cost of $624,891.74. The contract also included a provision regarding attorney fees:

6.8 ATTORNEY'S FEES

In addition to damages, the prevailing party shall recover reasonable attorneys fees and legal expenses if arbitration or litigation occurs between the parties to this Agreement.

(Appellant's App. Vol. II at 35) (emphasis in original). RKW started building the house shortly after being hired, and RKW finished the house on October 25, 2019. The cost of building the house overran the estimated cost, and in total, RKW billed Hutchinson and Burns $745,148.78 for the project. Hutchison and Burns paid RKW $612,725.36, and the parties disputed what additional amount Hutchison and Burns owed RKW.

[3] On November 12, 2019, RKW filed a sworn statement and notice of intention to hold a mechanic's lien against the property for $132,423.42 plus attorney fees, interest, and costs. On December 20, 2019, RKW filed suit against Hutchison and Burns. RKW's complaint alleged breach of contract and sought foreclosure of RKW's mechanic's lien. On February 26, 2020, Hutchison and Burns answered RKW's complaint and asserted counterclaims alleging fraud, breach of contract, and slander of title. The counterclaims accused RKW of sending fraudulent invoices to collect from the couple's financial institution, First Federal Savings Bank ("Bank"); breaching the construction contract by doing poor quality work; and filing a mechanic's lien without the right to hold such a lien. On April 8, 2020, RKW amended their complaint against Hutchison and Burns to add an allegation of unjust enrichment.[1] RKW's request for relief included claims for both prejudgment interest and attorney fees.

[1] RKW also asserted a claim for defamation in its amended complaint, but RKW withdrew this claim before the case was submitted to the jury.

[4] On September 7, 2021, Bank intervened in the lawsuit and filed suit against Hutchison, Burns, and RKW. The Bank alleged the couple was in default regarding the construction loan they received from the bank and sought to foreclose on the property. The Bank named RKW as a defendant to allow it to assert any interest it had against the property. Prior to trial, the court bifurcated the Bank's action and RKW's action for foreclosure of its mechanic's lien from the other claims RKW and Hutchison and Burns asserted against each other.

[5] Beginning on October 26, 2021, the trial court held a three-day jury trial on the claims between RKW and Hutchison and Burns. At the conclusion of the trial, the jury returned a verdict awarding RKW $58,500.00 with respect to its claims against Hutchison and Burns. The jury also found in favor of RKW regarding the counterclaims asserted by Hutchison and Burns.

[6] On November 1, 2021, RKW filed a motion to assess prejudgment interest, a motion for attorney fees and legal expenses, and a motion for entry of an amended judgment. RKW asserted it was entitled to pre-judgment interest both at common law and through the prejudgment interest statute.[2] RKW also asserted it was entitled to attorney fees pursuant to the parties' contract.

[7] On November 8, 2021, Hutchison and Burns deposited a cashiers' check with the Johnson County Clerk of Courts for the amount of the verdict plus the filing fee and costs. They also filed a response to RKW's post-trial motions.

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[2] Ind. Code § 34-4-37-1, et seq.

Hutchison and Burns argued RKW was not entitled to prejudgment interest because the trier of fact was required to exercise its judgment in computing damages. Hutchison and Burns also contended RKW's requested attorney fees were inequitable and unreasonable. On November 9, 2021, Hutchison and Burns filed a notice of satisfaction of judgment. On November 10, 2021, the trial court issued a notice of release of judgment that allowed Hutchison and Burns to resolve the contract and foreclosure action brought by the Bank.

[8] Without holding a hearing, the trial court entered an order denying RKW's post-trial motions on November 13, 2021. The trial court found:

> 4. By its Order On Motion For Continuance dated September 17, 2021, the Court ordered that "the claims brought by Intervenor are bifurcated from the claims brought by Plaintiff R.K.W. Homes, Inc.["] At Final Pre-Trial Conference, the Court dealt with the claim of R.K.W. Homes, Inc. for foreclosure of mechanic's lien. The Court held that inasmuch as the action to foreclose the mechanic's lien is an action in equity, the cause of action for foreclosure of the mechanic's lien would be at equity and not at law. The Court did not bifurcate any other claims.
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> 5. Plaintiffs seek prejudgment interest on contract damages as well as attorney fees under the contract. Both components of damage were before the Court for trial. No evidence was submitted on either element of damage.
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> * * * *
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> 8. Plaintiff's action for prejudgment interest on the actions for breach of contract and quantum merit and attorney fees on the action for breach of contract merged into the judgment. The

> satisfaction of the judgment extinguished the cause of action. In short, there is no action on which to award prejudgment interest or attorney fees.
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> 9. Plaintiff's Motion To Assess Prejudgment Interest, Plaintiff's Motion For Attorney Fees And Legal Expenses, Plaintiff's Motion For Entry Of Amended Judgment Pursuant to Trial Rule 59 and Plaintiff's Amended Motion To Assess Prejudgment Interest are all deemed moot and to present no issues for the Court's consideration.

(*Id*. at 19-20.)

Discussion and Decision

[9] RKW argues the trial court erred because the doctrines of merger and satisfaction of judgment do not bar its post-trial motions. In addition to arguing the trial court's order should be affirmed on the basis of merger and satisfaction, Hutchison and Burns contend RKW is not entitled to prejudgment interest because its damages were not readily ascertainable and the trial court's denial of the company's request for attorney fees was within the trial court's discretion. We review the trial court's order de novo because the parties raise pure questions of law. *See Lukis v. Ray*, 888 N.E.2d 325, 330 (Ind. Ct. App. 2008) ("We review questions of law de novo."), *trans. denied*.

1. Merger

[10] In the context of civil procedure, "merger" refers to "[t]he effect of a judgment for the plaintiff, which absorbs any claim that was the subject of the lawsuit into

the judgment, so that the plaintiff's rights are confined to enforcing the judgment." Merger, Black's Law Dictionary (11th ed. 2019). As we explained in *In re Dean*:

> The general rule of merger is that when a valid and final personal judgment is rendered in favor of the plaintiff, the original debt or cause of action, or underlying obligation upon which an adjudication is predicated is said to be merged into the final judgment, and the plaintiff cannot maintain a subsequent action on any part of the original claim, because the doctrine of merger operates to extinguish a cause of action on which a judgment is based and bars a subsequent action for the same cause.

787 N.E.2d 445, 447 (Ind. Ct. App. 2003) (quoting 46 Am. Jur. 2d Judgments § 501, pp. 762-63 (1994)), *trans. denied*. "When a cause of action merges into a judgment, the judgment is 'conclusive as to all matters which were litigated, which properly should have been litigated, or [which] might have been litigated in the original action.'" *Id*. (quoting 46 Am. Jur. 2d Judgments § 501, p. 763). Merger is essentially identical to the concept of claim preclusion. *Id*. "Both merger and claim preclusion prevent parties from splitting causes of action, and thereby prohibit excessive litigation between parties." *Id*. (internal citation omitted). In *Nicklas v. Van Tobel Corp.*, we explained:

> Four elements must be satisfied in order for res judicata, also known as claim preclusion, to apply:
>
> 1. The former judgment must have been rendered by a court of competent jurisdiction;

> 2. The former judgment was rendered on the merits;
>
> 3. The matter now at issue was, or could have been, determined in the prior action; and
>
> 4. The controversy adjudicated in the former action was between parties to the present action or their privies.

10 N.E.3d 575, 579 (Ind. Ct. App. 2014), *trans. denied*.

[11] The parties disagree regarding whether this third element is met. RKW argues its post-trial petitions for prejudgment interest and attorney fees are separate "from the merits of the case and cannot be addressed until the prevailing party has been determined. As such, the post-trial petitions do not constitute 'claim splitting,' thus [they] are not amenable to the application of the doctrine of merger." (Appellant's Br. at 14.) On the other hand, Hutchison and Burns note that while the trial court bifurcated the Bank's claims and the mechanic's lien claim, "neither party requested that the trial court bifurcate and reserve the issues of prejudgment interest and attorneys' fees, despite specific discussion about matters being reserved for the trial court post-jury trial." (Appellees' Br. at 14.)

[12] The trial court found the issues of prejudgment interest and attorney fees were before the court at trial because the claims were not bifurcated from the issues to be resolved at trial. However, as RKW notes, "undersigned counsel is unaware of any Indiana case law or procedural rule that requires a party to notify the Court of the potential for a post-trial motion seeking an award of

attorney fees and/or prejudgment interest in the event a party prevails at trial." (Appellant's Reply Br. at 9.) We also are unaware of any such case law, and neither the trial court nor the appellees cite to any such authority.

[13] With respect to attorney fees, Indiana generally adheres to the American rule whereby each party bears its own attorney fees absent an agreement between the parties, a statute, or other rule to the contrary. *Song v. Iatarola*, 76 N.E.3d 926, 938 (Ind. Ct. App. 2017), *reh'g granted on other grounds*, 83 N.E.3d 80 (Ind. Ct. App. 2017), *trans. denied*. "When an agreement allows one party to request attorney fees from another party, it is standard procedure for that party to petition the trial court for those fees after the jury has reached its decision in its case." *Id*. The issue of attorney fees is "separate from the merits of a case because the inquiry cannot commence until a party has prevailed." *Storch v. Provision Living, LLC*, 47 N.E.3d 1270, 1275 (Ind. Ct. App. 2015). "Accordingly, a request for attorney fees 'almost by definition is not ripe for consideration until after the main event reaches an end,' and '[e]ntertaining such petitions post-judgment is virtually the norm.'" *Id*. (quoting *R.L. Turner Corp. v. Town of Brownsburg*, 963 N.E.2d 453, 460 (Ind. 2012)) (brackets in *Storch*). Moreover, unless the parties contract or stipulate that any fee award be determined by jury, "parties do not have the right to have a jury determine a reasonable amount of fees. The trial judge is considered to be an expert on the question of attorney fees and may judicially know what constitutes a reasonable fee." *Song*, 76 N.E.3d at 938 (internal quotation marks and citation omitted).

[14] The contract the parties entered provided that, in the event of litigation between the parties, the prevailing party was entitled to recover reasonable attorney fees and legal expenses. RKW did not become a prevailing party until the jury returned a verdict in its favor. Therefore, its right to recover attorney fees could not merge into the judgment because it did not become ripe until after the judgment. The trial court erred in denying RKW's motion on that basis. *See R.L. Turner Corp.*, 963 N.E.2d at 460 (holding trial court did not err in awarding attorney fees after dismissing underlying lawsuit).

[15] Prejudgment interest is meant to fully compensate the injured party for the lost use of money. *Song*, 76 N.E.3d at 939. "It is well-settled that an award of prejudgment interest in a breach of contract action is warranted if the amount of the claim rests upon a simple calculation and the terms of the contract make such a claim ascertainable." *Id*. "The test for determining whether an award of prejudgment interest is appropriate is whether the damages are complete and may be ascertained as of a particular time." *Noble Roman's Inc. v. Ward*, 760 N.E.2d 1132, 1140 (Ind. Ct. App. 2002). "An award of prejudgment interest is proper when the trier of fact does not have to exercise judgment in order to assess the amount of damages." *WESCO Distribution, Inc. v. ArcelorMittal Ind. Harbor LLC*, 23 N.E.3d 682, 714 (Ind. Ct. App. 2014), *trans. dismissed*. It is generally not considered a matter of discretion. *Fackler v. Powell*, 923 N.E.2d 973, 979 (Ind. Ct. App. 2010). The calculation of prejudgment interest may be left to the jury, *see*, *e.g.*, *Bd. of Works of the City of Lake Station v. I.A.E., Inc.*, 956 N.E.2d 86, 96 (Ind. Ct. App. 2011) (holding trial court did not abuse its

discretion in giving jury instruction on the calculation of prejudgment interest), *reh'g denied*, *trans. denied,* or advanced by means of a post-trial motion. *See*, *e.g.*, *WESCO*, 23 N.E.3d at 714-15 (noting plaintiff sought prejudgment interest by means of a post-trial motion).

[16] Moreover, we note that calculating prejudgment interest is predicated on the amount awarded by the jury, and the parties are not aware of the jury's award until after the jury has rendered its verdict. Therefore, it seems to make practical sense to pursue prejudgment interest by means of a post-trial motion. That is what RKW did here, and therefore, the trial court erred when it determined RKW's claim for prejudgment interest merged into the judgment. *See Afolabi v. Atl. Mortg. & Inv. Corp.*, 849 N.E.2d 1170, 1175 (Ind. Ct. App. 2006) (holding claim preclusion did not bar successive mortgage foreclosure action when the successive action was premised on a subsequent and separate alleged default not at issue in the first action).

2. Satisfaction

[17] Indiana Trial Rule 58(D) concerns satisfaction and release from judgment. The Rule provides:

> Upon payment in full of a judgment, including accrued interest and court costs, the judgment creditor shall file a satisfaction/release of judgment and the Clerk shall note the satisfaction/release of the judgment on the CCS and on the judgment docket.

> Based upon a review of the Clerk's payment records, the Clerk may, or at the verified request of the judgment debtor shall, issue a Notice to the judgment creditor that a judgment, including accrued interest and court costs, has been paid in full and that the judgment should be satisfied/released. The Notice shall be sent to the judgment creditor and debtor at the address shown on the Chronological Case Summary. The Clerk shall note the issuance of the Notice on the Chronological Case Summary. If the judgment creditor does not agree that the judgment should be satisfied/released, the judgment creditor shall, within 30 days of the date of the issuance of the Notice, file a verified objection. If the judgment creditor does not file an objection or a satisfaction/release of judgment, the judgment shall be deemed satisfied/released and the Clerk shall note the satisfaction/release of the judgment on the Chronological Case Summary and on the Judgment Docket.

[18] In *RJH of Florida, Inc. v. Summit Account and Computer Services, Inc.*, the plaintiff filed a verified petition to recover appellate attorney fees and then filed a release of judgment a month later, before the trial court had ruled on its petition for appellate attorney fees. 725 N.E.2d 972, 973 (Ind. Ct. App. 2000). The defendants then filed a motion to dismiss the plaintiff's petition on the grounds that the release of judgment terminated the litigation and foreclosed the plaintiff from recovering the fees. *Id*. However, we observed that "when a statement of satisfaction applies to only part of a judgment, further proceedings with respect to unsatisfied claims are not barred." *Id*. at 974. We held that in light of the facts and circumstances of the case, the release of judgment was not a statement of full satisfaction that barred recovery of appellate attorney fees. *Id*. at 974-75. We noted the release of judgment made no mention of the pending fee petition and specified that it pertained to the judgment entered at the conclusion of trial,

"a judgment that did not include and, indeed, could not have included an award for appellate attorney fees." *Id*. at 974.

[19] By order dated October 29, 2021, the trial court in the instant case entered judgment in favor of RKW Homes in the amount of $58,500.00 "together with the costs of this action and interest on the judgment as provided by law." (Appellant's App. Vol. II at 42.) The trial court also entered judgment in favor of RKW on the counterclaims brought by Hutchison and Burns. On November 1, 2021, RKW filed its motion to assess prejudgment interest and its motion for attorney fees and legal expenses. On November 9, 2021, Hutchison and Burns filed a notice of satisfaction of judgment. The notice stated:

> On Friday, November 5, 2021, the clerk noted that Defendants owed $58,657.00 in restitution, which amount includes the $58,500.00 jury award, plus $157.00 in court costs and filing fees. On Monday, November 8, 2021, Defendants paid the $58,657.00 in full by cashier's check made payable to the Johnson County Clerk's Office. On Tuesday, November 9, 2021, the Clerk issued check #119959 for $58,657.00, payable to R.K.W. Homes, Inc. according to the docket in this case.
>
> Defendants request the Court to direct the Clerk to update the judgment docket (if applicable) to reflect the satisfaction of the October 29, 2021 judgment.

(Appellant's App. Vol. II at 92.) The notice did not mention the post-trial motions filed by RKW. In fact, the notice specified that it was intended to cover only the amount of the jury award, court costs and filing fees. Therefore, like in *RJH*, we hold the notice of satisfaction of judgment did not extend to the

pending motions for attorney fees and prejudgment interest, and the trial court erred in denying those motions on the basis of satisfaction.[3]

3. Prejudgment Interest

[20] While the trial court denied RKW's post-trial motions on other grounds, Hutchison and Burns contend RKW is not entitled to prejudgment interest because "the judgment amount was very much subject to the discretion of the trier of fact[.]" (Appellees' Br. at 13.) Hutchison and Burns note that even though RKW asserted it was entitled to $132,423.42 in damages, the jury only awarded only $58,500.00. As noted above in our discussion of whether RKW's claim for prejudgment interest merged with the jury's damage award, a prerequisite for an award of prejudgment interest is that the damages be readily ascertainable. *See Song*, 76 N.E.3d at 939; *see also Layden v. New Era Corp.*, 575 N.E.2d 638, 641 (Ind. Ct. App. 1990) ("Such ready ascertainability is the prerequisite for an award of prejudgment interest."), *reh'g denied with opinion*, 571 N.E.2d 547 (Ind. Ct. App. 1990). In *Layden*, we held the plaintiff was entitled to prejudgment interest when the trial court could calculate damages pursuant to a cost-plus formula for labor and material expenditures minus

[3] Moreover, while the trial court's order denying RKW's post-trial motions noted that payment of the judgment extinguished the cause of action, the trial court entered the order before expiration of the time RKW had to file an objection to the notice of satisfaction of judgment. It strikes us as unfair to credit a notice of satisfaction of judgment filed by the judgment debtor as extinguishing a cause of action without allowing the judgment creditor sufficient time to object. *See Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 546, 105 S. Ct. 1487, 1495 (1985) ("The essential requirements of due process . . . are notice and an opportunity to respond. The opportunity to present reasons, either in person or in writing, why proposed action should not be taken is a fundamental due process requirement.").

certain set off costs. 575 N.E.2d at 547. Likewise, in *Hayes v. Chapman*, we held the plaintiff was entitled to prejudgment interest on the damages award he received after the defendants refused to pay him for remodeling work even though the plaintiff miscalculated the value owed to him because his overall damages were ascertainable with reasonable precision. 894 N.E.2d 1047, 1055 (Ind. Ct. App. 2008), *trans. denied*. While the jury awarded RKW far less than what the company asked for in damages, the jury was able calculate the amount of money Hutchison and Burns owed RKW. Thus, the damages were readily ascertainable at a particular time and RKW is entitled to prejudgment interest. The trial court shall calculate the prejudgment interest award on remand. *See Town of New Ross v. Ferretti*, 815 N.E.2d 162, 170 (Ind. Ct. App. 2004) (holding general contractor was entitled to prejudgment interest on his contractual claims against town because damages were complete and ascertainable at time of trial).

4. Attorney Fees

[21] Hutchison and Burns also contend that, although the trial court denied RKW's post-trial motion for attorney fees pursuant to the doctrines of merger and satisfaction, the denial was otherwise within the trial court's discretion and supported by the record. Hutchison and Burns assert they "supplied the trial court ample evidence of other grounds to deny the request as unreasonable." (Appellees' Br. at 16.) In contrast, RKW notes it submitted evidence that it incurred costs of $39,880.18 in attorney fees and legal expenses. Any request for an award of attorney fees must be reasonable, and "[t]he determination of

reasonableness of an attorney's fee necessitates consideration of all relevant circumstances." *Bruno v. Wells Fargo Bank, N.A.*, 850 N.E.2d 940, 950 (Ind. Ct. App. 2006). Trial courts enjoy wide discretion in awarding attorney fees, and we generally review a trial court's decision to award attorney fees and the amount of the award for an abuse of discretion. *Cavallo v. Allied Physicians of Michiana, LLC*, 42 N.E.3d 995, 1008 (Ind. Ct. App. 2015). An abuse of discretion occurs "when the trial court's decision is clearly against the effect of the facts and circumstances before the court." *Id*.

[22] However, here, the trial court did not reach whether RKW's requested attorney fees and legal expenses were reasonable. While RKW submitted evidence of its legal bills to the trial court, a reasonable attorney fee award takes into account both the bills incurred and the trial court's knowledge of the proceedings. *Id*. at 1009 (holding "the detailed billing statements [the prevailing party] provided the court here, combined with the trial court's knowledge of the proceedings, were sufficient for the trial court to determine reasonable attorney fees"). Therefore, we remand the matter back to the trial court to exercise its discretion to assess an appropriate attorney fee award. *See Lutheran Health Network of Ind., LLC v. Bauer*, 139 N.E.3d 269, 284 (Ind. Ct. App. 2019) (remanding with instructions to assess appropriate attorney fee award), *reh'g denied*.

Conclusion

[23] The trial court erred when it found RKW's post-trial motions were barred by the doctrine of merger because RKW's request for attorney fees did not become

ripe until after the jury rendered a verdict in its favor and RKW was not prohibited from seeking prejudgment interest through a post-trial motion. The trial court also erred when it found the motions were barred by the doctrine of satisfaction because the notice of satisfaction of judgment did not extend to the pending post-trial motions. Moreover, RKW is entitled to prejudgment interest because the amount of damages was readily ascertainable at the time of trial, and the trial court should exercise its discretion in fashioning a reasonable award of attorney fees. We reverse the trial court and remand for it to calculate prejudgment interest and attorney fees.

[24] Reversed and remanded.

Riley, J., and Tavitas, J., concur.