STATE OF MICHIGAN

COURT OF APPEALS

CAROL HOFFMAN, Personal Representative of the ESTATE OF FRANK DANIEL BALDWIN, Deceased,

Plaintiff-Appellee,

v

SPARTEN STORES, INC.,

Defendant-Appellant.

UNPUBLISHED
August 9, 1996

No. 173386
LC No. 86-628012-NI

Before: Griffin, P.J., and Smolenski and L.P. Borrello,* JJ.

PER CURIAM.

Defendant appeals as of right a February 1994 order that entered a $200,000 judgment against defendant and in favor of plaintiff, and awarded interest on that judgment and offer of judgment sanctions. We affirm in part, reverse in part, and remand.

Defendant first argues that the trial court erred in refusing to deduct plaintiff's prior $322,000 settlement with other alleged tortfeasors from the total amount of damages found by the jury. We agree.

In *Rittenhouse v Erhart*, 424 Mich 166, 189; 380 NW2d 440 (1985), our Supreme Court held that where a settlement is reached before or during trial with one or more tortfeasors and a verdict is subsequently obtained against the remaining tortfeasors that must be reduced both by the settlement amount and applying a comparative negligence factor, a court should first subtract the settlement amount and then apply the comparative negligence factor.. The rationale for this holding was stated as follows:

> [T]here is no indication that the juries in these cases determined the plaintiffs' percentages of negligence by comparing their actions to all the possible tortfeasors. Rather, the juries weighed the responsibility of the plaintiffs as to the defendants at trial.

* * *

> We thus believe that the focus of trial, such as the ones in the cases at hand, will normally be upon only the conduct of the trial parties. Accordingly, the percentages of comparative negligence returned by these juries represent findings applicable only to the trial parties. [*Id*. at 178, 181.]

In this case, plaintiff settled with all tortfeasors but defendant before trial. At trial, the jury returned a verdict of $1 million in plaintiff's favor and found that plaintiff's decedent was eighty percent negligent. Pursuant to information obtained by plaintiff's attorney from the jury following their discharge, the trial court reconvened and asked the jury two special questions, to which the jury indicated that the eighty percent comparative negligence figure included the negligence of one of the settling tortfeasors and that plaintiff's decedent was only twenty-seven percent negligent. Judgment was entered in favor of plaintiff for $1 million reduced by the twenty-seven percent comparative negligence figure.

Thus, it appears that in this case there is no question that the jury considered the fault of a non-party tortfeasor in reaching its verdict. Accordingly, as contended by plaintiff, this case is factually distinguishable from *Rittenhouse*. However, as the parties are well aware, this Court reversed and remanded for reinstatement of the jury's original verdict in this case on the ground that the trial court had erred in reconvening the jury where the claimed mistake did not involve a clerical error or mistransmission of the verdict, but rather involved the thought processes and inner workings of the jury. *Hoffman v Spartan Stores, Inc*, 197 Mich App 289, 293-295; 494 NW2d 811 (1992). The thought processes and inner workings of the jury are beyond challenge. *Id*. at 295.

Again, had the trial court not inquired into the jury's verdict the formula enunciated in *Rittenhouse* would have unquestionably applied on remand and the setoff would have been deducted. Because this Court has already held in this case that the interest of protecting verdicts from postdischarge inquires into the thought processes of the jury outweighs the interests of fairness, *Hoffman, supra*, we conclude that the trial court erred in failing to deduct plaintiff's prior settlement from the total amount of damages found by the jury. In the previous appeal of this case, this Court resolved not to reward counsel's postdischarge inquiries into the thought processes of the jury. *Id*. at 291, 295. Utilizing the insight gained by that inquiry to create an exception to the setoff rule enunciated in *Rittenhouse* would likewise have the effect of rewarding that inquiry. We decline to do so. Accordingly, we reverse the trial court's entry of a judgment in the amount of $200,000 and remand for the entry of a judgment in the amount of $135,600, which reflects the $1 million in total damages found by the jury, less the $322,000 setoff as a result of plaintiff's previous settlement, less the eighty-percent comparative negligence of plaintiff's decedent.

Next, defendant argues that the trial court erred on remand in reinstating its prior award of offer of judgment sanctions in plaintiff's favor. Specifically, defendant first argues that the law of the case doctrine precluded the imposition of offer of judgment sanctions on remand where this Court vacated the trial court's previous order concerning the such sanctions.. See *Hoffman, supra* at 295. We disagree. Although this Court previously vacated the trial court's

award of offer of judgment sanctions, this ruling was premised on the trial court's entry of a judgment in which the jury's verdict was erroneously determined to include a comparative fault figure of only twenty-seven percent.. *Id.* at 292, 295. However, on remand and pursuant to this Court's previous opinion, the trial court entered a judgment in which the jury's verdict included a comparative fault figure of eighty percent. The trial court's award of offer of judgment sanctions in this factual context was neither considered by this Court previously nor inconsistent with this Court's order of remand. *People v Fisher*, 449 Mich 441, 446-447; 537 NW2d 577 (1995); *Brucker v McKinlay Transport, Inc*, 212 Mich App 334, 338; 537 NW2d 474 (1995). Thus, the trial court's imposition of offer of judgment sanctions in plaintiff's favor on remand did not violate the law of the case doctrine. *Fisher, supra; Brucker, supra.*

Defendant also argues that offer of judgment sanctions in favor of plaintiff are not appropriate where "the judgment in this case is not more favorable to the plaintiff than the average offer of judgment." We disagree. In this case, the "verdict" was $200,000, i.e., $1 million total damages reduced by plaintiff's decedent's eighty percent comparative negligence, excluding costs and interest. MCR 2.405(A)(4). This "verdict" plus interest under § 6013, as calculated from September 30, 1986 (the date plaintiff filed her complaint) to December 1, 1988 (the date of plaintiff's offer), yields an "adjusted verdict" in excess of $250,000. MCR 2.405(A)(5). Defendant contends that the "adjusted verdict" also includes a setoff for plaintiff's previous $322,000 settlement. However, an "adjusted verdict" does not include deductions of any setoff paid by another party to the lawsuit. *Fischer v Chez Ami Lanes*, 212 Mich App 19, 21; 536 NW2d 840 (1995). The parties agree that the "average offer" was $216,250. See MCR 2.405(A)(3). Thus, the trial court properly awarded offer of judgment sanctions in plaintiff's favor where the "adjusted verdict" was more favorable to plaintiff than the "average offer." MCR 2.405(D)(1).

Finally, defendant argues that the trial court erred in ruling that plaintiff is entitled to post-judgment interest during the periods of time that this has been case on appeal in docket numbers 121235 and 173386. We disagree.

As relevant to this case, MCL 600.6013(4); MSA 27A.6013(4) provides that interest "shall be calculated from the date of filing the complaint to the date of satisfaction of the judgment . . . ." Section 6013 is a remedial statute and is to be construed liberally in favor of a plaintiff. *Southfield Western, Inc v City of Southfield*, 206 Mich App 334, 339; 520 NW2d 721 (1994). The allowance of interest under § 6013 is mandatory and is intended to compensate the prevailing party for the delay in its receiving money damages. *Dep't of Treasury v Central Wayne Co Sanitation Authority*, 186 Mich App 58, 61; 463 NW2d 120 (1990). However, this Court has held that a court may disallow interest for periods of delay where the delay was not the fault of, or caused by, the debtor. *Eley v Turner*, 193 Mich App 244, 247; 483 NW2d 421 (1992). Our review of a trial court's award of interest pursuant to § 6013 is de novo. *Beach v State Farm Mut Automobile Ins Co*, 216 Mich App 612, 623-624; ___ NW2d ___ (1996).

In this case, defendant contends that the delay in payment was "precipitated entirely by the plaintiff's specious arguments which necessitated both this appeal and the prior appeal." However,. we decline to find plaintiff's arguments, which were successful in the trial court, so

"specious" that this Court should disallow the accrual of interest during the post-judgment appeal periods in this case. Although defendant had every right to appeal, the delay in payment was caused by defendant. We conclude that the trial court did not err in ruling that plaintiff was entitled to post-judgment interest. *Beach, supra*. To hold otherwise would allow defendant to retain and use money owed, interest free and contrary to the intent of § 6013. *Westchester Fire Ins Co v Safeco Ins* Co, 203 Mich App 663, 672-673; 513 NW2d 212 (1994); *Coughlin v Dean*, 174 Mich App 346; 354; 435 NW2d 792 (1989). We also note that defendant could have paid the judgment into the court, thereby satisfying the judgment and precluding any further accrual of interest during the appeal process. MCR 2.620; *Coughlin, supra*.

In summary, we reverse the trial court's order to the extent that it entered a judgment for $200,000 and remand for the entry of a judgment in the amount of $135,600. We affirm the trial court's award of interest for the periods of time this case has been on appeal. We further affirm the trial court's award of offer of judgment sanctions. We do not retain jurisdiction.

/s/ Richard Allen Griffin
/s/ Michael R. Smolenski
/s/ Leopold P. Borrello