ATTORNEYS FOR APPELLANT

Michael J. Feiwell
Bryan K. Redmond
Matthew S. Love
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

PNC Bank, National Association,

Appellant-Plaintiff,

v.

Paul J. Page, et al.,

Appellees-Defendants.

March 31, 2022

Court of Appeals Case No. 21A-MF-1974

Appeal from the Marion Superior Court

The Honorable Timothy Wayne Oakes, Judge

The Honorable Patricia C. McMath, Magistrate

Trial Court Cause No. 49D02-1811-MF-46376

Altice, Judge.

Case Summary

[1] PNC Bank, N.A. (PNC) filed a complaint against Michael R. Couch, among others, to foreclose on a promissory note and mortgage. On PNC's motion, the trial court issued a judgment and decree of foreclosure that granted all requested

relief to PNC with the exception that the trial court excluded "[i]nterest accruing 3/16/20 – 8/14/20" from the judgment against Couch. *Appendix* at 54. This exclusion of interest was based on a series of Ind. Administrative Rule 17 Emergency Orders (the Emergency Orders) that the Indiana Supreme Court issued in 2020 during the outbreak of the COVID-19 pandemic. Following the denial of its Motion to Correct Error, PNC appeals and raises the following restated issue:

> Did the trial court err when it determined that certain terms in the Emergency Orders, which provided for the tolling of interest, were applicable to PNC's mortgage loan agreement and operated to suspend the accrual of prejudgment interest for a period of time?

[2] We reverse and remand.

Facts & Procedural History

[3] On July 31, 2007, Couch executed a $100,000 equity reserve line of credit (the Note) with PNC's predecessor in interest, National City Bank, as well as a mortgage to secure payment of the Note. The Note contained the following provision:

> Termination of Line. Bank can terminate your Line and require you to pay the entire outstanding balance in one payment if you breach a material obligation of this Agreement[.]
>
> * * *

> To the extent permitted by 11 USC [illegible], Bank shall be entitled to reasonable court costs and attorneys' fees for independent counsel that Bank hires. . . . *Interest after termination, whether prior to or after judgment by a court of competent jurisdiction, shall accrue upon the outstanding unpaid balance at the rate determined under this Agreement until such balance is paid in full*.

Appendix at 25 (emphasis added). Couch defaulted on November 24, 2017.

[4] In November 2018, PNC filed a complaint, later amended on July 19, 2019, seeking (1) a judicial determination of the sums due pursuant to the Note and (2) a decree of foreclosure on the mortgage.[1] PNC attached to the complaint the Note and the mortgage.

[5] On March 6, 2020, Governor Eric Holcomb issued Executive Order 20-02 that declared a public health emergency in Indiana related to COVID-19. About two weeks later, on March 19, 2020, Governor Holcomb issued Executive Order 20-06 titled "Temporary Prohibition on Evictions and Foreclosures,"[2] which stated, in part:

> 1. No eviction or foreclosure actions or proceedings involving residential real estate or property, whether rental or otherwise, may be initiated between the period from the date of this Executive Order until the state of emergency has terminated; and any applicable statute in connection therewith is hereby

---

[1] In addition to Couch, PNC named as defendants multiple other parties who had liens on or an interest in the subject property.

[2] Governor Holcomb issued other Executive Orders that restricted travel and business operations (Executive Order 20-08) and closed State government offices to the general public (Executive Order 20-09).

> suspended for any such actions or proceedings as described above. In addition, and notwithstanding the foregoing, any applicable rule or regulation in connection therewith is hereby rescinded for any such actions or proceedings as described above for the duration of the state of emergency.
>
> 2. *No provision contained in this Executive Order shall be construed as relieving any individual of their obligations* to pay rent, to make mortgage payments, or *to comply with any other obligation(s) that an individual may have under a tenancy or mortgage*.

https://www.in.gov/gov/files/EO_20-06.pdf (emphases added); *see also Colvin v. Taylor*, 168 N.E.3d 784, 786-87 (Ind. Ct. App. 2021) (quoting Executive Order 20-06).

[6] On March 13, 2020, the Circuit and Superior Courts of Marion County filed with the Indiana Supreme Court a Petition for Relief addressing the ability of litigants and courts to comply with certain deadlines and rules of procedure. That same day, the Court issued an order pursuant to Ind. Administrative Rule 17(A)[3] that granted the petition, stating, in part:

---

[3] Admin. R. 17(A) provides, in part:

> Supreme Court Authority. Under the authority vested in the Indiana Supreme Court to provide by rule for the procedure employed in all courts of this state and the Court's inherent authority to supervise the administration of all courts of this state, the Court has the power upon petition from any trial court as set forth herein, or sua sponte, in the event of . . . wide spread disease outbreak, or other exigent circumstances requiring the closure of courts or inhibiting the ability of litigants and courts to comply with statutory deadlines and rules of procedure applicable in courts of this state, to enter such order or orders as may be appropriate to ensure the orderly and fair administration of justice. This order shall include, without limitation, those rules and procedures affecting time limits

> The Court authorizes the tolling, beginning March 16 and until April 6, 2020, of all laws, rules, and procedures setting time limits for speedy trials in criminal and juvenile proceedings, public health, and mental health matters; all judgments, support, and other orders; and in all other civil and criminal matters before the courts of Marion County. **Further, no interest shall be due or charged during this tolled period**.

In the Matter of the Petition of the Courts of Marion County for Administrative Rule 17 Emergency Relief, 20S-CB-113 (Mar. 13, 2020) (emphasis added). On March 17, Marion County courts sought additional relief asking that all relief previously granted be extended through May 1, 2020. On March 23, the Court granted the request and issued an order stating, in part:

> 3. To the extent not already provided by an order granting emergency relief under Administrative Rule 17 to a particular court, the Court hereby tolls all laws, rules, and procedures setting time limits for speedy trials in criminal and juvenile proceedings, public health, mental health, and appellate matters; all judgments, support, and other orders; statutes of limitations; and in all other civil and criminal matters before the Indiana Tax Court and all circuit, superior, and city/town courts ("trial courts") of the State of Indiana. **Further, no interest shall be due or charged during the tolled period**. Nothing in this paragraph, however, prohibits any trial court from proceeding with any matter it deems in its discretion to be essential or urgent.

---

currently imposed for speedy trials in criminal and juvenile proceedings, public health, mental health, appellate, and all other civil and criminal matters.

In the Matter of Administrative Rule 17 Emergency Relief for Indiana Trial Courts Relating to the 2019 Novel Coronavirus (COVID-19), 141 N.E.3d 389, 390 (Ind. 2020) (emphasis added).[4]

[7] On March 25, 2020, the Indiana Supreme Court's Office of Judicial Administration (the OJA) distributed to Indiana trial court judges and circuit court clerks a memorandum titled "Status of Foreclosure and Eviction proceedings with Federal Directives and State Executive Order." *Appendix* at 79-80. The OJA stated that Governor Holcomb's Executive Order 20-06 "does not relieve individuals of their obligations to pay rent, to make mortgage payments, or to comply with other obligations under a . . . mortgage." *Id*. The OJA further observed that "[t]he Governor's Executive Order obligates parties to continue paying rent/making mortgage payments and complying with other obligations under a . . . mortgage during the state of emergency. Failure to meet these obligations would be issues for future hearings on damages." *Id.* at 80. The OJA distributed four additional memoranda, on May 20, May 27, June 30, and July 31, 2020, stating in part that "[t]he Governor's Executive Order obligates parties to continue paying rent/making mortgage payments and

[4] Ultimately, the Court extended the effective date of the Emergency Orders through August 14, 2020. *See In the Matter of Administrative Rule 17 Emergency Relief for Indiana Trial Courts Relating to the 2019 Novel Coronavirus (COVID-19)*, 145 N.E.3d 787 (Ind. 2020). The moratorium on evictions and foreclosures was also extended through August 14, 2020. *See* https://www.in.gov/gov/files/Executive-Order-20-39-2ndExtension-Stage-4.5.pdf.

complying with other obligations under a . . . mortgage during the state of emergency." *Id.* at 81-91.

[8] On June 8, 2021, PNC filed a Motion for Agreed and Default Judgment and Decree of Foreclosure seeking a judgment against Couch for the balance due of principal plus interest. PNC attached to its motion, among other things, an Affidavit averring that, as of May 11, 2021, it was owed an unpaid principal balance of $21,272.60 "together with interest from November 24, 2017 to April 30, 2021, in the sum of $3,434.02, and further interest will accrue from April 30, 2021." *Id.* at 48.

[9] On June 21, 2021, the trial court granted PNC's motion and entered a Default Judgment Entry and Decree of Foreclosure (the Judgment Entry), which granted PNC a personal judgment against Couch. The Judgment Entry included an award of interest "[f]rom October 24, 2017 through and including April 30, 2021" and "further interest from May 1, 2021 to the date of judgment at the adjustable rate of 3.5%," but – based on the Emergency Orders – stated that "**[i]nterest accruing 3/16/20 - 8/14/20 shall not be included in the judgment amount**." *Id.* at 54 (emphasis in original).

[10] PNC filed a motion to correct error and memorandum in support, maintaining that the exclusion of interest accruing from March 16, 2020 through August 14, 2020 was in error. It argued:

> [T]he Indiana Supreme Court could not have intended the rule regarding interest in its [Emergency] Orders to apply to cases involving private mortgage cont[r]acts because (a) its application

> to such cases would run afoul of the Court recognized, constitutionally mandated limitation on its rule-making authority; (b) its application would violate Plaintiff's rights under the Due Process Clause in the United States Constitution and Due Course of Law Clause in the Indiana Constitution; ([c]) its enforcement is preempted under the Supremacy Clause in the United States Constitution; and ([d]) the Office of Judicial Administration would have squarely addressed the issue in its memoranda to trial courts if the Court intended its Orders to directly conflict with Governor Holcomb's Executive Order and statutes enacted by the Indiana General Assembly.

Id. at 60. PNC asked the trial court to grant its request for an award of interest from November 24, 2017 to the date of judgment, at the rate provided in the Note, "including for the period from March 16, 2020 through August 14, 2020." *Id*. The trial court summarily denied the motion to correct error. PNC now appeals.

Discussion & Decision

[11] Generally, a trial court's ruling on a motion to correct error is reviewed for an abuse of discretion. *Poiry v. City of New Haven*, 113 N.E.3d 1236, 1239 (Ind. Ct. App. 2018). However, where the issues raised in the motion are questions of law, the standard of review is de novo. *Id*. (citing *City of Indianapolis v. Hicks*, 932 N.E.2d 227, 230 (Ind. Ct. App. 2010), *trans. denied*). Here, the issue is whether the trial court erred in finding that the interest provision in the Emergency Orders applied to PNC's note and mortgage with Couch such that prejudgment interest was tolled for approximately five months. As this presents a question of law, we review the trial court's ruling de novo.

[12] PNC argues that, for the various reasons presented in its motion to correct error, our Supreme Court "could not have intended [the] sentence regarding interest in [the Emergency Orders] to apply to cases involving private mortgage contracts." *Appellant's Brief* at 11. On the basis discussed below, we agree.

[13] Ind. Code § 34-8-1-3 provides that our Supreme Court "has authority to adopt, amend, and rescind rules of court that govern and control *practice and procedure* in all the courts of Indiana." (Emphasis added). The Court's rulemaking authority includes authority to act on an emergency basis. *See In re Indiana Supreme Court to Engage in Emergency Rulemaking to Protect CARES Act Stimulus Payments From Attachment or Garnishment From Creditors*, 142 N.E.3d 907, 908 (Ind. 2020). It is well settled, however, that the Court, through its rulemaking authority, "cannot change a rule of substantive law nor could the General Assembly vest [it] with such legislative power." *Square D. Co. v. O'Neal*, 72 N.E.2d 654, 655 (Ind. 1947); *see also Denman v. St. Vincent Med. Grp., Inc.*, 176 N.E.3d 480, 503-04 (Ind. Ct. App. 2021), *trans. denied*. This limit on the Court's authority is grounded in Article 3, §1 of the Indiana Constitution, which provides that "[t]he powers of the Government are divided into three separate departments; the Legislative, the Executive . . ., and the Judicial: and no person, charged with official duties under one of these departments, shall exercise any of the functions of another, except as in this constitution expressly provided."

[14] At the onset of the COVID-19 pandemic, the Court – using its authority "to provide by rule *for the procedure employed in all courts of this state*" – issued the

Emergency Orders to address concerns that the pandemic was inhibiting the ability of litigants and courts "to comply with statutory deadlines and rules of procedure." Admin. R. 17(A) (emphasis added). PNC argues that the Court "could not have intended the rule regarding interest in [the Emergency Orders] to apply to cases involving the enforcement of either negotiable or non-negotiable instruments, given that its application [] would directly conflict with several Indiana statutes[.]" *Appellant's Brief* at 14. PNC refers us to several such relevant statutes.

[15] Ind. Code §§ 24-4.6-1-102 and -103 establish a default interest rate for courts to use in calculating prejudgment interest when parties to a contract have not agreed to an interest rate. More specifically, I.C. § 24-4.6-1-102 addresses the interest rate on loans in the absence of agreement and provides, "When the parties do not agree on the rate, interest on loans or forbearances of money, goods or things in action shall be at the rate of eight percent per annum until payment of the judgment." *See Thor Elec., Inc. v. Oberle & Assoc., Inc.*, 741 N.E.2d 373, 379 (Ind. Ct. App. 2000) (recognizing that where the contract does not provide the interest rate to be applied in calculating prejudgment interest, the court looks to statutory authority to determine the applicable interest rate for prejudgment interest on a contract claim). I.C. § 24-4.6-1-103 addresses "date of accrual" and provides that interest at eight percent per annum shall be allowed "[f]rom the date of settlement on money due on any instrument in writing which does not specify a rate of interest." When the parties have contractually agreed to a rate of interest, that rate is used to compute the

amount of prejudgment interest. *Fackler v. Powell*, 923 N.E.2d 973, 977 (Ind. Ct. App. 2010).

[16] Section 3-112(a)(2) of the Uniform Commercial Code (UCC), codified at Ind. Code § 26-1-3.1-112(a)(2), addresses interest in negotiable instruments and provides, in part, that "[u]nless otherwise provided in the instrument[,] . . . interest on an interest-bearing instrument is payable from the date of the instrument." It further states:

> Interest may be stated in an instrument as a fixed or variable amount of money or it may be expressed as a fixed or variable rate or rates. The amount or rate of interest may be stated or described in the instrument in any manner and may require reference to information not contained in the instrument. If an instrument provides for interest, but the amount of interest payable cannot be ascertained from the description, interest is payable at the judgment rate in effect at the place of payment of the instrument and at the time interest first accrues.

I.C. § 26-1-3.1-112(b). Another UCC provision, Section 3-412, codified at I.C. § 26-1-3.1-412, addresses the obligation of the issuer of a note – that is, the borrower – and provides, in part, that "[t]he issuer of a note . . . is obligated to pay the instrument . . . according to its terms" and "[t]he obligation is owed to a person entitled to enforce the instrument[.]"

[17] The aforementioned statutes are substantive rather than procedural, as they "create[], define[], and regulate[] rights" rather than "prescribe[] the method of enforcing a right or obtaining redress for invasion of that right." *Morrison v. Vasquez*, 124 N.E.3d 1217, 1222 (Ind. 2019); *see also Denman*, 176 N.E.3d at 504

(finding that post-judgment interest statute is substantive rather than procedural). Further, our courts have confirmed that a party's right to prejudgment interest according to a contract is not discretionary. *See Fackler*, 923 N.E.2d at 979 ("[A]n award of prejudgment interest is generally not considered a matter of discretion.").

[18] This court's recent decision in *Denman* is instructive to our analysis. There, we determined that the Emergency Orders did not toll or suspend post-judgment interest provided by I.C. § 24-4.6-1-101.[5] The *Denman* court acknowledged "the potential breadth of the term 'interest'" in the Emergency Orders' directive that "no interest shall be due or charged during the tolled period" but explained that our Supreme Court could not have intended to include statutory post-judgment interest within that provision. 176 N.E.3d at 502. Among other reasons, we observed that post-judgment interest was "a creature of statute, born of legislative authority," which was substantive rather than procedural. *Id*. at 503. Further, post-judgment interest under the statute was non-discretionary, as prevailing plaintiffs were automatically entitled to it. *See id*. at 504 (noting that "post-judgment interest – being automatic and continuous – cannot be tolled").

---

[5] Post-judgment interest on a money judgment is automatic under I.C. § 24-4.6-1-101, which states:

> Except as otherwise provided by statute, interest on judgments for money whenever rendered shall be from the date of the return of the verdict or finding of the court until satisfaction at:
>
> (1) the rate agreed upon in the original contract sued upon, which shall not exceed an annual rate of eight percent (8%) even though a higher rate of interest may properly have been charged according to the contract prior to judgment; or
>
> (2) an annual rate of eight percent (8%) if there was no contract by the parties.

Thus, we observed that to find that the Emergency Orders applied to post-judgment interest would give them "effect beyond the power constitutionally and statutorily allocated to the courts." *Id*.

[19] Lastly, the *Denman* court noted that excluding post-judgment interest from the Emergency Orders did not affect the emergency purpose of the Orders – that being to address the fact that COVID-19 was impeding litigants' and courts' ability to comply with statutory deadlines and rules of procedure – because "[p]ost-judgment interest . . . arises just as automatically during a pandemic as it does any other time [] and will continue to do so until the legislature decides otherwise." *Id*. at 505.

[20] We find the same reasoning applies here. That is, because our Supreme Court could not, by rule, change substantive law, the Emergency Orders' instruction – that interest would not "be charged or due during the tolled period" – cannot be construed to suspend the automatic accrual of non-discretionary interest provided by the terms of a private loan instrument and as permitted by statute.[6] Our conclusion is consistent "with our practice of presuming that each branch of our government acts within their constitutionally prescribed boundaries." *Denman*, 176 N.E.3d at 504.

---

[6] Because we find this basis dispositive, we do not reach PNC's other arguments for reversal, including due process and preemption claims. This is in line with the doctrine of judicial restraint, under which we "must refrain from deciding constitutional questions unless no non-constitutional grounds present themselves for resolving the case under consideration." *Jones v. Jones*, 832 N.E.2d 1057, 1059 (Ind. Ct. App. 2005).

[21] We therefore reverse the trial court's order denying PNC's Motion to Correct Error and instruct the trial court on remand to award PNC interest from November 24, 2017 to the date of the judgment at the rate specified in the Note, including the period of March 16, 2020 through August 14, 2020.

[22] Judgment reversed and remanded.

Bailey, J. and Mathias, J., concur.