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IN THE COURT OF APPEALS OF INDIANA

Hannah Wormgoor,
Appellant-Plaintiff

v.

State Farm Mutual Automobile Insurance Company,
Appellee-Defendant.

February 10, 2023

Court of Appeals Case No. 21A-CT-2612

Appeal from the Marion Superior Court

The Honorable John M.T. Chavis, II, Judge

Trial Court Cause No. 49D05-1907-CT-28528

Opinion by Judge Pyle

Judges Robb and Weissmann concur.

Pyle, Judge.

Statement of the Case

[1] Hannah Wormgoor ("Wormgoor") appeals the trial court's order granting her prejudgment interest in the amount of $11,559.77 on her $67,168.52 judgment. Wormgoor argues that the trial court abused its discretion when it calculated her prejudgment interest based on a pre-trial stipulation in which the parties agreed that the ultimate verdict amount should be reduced to a fixed amount reflecting her policy limits instead of the jury verdict amount. Concluding that the trial court did not abuse its discretion when it awarded her prejudgment interest, we affirm the trial court's judgment.

[2] We affirm.

Issue

Whether the trial court abused its discretion when it calculated Wormgoor's prejudgment interest.

Facts

[3] In November 2017, Christopher Vervaet ("Vervaet"), while driving on US-35, veered over the center line. As a result, Vervaet's car struck Wormgoor's car, which was traveling in the opposite direction. At the time of the accident, Wormgoor maintained an insurance policy with State Farm Mutual Automobile Insurance Company ("State Farm"). Wormgoor's policy provided $100,000 in underinsured motorist coverage and $10,000 in medical coverage. Vervaet, who had a policy with Progressive Insurance ("Progressive"), had a policy limit of $25,000. Wormgoor sustained serious injuries as a result of the

accident. Specifically, physicians diagnosed Wormgoor with post-traumatic headaches, occipital neuralgia, and cervical radiculopathy.

[4] In June 2019, Wormgoor sent a demand for settlement to State Farm for $75,000. State Farm rejected this demand and offered $7,831.48. Vervaet's insurer, Progressive, offered Wormgoor the maximum allowable amount under Vervaet's policy, $25,000.

[5] In July 2019, Wormgoor filed a complaint for damages against Vervaet and State Farm. Specifically, Wormgoor's complaint listed a claim against Vervaet for his alleged negligence and a claim against State Farm for the total amount of underinsured motorist coverage in Wormgoor's policy. State Farm authorized Wormgoor to accept the $25,000 from Vervaet's policy, and the lawsuit continued between Wormgoor and State Farm.

[6] In July 2020, Wormgoor and State Farm attempted to resolve the lawsuit in mediation but the parties could not reach an agreement. Wormgoor continued to demand $75,000, the remaining covered amount under her policy for underinsured motorists, and State Farm continued to offer $7,831.48 as an advanced payment. Settlement talks continued sporadically until the time of the trial in September 2021.

[7] Wormgoor and State Farm entered into a pre-trial stipulation in the weeks leading up to the September 2021 jury trial. The relevant portion stated:

> 11. That if the jury's verdict is greater than $110,000, the Court should reduce the verdict to $67,168.52, because:

> a. [T]he policy has limits of $100,000 for underinsured motorist coverage and $10,000 for medical payments coverage. Thus, the maximum amount available under the policy is $110,000.
>
> b. That amount must be reduced by:
>
> > 1. the $10,000 that has already been paid under the medical payments coverage for []Wormgoor's treatment.
> >
> > 2. the $25,000 that []Wormgoor has already received from Vervaet's insurance carrier.
> >
> > 3. the $7,831.48 advanced to []Wormgoor].

(App. Vol. 2 at 72-73).

[8] The trial court held a jury trial in September 2021. At the conclusion of the jury trial, the jury entered a $1,050,000 verdict in favor of Wormgoor. The trial court, pursuant to the pre-trial stipulations, reduced the judgment to $67,168.52. Wormgoor moved for prejudgment interest pursuant to the Tort Prejudgment Interest Statute ("TPIS"). Wormgoor argued that the prejudgment interest should be calculated based on the jury verdict of $1,050,000. However, State Farm argued that the prejudgment interest, if any, should be calculated based on the actual judgment value of $67,168.52. The trial court allowed for the parties to submit briefing on the issue of prejudgment interest before entering a final judgment.

[9] In October 2021, the trial court held a prejudgment interest hearing. At this hearing, Wormgoor argued that "[i]t is up to this [h]onorable [c]ourt to decide whether to award prejudgment interest on the jury verdict. There is no law or precedent that says prejudgment interest shall be awarded on the verdict or that prejudgment interest shall not be awarded on the jury verdict." (Tr. Vol. 2 at 9).

[10] In its November 2021 order, the trial court found that the prejudgment interest should be calculated based on the judgment amount of $67,168.52. Specifically, the trial court justified its decision as follows:

> The decision of whether to award prejudgment interest is within the discretion of the trial court. *Inman v. State Farm Mut. Auto. Ins. Co.*, 981 N.E.2d 1202, 1204 (Ind. 2012). The purpose of prejudgment interest, and by extension the Tort Prejudgment Interest Statute, IND. CODE 34-51-4-1 et seq., is to encourage settlement and compensate a plaintiff for the lost time value of money. *Cahoon v. Cummings*, 734 N.E.2d 535, 547 (Ind. 2000). The Court exercises its discretion to award prejudgment interest in this case.
>
> The Court finds that the measure upon which to base the calculation of prejudgment interest is on the reduced judgment of $67,168.52. The maximum amount that [Wormgoor] would ever receive is $67,168.52 and the parties so stipulated. The Court is not inclined to award prejudgment interest calculated upon a jury award that [Wormgoor] would never have received.

(App. Vol. 2 at 16). The trial court calculated prejudgment interest at a rate of 10% from January 2020 to October 2021, resulting in a total prejudgment interest award of $11,559.77.

[11] Wormgoor now appeals.

Decision

[12] Wormgoor argues that the trial court erred when it calculated her prejudgment interest based on a pre-trial stipulation reflecting her policy limits instead of the jury verdict amount. An award of prejudgment interest under the TPIS is discretionary. *See* IND. CODE § 34-51-4-7 ("The court *may* award prejudgment interest as part of a judgment.") (emphasis added). Accordingly, we review a trial court's ruling on a motion for prejudgment interest under the TPIS for abuse of discretion. *Inman v. State Farm Mut. Auto. Ins. Co.*, 981 N.E.2d 1202, 1204 (Ind. 2012) (internal citations omitted). The trial court abuses its discretion when its decision is "clearly against the logic and effect of the facts and circumstances before the court or if the court has misinterpreted the law." *Inman*, 981 N.E.2d at 1204 (internal citation omitted).

[13] Wormgoor first argues that "[a] pretrial stipulation of underinsured policy limits does not affect or have any relation to an award of prejudgment interest." (Wormgoor's Br. 11). We disagree.

[14] We first note that "a stipulation is a confessory pleading negating the need to offer evidence to prove the fact, and the party is not permitted to later attempt to disprove the fact." *Ind. Dept. of Environmental Management v. Adapto, Inc.*, 717

N.E.2d 646, 649-50 (Ind. Ct. App. 1999). A stipulation of facts is an express waiver by a party or his counsel of the intended issues. *Id.* "Additionally, stipulations should receive a fair and liberal construction." *Id.* "Where the parties to a stipulation have given a practical construction to it by their acts and conduct, such construction is entitled to great, if not controlling, weight in determining its proper meaning." *Id.*

[15] Our review of the record reveals that the stipulations agreed upon by Wormgoor and State Farm were very clear. The stipulation stated that "if the jury's verdict is greater than $110,000, the Court should reduce the verdict to $67,168.52[.]" (App. Vol. 2 at 72). The parties reasoned that this reduction of the verdict amount was necessary based on payments that Wormgoor had already received under medical payments coverage, from Verveat's insurance carrier, and for an advanced payment from State Farm.

[16] Our review of the record reveals that the plain language of the pretrial stipulations provides that any jury verdict in excess of $110,000 should be reduced to $67,168.52. Thus, the judgment that the trial court used to calculate prejudgment interest cannot be the $1,050,000 jury verdict, because it was immediately reduced, pursuant to the pretrial stipulations, to $67,168.52. Further, INDIANA CODE § 1-1-4-5(a)(10) defines a "judgment" as "all final orders, decrees, and determinations in an action and all orders upon which executions may issue." Here, the final order that constituted the trial court's judgment was the reduced judgment of $67,168.52, not the jury verdict of $1,050,000. However, our analysis does not end here.

[17] We also note that our Indiana Supreme Court, in *Kosarko v. Padula*, 979 N.E.2d 144 (Ind. 2012), spoke on the issue of whether to calculate prejudgment interest on a jury verdict or on the reduced judgment reflecting a party's policy limits. In *Kosarko*, our supreme court remanded the issue of prejudgment interest back to the trial court to be analyzed under the framework provided by the TPIS. In doing so, our supreme court stated "the trial court has broad discretion to determine whether to award prejudgment interest, what interest rate to use, what time period to use, and whether to calculate interest on the full $210,000 awarded by the jury, or on the amount of $100,000, representing insurance liability coverage limits[.]" *Kosarko*, 979 N.E.2d at 150-51. Likewise, in a companion case, *Inman*, our supreme court held that "prejudgment interest can be awarded in excess of an insured's UIM policy because prejudgment interest is a collateral litigation expense imposed at the discretion of the trial court[.]" *Inman*, 981 N.E.2d at 1206.

[18] Here, our review of the record reveals that the trial court, in its final order, laid out its reasoning in choosing to award prejudgment interest based on the stipulated reduced judgment instead of the jury verdict:

> The Court finds that the measure upon which to base the calculation of prejudgment interest is on the reduced judgment of $67,168.52. The maximum amount that [Wormgoor] would ever receive is $67,168.52 and the parties so stipulated. The Court is not inclined to award prejudgment interest calculated upon a jury award that [Wormgoor] would never have received.

(App. Vol. 2 at 16). In doing so, the trial court exercised the broad discretion granted to it under the TPIS. In exercising this discretion, trial courts are to consider the purposes for awarding prejudgment interest: "to encourage settlement, to incentivize expeditious resolution of disputes, and to compensate the plaintiff for the lost time value of money arising from unreasonable delay." *Kosarko*, 979 N.E.2d at 150. Based on these objectives and our supreme court's holdings in *Kosarko* and *Inman*, we hold that a trial court has the discretion to award prejudgment interest upon a jury verdict, even when that amount exceeds a final judgment stipulated to by the parties. Here, the trial court granted the request for prejudgment interest. However, it based the award on the final judgment stipulated to by the parties, not the jury verdict award. The record supports the trial court's decision. Here, the record reveals that the parties did not avoid efforts to settle their dispute and there is no evidence that State Farm took steps to unreasonably delay the case being decided at trial. In fact, the record reveals that much of the delay getting this case to trial involved COVID-19 emergency orders delaying in-person hearings during the pandemic. As a result, the trial court did not abuse its discretion in calculating prejudgment interest based on the stipulated reduced judgment instead of the jury verdict amount.

Affirmed.[1]

Robb, J., and Weissmann, J., concur.

[1] Wormgoor also argues that the TPIS "requires prejudgment interest be awarded on a jury verdict and not underinsured motorist policy limits in underinsured motorist cases." (Wormgoor's Br. 13). However, Wormgoor has waived this argument on appeal because Wormgoor did not make this argument before the trial court. *See GKC Indiana Theaters, Inc. v. Elk Retail Investors, LLC*, 764 N.E.2d 647, 651 (Ind. Ct. App. 2002) ("A party generally waives appellate review of an issue or argument unless the party raised that argument or issue before the trial court."). In fact, Wormgoor argued before the trial court that the TPIS gives the trial court broad discretion to determine prejudgment interest.