IN THE SUPREME COURT OF OHIO

LEONARD MAYNARD	:	Case No.: 2007-1069
	:	
Plaintiff-Appellee,	:	On Appeal from the Marion County Court of Appeals, Third Appellate District
v.	:	
EATON CORPORATION	:	Court of Appeals Case No.: 9-06-33
Defendant-Appellant.	:	

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF FACTS 1

ARGUMENT 2

Proposition of Law:
The Judgment At Bar Is Subject To The Former O.R.C. § 1343.03, Post-Judgment Interest At Ten Percent Interest Annum, Not O.R.C. § 1343.03 As Amended June 4, 2004 Because Final Judgment Was Entered Prior To June 4, 2004 4

A. The Plain Language Of O.R.C. § 1343.03, Former And Amended, Require Application Of The Former O.R.C. § 1343.03 Post-Judgment Interest Rate Of Ten Percent (10%) Annum 4

B. The Case At Bar Was Not Pending On June 4, 2004 6

C. Application Of Amended O.R.C. § 1343.03 Is Unconstitutionally Retrospective..... 9

CONCLUSION 12

CERTIFICATE OF SERVICE 14

TABLE OF AUTHORITIES

Cases:

Bertolini v. Indus. Fabricators, Inc. v. NCR Corp. (Mar. 8, 1984), 10th Dist. No. 83AP-13, 1984 Ohio App. LEXIS 8703 6

Bertolini v. Whitehall City Sch. Dist. (2003), 10th Dist. No. 02AP-839, 2003 Ohio 2578 6

Champion Contr. & Constr. Co. v. Valley City Post No. 5563 (2004), 2004 Ohio App. LEXIS 3032, 2004 Ohio 3406 8

Chef Italiano Corp. v. Kent State Univ. (1989), 44 Ohio St.3d 86, 88, 541 N.E.2d 64 8

City of Hilliard v. First Indus., L.P. (2005), 165 Ohio App. 3d 335, 2005 Ohio 6469 822 N.E.2d 441 ..... 2, 9

Clark v. Clark, 10 N. H. R. 380 10

Dow v. Norris, 4 N. H. R. 16 10

Gen. Elec. Supply Co. v. Warden Elec., Inc. (1988), 38 Ohio St.3d 378, 528 N.E.2d 195 8

Greenlaw v. Greenlaw, 12 N. H. R. 200 10

Hamilton Cty. Bd. of Mental Retardation & Developmental Disabilities v. Professionals Guild of Ohio 46 Ohio St.3d 147, 153, 545 N.E.2d 1260 8

Hartman v. Duffey (2002), 95 Ohio St. 3d 456, 2002 Ohio 2486, 768 N.E.2d 1170 6

Hausser & Taylor LLP v. Accelerated Sys. Integration, Inc. (2006), 2006 Ohio 1582, 2006 Ohio App. LEXIS 1482 2

Hogg v. Zanesville Canal & Mfg. Co. (1832), 5 Ohio 410,424, 1832 WL 26 6

Judy v. Ohio Bur. of Motor Vehicles (2004), 2004 Ohio 5673; 2004 Ohio App. LEXIS 5117 ..... 4, 8

Lake Hosp. Sys., Inc. v. Ohio Ins. Guar. Assn. (1994), 69 Ohio St.3d 521,

634 N.E.2d 611 ..... 2, 4, 5

Landis v. Grange Mut. Ins. Co. (1998), 82 Ohio St.3d 339, 695 N.E.2d 1140 6

Miller v. First Intl Fid. & Trust Bldg, ltd, et al. (2007), 113 Ohio St. 3d 474, 2007 Ohio 2457; 866 N.E.2d 1059 7

Millstone Dev., Ltd. v. Berry (2004), 10th Dist. No. 03AP-531, 2004 Ohio 1215 5

Musisca v. Massillon Community Hosp. (1994), 69 Ohio St.3d 673, 676, 635 N.E.2d 358 5

North Olmsted v. Eliza Jennings, Inc. (1995), 101 Ohio App. 3d 652, 656 N.E.2d 389 6

Ohio v. Young (2004), 2004 Ohio 4730, 2004 Ohio App. LEXIS 4295 9

Rairden v. Holden (1864), 15 Ohio St. 207, 1864 Ohio LEXIS 121 10

Shesler v. Consolidated Rail Corp. (2004), 2004 Ohio 3110, 2004 Ohio App LEXIS 2760 3

State ex rel. Downs v. Panioto, 107 Ohio St.3d 347, 2006 Ohio 8, 839 N.E.2d 911, P8 8

State ex rel. Herman v. Klopfleisch (1995), 72 Ohio St.3d 581, 584, 651 N.E.2d 995 5

State, ex rel. Holdridge v. Indus. Comm. (1967), 11 Ohio St. 2d 175, 228 N.E.2d 621 10

State ex rel. Slaughter v. Indus. Comm. (1937), 132 Ohio St. 537, 542, 9 N.E. 2d 505 11

State v. Consilio (2007), 114 Ohio St. 3d 295, 299, 871 N.E. 2d 1167 ..... 11, 12

State v. Cook (1998), 83 Ohio St.3d 404, 410, 1998 Ohio 291, 700 N.E.2d 570 9

State v. LaSalle (2002), 96 Ohio St. 3d 178, 772 N.E. 2d 1172 ..... 10, 11

State v. Williams (2004), 103 Ohio St.3d 112, 814 N.E.2d 818 9

State v. Williams (2000), 88 Ohio 3d 513, 532, 728 N.E. 2d 342 12

Summa Health Sys. v. Viningre (2000), 140 Ohio App. 3d 780, 793,

749 N.E.2d 344 6

Viock v. Stowe-Woodward Company (1989), 59 Ohio App. 3d 3, 6; 569 N.E.2d 1070 ..... 3, 9

Van Fossen v. Babcock & Wilcox Co. (1988), 36 Ohio St. 3d 100, 105, 522 N.E. 2d 489 ..... 10, 11

Statutes:

O.R.C. § 1.48 ..... 9, 10

O.R.C. § 319.19 3

O.R.C. § 1343.01 2

O.R.C. § 1343.02 2

O.R.C. § 1343.03 ..... 1, 2, 3, 4, 5, 6, 7, 9, 10

O.R.C. § 1343.03, amended June 4, 2004 ..... 1, 8, 9, 11, 13

O.R.C. § 1901.313 3

O.R.C. §1907.202 3

O.R.C. § 2303.25 3

O.R.C. § 2325.18 3

O.R.C. § 2505.02 ..... 7, 8

O.R.C. § 5703.47 ..... 3, 12

Other Authorities:

H.B. 212 ..... 3, 7, 11, 12

Black's Law Dictionary 7

Article II of the Ohio Constitution, Section 28 10

STATEMENT OF FACTS

This case arises on the Complaint filed by the Appellee, Leonard Maynard, in Marion County Common Pleas Court alleging an employer intentional tort against the Appellee, Eaton Corporation. On March 10, 2003, a second jury trial commenced. The jury made a finding in favor of the Appellee and awarded damages in the full amount of $1,150,000.00. Judgment was entered on April 3, 2003. (Appellant's Supp. 1-2).

Following the exhaustion of the Appellant's appeals on the substantive merits of the case, Appellant paid the underlying damages and post judgment interest in the amount of $1,315,426.40 on January 27, 2005. (Appellant's Supp. 3-5). This amount was expressly characterized as a partial-satisfaction of judgment, because the parties disputed the amount of post-judgment interest to be paid in light of the amendment to O.R.C. 1343.03 on June 4, 2004. (Appellant's Supp. 3-5). At the time of Appellant's Notice of Appeal, all issues were decided on the merits by the jury and trial court.

During the period that Appellant was appealing the merits of the jury verdict, the Ohio Legislature amended Ohio Revised Code Section 1343.03. (Appellant's Appx. 1). This amendment was effective June 2, 2004. Regarding post-judgment interest, the amended statute essentially changed the interest rate calculation from a flat ten percent per annum rate (in effect on April 3, 2003 – the date the judgment in the case at bar was rendered) to a variable rate tied to the federal short-term rate. (See Appellant's Appx. 1). Appellant – in making the payment on January 27, 2005 – calculated the interest rate at 10 % per annum up to the date of amendment of O.R.C. 1343.03, and then applied the variable rates thereafter for the periods of 2004 and 2005.

On June 28, 2006, after receiving an unfavorable decision on the issues of attorney's fees, pre-judgment interest, and the proper amount of post-judgment interest, the Appellee appealed those issues. On April 23, 2007, the Third District Court of Appeals sustained the Appellee's claims with regard to the issue of attorney's fees and post-judgment interest – specifically that the 10% per annum rate applied for the entire period of time between the date that judgment was rendered and the date that the judgment was paid. (Appellant's Appx. 8, 24). In so ruling, the Third Appellant District certified a conflict with the Tenth Appellate District case of *City of Hilliard v. First Indus., L.P. (2005), 165 Ohio App. 3d 335*; and the Eighth Appellate District case of *Hausser & Taylor LLP v. Accelerated Sys. Integration, Inc.* Cuyahoga App. No. 86547, 2006-Ohio-1582. (Appx. 31-37, 46)

Appellee contends that he is entitled to post-judgment interest on the judgment from the date that the Court entered the judgment on April 2, 2003 until the date of partial payment of the judgment by the Appellant at the rate of ten (10%) percent.

ARGUMENT

> Does the amendment to R.C. 1343.03, effective June 2, 2004, adjust the 10% rate of post-judgment interest calculated on a final judgment that was entered prior to the date of the amendment, but not paid in full and pending on appeal?

Prior to June 4, 2004, Ohio Revised Code Section 1343.03 provided that interest on a judgment for tortuous conduct accrued at the rate of ten (10%) percent annum when the money became due and payable. Amended Ohio Revised Code Section 1343.03 states:

> (A) In cases other than those provided for in sections 1343.01 and 1343.02 of the Revised Code, *when money becomes due and payable* upon any bond, bill, note, or other instrument of writing, upon any book account, upon any settlement between parties, upon all verbal

> contracts entered into, and upon all judgments, decrees, and orders of any judicial tribunal for the payment of money arising out of tortious conduct or a contract or other transaction, the creditor is entitled to interest at the rate per annum determined pursuant to section 5703.47 of the Revised Code, unless a written contract provides a different rate of interest in relation to the money that becomes due and payable, in which case the creditor is entitled to interest at the rate provided in that contract. Notification of the interest rate per annum shall be provided pursuant to sections 319.19, 1901.313 [1901.31.3], 1907.202 [1907.20.2], 2303.25, and 5703.47 of the Revised Code.
>
> (B) Except as provided in divisions (C) and (D) of this section and subject to section 2325.18 of the Revised Code, interest on a judgment, decree, or order for the payment of money rendered in a civil action based on tortious conduct or a contract or other transaction, including, but not limited to a civil action based on tortious conduct or a contract or other transaction that has been settled by agreement of the parties, shall be *computed from the date the judgment, decree, or order is rendered to the date on which the money is paid and shall be at the rate determined pursuant to section 5703.47 of the Revised Code that is in effect on the date the judgment, decree, or order is rendered.* That rate shall remain in effect until the judgment, decree, or order is satisfied. (Emphasis added)

Both the previous and the amended versions of O.R.C. § 1343.03 bestow the right to post-judgment interest upon the prevailing party at the time that judgment is entered by the trial court. *Viock v. Stowe-Woodward Company* (1989), 59 Ohio App. 3d 3; 569 N.E.2d 1070. Appellant concedes this point citing *Shesler v. Consolidated Rail Corp.* (2004), 2004 Ohio 3110, 2004 Ohio App LEXIS 2760 (a judgment is "rendered" and post-judgment interest begins to accrue on the date judgment is entered by a court, not on the date the jury returns its verdict), in its previous memorandum disputing the amount of post-judgment interest due. (Supp. 13-23)

In support of its contention that this case was pending on June 4, 2004, Appellant refers Section 3 of H.B. 212 which states:

> The interest rate provided for in division (a) of section 1343.03 of the Revised Code, as amended by this act, applies to actions *pending* on the effective date of this act. In the calculation of interest due under section 1343.03 of the Revised Code, in actions pending on the effective date of this act, the interest rate provided for in section 1343.03 of the Revised Code prior to the amendment of that section by this act shall apply up to the effective date of this act, and the interest rate provided for in section 1343.03 of the Revised Code as amended by this act shall apply on and after that effective date. (Emphasis added)

The Legislature, however, does not provide any insight into the word "pending." In its brief, Appellant fails to address the issue of whether this case was "pending." Appellant simply and conclusively states that this case was "pending" on June 4, 2004 because the case was on appeal to the Third Appellate District. Since the trial court entered judgment on April 2, 2003 and Appellant appealed the verdict, the question becomes whether the case was actually pending on June 4, 2004.

Proposition Of Law: The Judgment At Bar Is Subject To The Former O.R.C. § 1343.03, Post-Judgment Interest At Ten Percent Interest Annum, Not O.R.C. § 1343.03 As Amended June 4, 2004 Because Final Judgment Was Entered Prior To June 4, 2004.

A. The Plain Language Of O.R.C. § 1343.03, Former And Amended, Require Application Of The Former O.R.C. § 1343.03 Post-Judgment Interest Rate Of Ten Percent (10%) Annum.

Prevailing case law establishes that courts are guided by the plain meaning doctrine. The plain meaning doctrine states that a court has no authority to bypass or modify the plain meaning of unambiguous legislative language. Legislative application must be constrained and encompassed within the confines of the plain meaning of the language. *Judy v. Ohio Bur. of Motor Vehicles* (2004), 6th Dist. No. L-01-1200, 2004 Ohio 5673, P 8. "[I]f the meaning of a statute is clear on its face, then it must be applied

as it is written." *Lake Hosp. Sys., Inc. v. Ohio Ins. Guar. Assn.* (1994), 69 Ohio St.3d 521, 524, 634 N.E.2d 611. Thus, if the statute is unambiguous and definite, there is no need for further interpretation. *State ex rel. Herman v. Klopfleisch* (1995), 72 Ohio St.3d 581, 584, 651 N.E.2d 995.

Both the previous and the June 4, 2004 versions of O.R.C. §1343.03 state that statutory rate for post-judgment interest is determined at the time that the "money becomes due and payable." O.R.C. § 1343.03(A). The wording of O.R.C. §1343.03(A) is clear. The statute is written in the conjunctive and expressly provides that a creditor is entitled to interest . . . upon all judgments, decrees, and orders of any judicial tribunal for the payment of money arising out of tortious conduct or a contract or other transaction. On the date that the trial court filed its Order directing Appellant to pay Appellee the amount awarded by the jury, the money became due and payable. O.R.C. § 1343.03(B) stated that interest is computed from the date of the judgment, decree, or order.

This interpretation is consistent with the public policy of promoting prompt payment, of fully compensating the plaintiff, of ensuring that the plaintiff receives the use of money that rightfully belongs to him, and of preventing a party from benefiting from its own delay. *Musisca v. Massillon Community Hosp.* (1994), 69 Ohio St.3d 673, 676, 635 N.E.2d 358, ("[A]ny statute awarding interest has the * * * purpose of compensating a plaintiff for the defendant's use of money which rightfully belonged to the plaintiff." (Emphasis added.)

Under the plain language of O.R.C. § 1343.03(A) and (B), to trigger the payment of interest, the judgment, decree or order from the court must be one "for the payment of money." *Millstone Dev., Ltd. v. Berry* (2004), 10th Dist. No. 03AP-531, 2004 Ohio 1215,

at P22. The statute does not require that the judgment even be final and appealable. *Summa Health Sys. v. Viningre* (2000), 140 Ohio App. 3d 780, 793, 749 N.E.2d 344.

Nevertheless, "only where a money judgment, definite in amount, is rendered will interest be included thereon by operation of law pursuant to R.C. 1343.03." *Bertolini v. Whitehall City Sch. Dist.* (2003), 10th Dist. No. 02AP-839, 2003 Ohio 2578, at P55, citing to *North Olmsted v. Eliza Jennings, Inc.* (1995), 101 Ohio App. 3d 652, 656, N.E.2d 389. Therefore, in order for post-judgment interest to be awarded, the judgment must require a payment, which is calculable and ascertainable from the evidence before the court. See *Bertolini*, supra; *Indus. Fabricators, Inc. v. NCR Corp.* (Mar. 8, 1984), 10th Dist. No. 83AP-13, 1984 Ohio App. LEXIS 8703.

The entitlement to interest, whether it be pre-judgment interest, post-judgment interest, or post-settlement interest, " 'is allowed, not only on account of the loss which a creditor may be supposed to have sustained by being deprived of the use of his money, but on account of the gain being made from its use by the debtor.' " *Landis v. Grange Mut. Ins. Co.* (1998), 82 Ohio St.3d 339, 342, 695 N.E.2d 1140, quoting *Hogg v. Zanesville Canal & Mfg. Co.* (1832), 5 Ohio 410, 424, 1832 WL 26. Thus, the plaintiff is entitled to be compensated for the lapse of time between accrual of that right (the date of judgment) and payment. *Hartman v. Duffey* (2002), 95 Ohio St. 3d 456, 2002 Ohio 2486, 768 N.E.2d 1170. Since the money was due and payable at the time that the Court entered judgment prior to June 4, 2004, post-judgment interest should be calculated under the former O.R.C. § 1343.03 at ten (10%) percent annum.

B. The Case At Bar Was Not Pending On June 4, 2004.

Appellant argues that this Court should look beyond the plain language of O.R.C. § 1343.03 to the legislative intent behind the statute as amended on June 4, 2004. Appellant cites section 3 of House Bill 212, which states that the amended O.R.C. § 1343.03 applies to actions *pending* on the effective date of this act. Appellant argues that the instant case was pending as Appellant appealed from the judgment in Appellee's favor. In so arguing, Appellant inaccurately assumes that a pending case include a case on appeal, which a jury previously decided on the merits. The fact of the matter is that when a jury or court decides a case on the merits, the case is no longer pending as a final judgment has been rendered.

Black's Law Dictionary, however, defines "pending" as "awaiting an occurrence or conclusion of action, period of continuance or indeterminacy. Thus, an action or suit is 'pending' from its inception until the rendition of final judgment." Sixth Ed. 1990. A final judgment, or a final appealable order, is "[o]ne that disposes of all issues and all parties in the case and leaves nothing for further determination." Id.

In *Miller v. First Intl Fid. & Trust Bldg, ltd, et al.* (2007), 113 Ohio St. 3d 474; 2007 Ohio 2457; 866 N.E.2d 1059, the Ohio Supreme Court cited O.R.C. § 2505.02(B) in determining that a judgment is "final" when it is fully adjudicated on the merits. O.R.C. § 2505.02(B) provides, in pertinent part:

> (B) An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:
>
> (1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment.

A "substantial right" is "a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect." R.C. 2505.02(A)(1).

To be final, "an order must also determine an action and prevent a judgment." *Chef Italiano Corp. v. Kent State Univ.* (1989), 44 Ohio St.3d 86, 88, 541 N.E.2d 64, citing *Gen. Elec. Supply Co. v. Warden Elec., Inc.* (1988), 38 Ohio St.3d 378, 528 N.E.2d 195, syllabus; O.R.C. 2505.02(B)(1). "For an order to determine the action and prevent a judgment for the party appealing, it must dispose of the whole merits of the cause or some separate and distinct branch thereof and leave nothing for the determination of the court." *Hamilton Cty. Bd. of Mental Retardation & Developmental Disabilities v. Professionals Guild of Ohio* (1989), 46 Ohio St.3d 147, 153, 545 N.E.2d 1260. See *State ex rel. Downs v. Panioto*, 107 Ohio St.3d 347, 2006 Ohio 8, 839 N.E.2d 911, P20. The court in *Champion Contr. & Constr. Co. v. Valley City Post No. 5563* (2004), 2004 Ohio App. LEXIS 3032, 2004 Ohio 3406, held that a trial court's judgment constituted a final appealable order because the judgment entry clearly disposed of all issues even though the trial court did not specifically discuss the company's claim for unjust enrichment.

In determining whether the instant case is considered "pending," for purposes of the amended O.R.C. § 1343.03, as a result of the appeal, it is also important to look at what the legislature did not say. The legislature failed to include cases on "appeal" as affected by the amended statute when it included cases on appeal previously. For instance, in O.R.C. § 2505.02(D) makes clear that, when the legislature desires to include an "appeal" as a "pending" case, it can and will do so expressly. Specifically, O.R.C. § 2505.02(D) states:

> "(D) This section applies to and **governs any action, including an appeal, that is pending in any court** on July 22, 1998, and all claims filed or actions commenced on or after July 22, 1998, notwithstanding any provision of any prior statute or rule of law of this state."

It is well settled that a judgment is "rendered" and post-judgment interest begins to accrue on the date the judgment is entered by the court. *Viock v. Stoew-Woodward Co.* (1989), 59 Ohio App.3d 3, 6. In the case at bar, the Court entered the judgment of the jury on April 2, 2003 and partial payment was finally rendered on the judgment on January 29, 2004 and February 3, 2004. (Supp. 1-2, 13-27). Post-judgment should be calculated at 10% annum from April 2, 2003 until February 3, 2004 in accordance with the former O.R.C. § 1343.03.

C. Application Of Amended O.R.C. § 1343.03 Is Unconstitutionally Retrospective.

While the Constitution prohibits retrospective application where it would impinge upon an individual's rights, O.R.C. § 1.48 aids in the interpretation of statutes by creating a presumption that all statutes are prospective unless expressly made retrospective. *Ohio v. Young* (2004), 2004 Ohio 4730. O.R.C. § 1.48 provides, "A statute is presumed to be prospective in its operation unless expressly made retrospective." To apply an act or amendment retrospectively, the legislature must have clearly expressed retroactive intent. *State v. Williams* (2004), 103 Ohio St.3d 112, 2004 Ohio 4747, P 8, 814 N.E.2d 818, citing *State v. Cook* (1998), 83 Ohio St.3d 404, 410, 1998 Ohio 291, 700 N.E.2d 570. Since Ohio Rev. Code Ann. § 1343.03(A) was not expressly made retroactive, it operates prospectively only. Ohio Rev. Code Ann. § 1.48. *Hilliard v. First Indus., L.P.* (2005), 165 Ohio App.3d 335, 2005 Ohio 6469, 822 N.E.2d 441.

"Upon principle, every statute which takes away or impairs vested rights, acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past, must be deemed retrospective." *Rairden v. Holden* (1864), 15 Ohio St. 207 citing *Dow v. Norris*, 4 N. H. R. 16, *Clark v. Clark*, 10 N. H. R. 380, *Greenlaw v. Greenlaw*, 12 N. H. R. 200. The questions of which laws are substantive and which are remedial was addressed in *State, ex rel. Holdridge v. Indus. Comm.* (1967), 11 Ohio St. 2d 175, 228 N.E.2d 621. In that case, the Supreme Court held that "substantive law is that which creates duties, rights, and obligations while procedural or remedial law prescribes methods of enforcement of rights of obtaining redress." *Id.* at 178. The question presented is whether this statute when read together with the uncodified section evince a clear intent on the part of the legislature to have the amended version of 1343.03 apply retroactively.[1]

It is well settled law that statutes are presumed to apply prospectively unless expressly declared to be retroactive. R.C. 1.48; *Van Fossen v. Babcock & Wilcox Co.* (1988), 36 Ohio St. 3d 100, 105, 522 N.E. 2d 489. It is also settled that the General Assembly does not posses an absolute right to adopt retroactive statutes. *Section 28, Article II of the Ohio Constitution* prohibits the retroactive impairment of vested substantive rights. See *State v. LaSalle* (2002), 96 Ohio St. 3d 178, 772 N.E. 2d 1172. However, the General Assembly may make retroactive any legislation that is merely

[1] Appellee notes that the Appellant attempts to argue its position first for being a "prospective only" application of the amended statute. (Appellant's Merit Brief at pp. 7-9). The Amicus Curiae brief filed in support of Appellant's position more accurately states that in order for the amended statute to reach the case at bar it can only be by retroactive application. (Amicus Curiae Brief in Support of Appellant at p. 6).

remedial in nature. See *State ex rel. Slaughter v. Indus. Comm. (1937), 132 Ohio St. 537, 542, 9 N.E. 2d 505.*

This Court has thus distilled the above-noted principles into a two-part test for evaluating whether statutes may be applied retroactively. First the reviewing court must determine if the statute is expressly made retroactive. *Lasalle*, 96 Ohio St. 3d at 181, citing *Van Fossen,* 36 Ohio St. 3d 100. The legislature's failure to clearly enunciate retroactivity ends the analysis, and the relevant statute may be applied only prospectively. *Id.*

It is further relatively uncontested that where the General Assembly uses language to apply a statute to pending cases, this evinces an intent to apply the statute retroactively. See *Van Fossen,* 36 Ohio St. 3d at 106; *State v. Consilio* (2007), 114 Ohio St. 3d 295, 299, 871 N.E. 2d 1167. However, amended O.R.C. 1343.03 and the uncodified portion thereof create a unique situation to be considered as to clarity of intent.

When determining legislative intent, courts can look to uncodified law. See *State v. Consilio* (2007), 114 Ohio St.3d 295, 2007 Ohio 4163, P 19, 871 N.E.2d 1167. Courts can also use uncodified law to determine when an act takes effect, and uncodified law often shows whether the legislature intended an act to be applied retroactively. *Id.* If the legislature is silent, the act must only be applied prospectively. *Id.*

Uncodified Section 3 of H.B. 212 limits itself to division (A) of the statute, and then states that calculations for cases pending on the effective date shall be split between the old rate and the new rate. However, the plain language of division (B) of the statute states that "except as provided in Section (C) and (D) of this section" the rate of calculation is to be on the date the judgment is rendered, and fixed at that rate.

In other words, the statutory scheme laid out in division (B) of the statute itself creates a flexible rate; however one that is fixed for each case depending upon the date judgment is rendered. So, for example, if a judgment were rendered on a case on November 5, 2007, and the statutory rate is set in 2007 at 8%, the calculation of post-judgment interest on that case would always be 8% regardless of when the judgment is paid, because the plain language of statute fixes the rate of interest at the date that judgment is rendered.

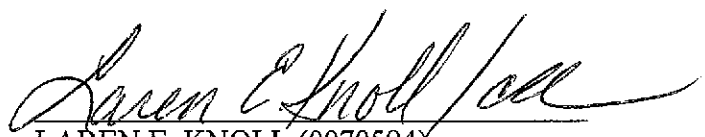
Based upon the statutory scheme created by the amended statute, uncodified Section 3 is at odds with the plain language in Division (B) of the statute. While Division (B) does indicate that the method of calculation shall be the rate in effect under O.R.C. § 5703.47 at the time that judgment is rendered, that language provides no help for a party arguing retroactivity, since that language is clearly prospective. When the judgment was rendered in the case at bar, 5703.47 was not part of the statute that controlled post-judgment interest.

The Constitution requires that the General Assembly write statutes in such a way that people of common intelligence may understand what conduct is required. *State v. Consilio,* 114 Ohio St. 3d at 300, citing *State v. Williams* (2000), 88 Ohio 3d 513, 532, 728 N.E. 2d 342. In this case the General Assembly has created a statutory scheme at odds with itself in an attempt to make it retroactive. For clarity's sake, such attempt should be denied.

CONCLUSION

Therefore, for all the above stated reasons, the Decision of the Third Appellate District in this case should be upheld, and those cases in conflict with that Decision should be reversed. This Court should hold that the statutory scheme created by the amended R.C. 1343.03 is prospective in nature only, and the plain language of the statute fixes an interest rate for each case at the time that judgment is rendered in the case.

Respectfully Submitted,



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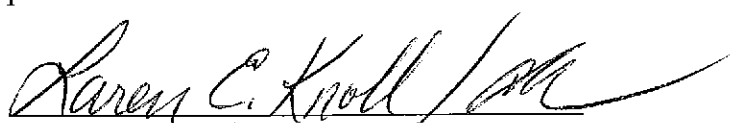

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