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IN THE
COURT OF APPEALS OF INDIANA

Calvin Hair,

Appellant-Plaintiff,

v.

Dennis Goldsberry, Linda Goldsberry, and JPMorgan Chase Bank, N.A.,

Appellees-Defendants.

February 2, 2023

Court of Appeals Case No. 22A-TP-2122

Appeal from the Marion Superior Court

The Honorable James A. Joven, Judge

Trial Court Case No. 49D13-2001-TP-4549

Opinion by Senior Judge Najam
Judges Bailey and Brown concur.

Najam, Senior Judge.

Statement of the Case

[1] Calvin Hair ("Hair") appeals from the trial court's denial of his motion for pre-judgment interest and statutory post-judgment interest on his settlement agreement with Dennis L. Goldsberry ("Dennis"), Linda S. Goldsberry ("Linda") (collectively "the Goldsberrys"), and JP Morgan Chase Bank ("Chase"). The trial court held that Hair was not entitled to an award of interest based on the settlement agreement. We agree and affirm.

Issue

[2] In this appeal we consider whether, as Hair asserts, the trial court's original order to execute a settlement agreement providing for the payment of money in a specific dollar amount was, in effect, a money judgment subject to interest. We hold that an order to comply with a settlement agreement which provides for the payment of money is an order for specific performance and not *per se* a money judgment subject to interest, unless the settlement agreement includes a stipulation for entry of a money judgment or otherwise provides for the payment of interest.

Facts and Procedural History

[3] In a previous appeal, Hair sued to foreclose on two judgment liens against residential real estate naming Dennis, Linda, and Chase as defendants. Hair named the Goldsberrys as judgment debtors and joined Chase as a party to answer as to any interest it may have had or asserted by reason of Linda's mortgage to Chase on the real estate. *See Hair v. Goldsberry*, No. 21A-TP-1515,

2021 WL 5350930 (Ind. Ct. App. Nov. 17, 2021), *trans. denied* ("*Hair I*"). While the litigation was pending the parties engaged in settlement negotiations and then disputed whether they had reached a settlement. The trial court held that the parties had agreed to settle their dispute for the sum of $18,000 payable to Hair in consideration for Hair's release of his judgment liens and ordered that the settlement agreement be enforced. Hair then appealed.

[4] In a memorandum decision deciding *Hair I*, we affirmed the trial court's judgment that the parties had entered into an enforceable settlement agreement as of December 2, 2020. *Id*. Next, focusing on the extent to which the court's order was in harmony with the terms of the agreement, we remanded with instructions that the trial court amend and reissue its order, excluding other release provisions that the parties had not agreed upon. *Id.* at *5. In this opinion we cite that memorandum decision for the law of the case. *See* Ind. Appellate Rule 65(D).

[5] On remand, Hair moved for a supplemental order that included both pre-judgment and post-judgment interest from December 2, 2020, the date of the settlement agreement. The Goldsberrys and Chase filed a joint motion to enforce the settlement agreement. The trial court granted the joint motion, ordered the defendants to pay Hair the settlement amount of $18,000 and ordered Hair to release the two judgment liens he held against the Goldsberrys, but did not award either the pre-judgment interest or post-judgment statutory interest Hair claimed was due. Appellant's App. Vol. 2, p. 20. In its August 5,

2022 Order, the trial court succinctly explained its ruling on Hair's Motion to Tax Interest as follows:

> The Court's Order in this matter is to enforce a settlement agreement the parties had previously reached. That agreement did not provide for any payments of interest whatsoever.

Id. at 16. That same month the Goldsberrys and Chase tendered the settlement amount to Hair. Appellee's App. Vol. 2 pp. 3-6,13-14.[1] Hair now appeals from the court's orders on remand.

Discussion and Decision

[6] In 2010 and 2012 Hair had obtained money judgments in the Marion Circuit Court and the United States Bankruptcy Court for the Southern District of Indiana. *Id*. at 19. *Hair I* began with a complaint to foreclose on Hair's judgment liens and ended with a dispute over whether the parties had agreed to settle the litigation. Thus, at the end of the day, *Hair I* was a contract dispute. The trial court was not asked to adjudicate the merits of competing claims

[1] After our opinion in *Hair I*, in his brief and memorandum to the trial court, Hair alleged that the "underlying dispute" with the Goldsberrys and Chase "turned on" their "refusal to pay" the settlement amount "promptly." Appellant's Amended Br. pp. 5-6, 8, 10-11, 15, 17, 19, 21; Appellant's App. Vol. 2, p. 127. This opinion obviates the promptness issue because (1) we have determined that the settlement agreement was not a money judgment subject to statutory interest; (2) the agreement did not otherwise provide for the payment of interest; and (3) the Goldsberrys and Chase did, in fact, comply with the court's order on remand that they promptly pay the settlement amount. Hair's reliance on Indiana Trial Rule 67(A) to support his claim of untimely payment is also misplaced in that the Rule contemplates the permissive, not mandatory, deposit of a sum of money with the clerk prior to judgment unless payment to the clerk is directed by the court. And, after the trial court's May 11, 2021 order enforcing the settlement agreement, the contract dispute remained *in fieri* and unresolved during Hair's first appeal, a delay not attributable to the Goldsberrys or Chase.

arising from Hair's judgment liens. Rather, the trial court was asked to adjudicate whether the parties had contracted to settle their dispute. When the court concluded that the parties had reached a settlement agreement, which we affirmed on appeal, Hair's judgment liens, including accrued interest, were merged, incorporated, and extinguished in the agreement, which was neither entered as a money judgment nor otherwise provided for the payment of any interest. The specific amount of money to be paid was arrived at by the parties, not the trial court.

[7] We explained that, "A settlement agreement is a compromise, the purpose of which is to end a claim or dispute and avoid, forestall, or terminate litigation." *Hair*, 2021 WL 5350930, at *3. We also noted that Indiana law strongly favors settlement agreements and that settlement agreements are governed by general principles of contract law. *Id.* And, like all settlement agreements, the settlement agreement in this case was reached to resolve disputed claims, including whether Chase's mortgage had priority over Hair's judgment liens. *See* Appellant's App. Vol. 2, p. 78.

[8] On December 2, 2020, Hair's counsel had emailed Chase's counsel that Hair "will accept $18,000 in satisfaction and accord" of the judgment liens. *Hair*, 2021 WL 5350930, at *4. An accord and satisfaction is an express contract by which the parties agree to settle a dispute or cause of action by substituting an agreement for satisfaction of the dispute or cause of action on terms other than those originally contemplated. *Mominee v. King*, 629 N.E.2d 1280, 1282 (Ind. Ct. App. 1994). Here, Hair filed a complaint to foreclose on his judgment liens

with interest and then reached an accord with the Goldsberrys and Chase on other terms, namely, to accept payment of a sum certain and to release the liens in satisfaction of his cause of action. *See* Appellant's App. Vol. 2, pp. 29-31 (Complaint to Foreclose Judgment Lien); *id.* at 20 (August 5, 2022 Order Enforcing Settlement Agreement).

[9] It is not uncommon for parties to enter into a stipulation for the entry of judgment. But, here, the parties did something different. When the parties reached a settlement, they knew — and we presume they took into account — that interest had accrued on the judgment lien of $7,107 entered in 2010 and the judgment lien of $3,225 entered in 2012. The order, which concluded that the parties had settled their dispute and enforced their settlement agreement, merely acknowledged and ratified the agreement and did not alter its terms.

[10] In his motion for pre-judgment and post-judgment interest, and now on appeal, Hair relies on *Hilliard v. Jacobs,* 916 N.E.2d 689 (Ind. Ct. App. 2009), *trans. denied*. In every case we considered in *Hilliard*, we looked to the nature of the underlying transaction to determine whether a particular court order was the legal equivalent of a money judgment. And we concluded that, "regardless of the form of the judgment, i.e. a civil money judgment or a mandate order . . . the result is the same—one party is required to pay a specific amount of money to the other party" subject to statutory interest under Indiana Code section 24-4.6-1-101. *Id.* at 694. (citing *Ind. Revenue Bd. v. State ex rel. Bd. of Comm'rs of Hendricks Cnty*, 270 Ind. 365, 369, 385 N.E.2d 1131, 1134 (1979). But in *Hilliard*

we held that the order in question, an order for the delivery of life insurance policies, did not constitute a money judgment. *Id.*

[11] Citing *Hilliard*, Hair asserts categorically that "*Any* order that requires the payment of a sum of money is a 'money judgment.'" Appellant's App. Vol. 2, pp. 132-33; Appellant's Amended Br. p. 16 (Motion for Supplemental Order Taxing Interest at Foot of Judgment) (emphasis added). He contends that the order enforcing the settlement agreement "requires" the payment of a sum of money and, thus, that the order is a "judgment for money." But this "If A, then B" logic is flawed because the "If A" premise assumes incorrectly that the order requires the payment of a sum of money when it is the settlement agreement – not the order – that "requires" the payment. Here, the court did not find and adjudicate that one party owed money to the other party and did not award a money judgment for one party and against the other party. The court ordered that the contract between the parties, the settlement agreement, an accord and satisfaction to resolve disputed claims, be enforced. This was not a money judgment but a decree in equity for specific performance.

[12] In *Hilliard*, we discussed our opinion in *Paxton v. Paxton*, 709 N.E.2d 31, 32 (Ind. Ct. App. 199), *trans. denied*, which reached the same result as in *Hilliard*. In *Paxton* a marital dissolution decree ordered the wife to pay the husband a portion of her IRA account. We held that the order was an order for transfer of property, not a "money judgment." *Id.* at 33. We explained that, "By its terms, the statute [IC 24-4.6-1-101] applies only to judgments for money" and that "[a] money judgment '*adjudges the payment of a sum of money, as distinguished from one*

directing an act be done or property to be restored or transferred.'" *Id.* (quoting BLACK'S LAW DICTIONARY 844 (6th ed.1990)) (emphasis added). In the instant case, just as we held in *Paxton* and *Hilliard*, the trial court did not "adjudge" and award the payment of a sum of money.

[13] Here, and in *Hair I*, the trial court and we have addressed a contract dispute, have found as a matter of law that the parties reached a settlement agreement, and have directed that the agreement be executed according to its terms. *See* Appellant's App. Vol. 2, p. 16; *Hair*, 2021 WL 5350930, at *5. The court explicitly ordered "the parties' mutual conformance with the following essential terms of the agreement," namely, that the Goldsberrys and Chase would pay Hair "the settlement amount of $18,000" and that Hair would release the judgment liens. Appellant's App. Vol. 2, p. 20. This was not a money judgment but an order that an act be done. *See Paxton*, 709 N.E.2d at 33.

[14] We conclude, again, that the trial court properly enforced the settlement agreement, and we hold both that the settlement agreement was not a judgment for money and that the trial court's entry stating that the settlement agreement did not provide for the payment of interest was correct. Thus, we affirm.

[15] Affirmed.

Bailey, J., and Brown, J., concur.