[Cite as *Hirsh v. Lambert,* 2004-Ohio-6687.]

THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

TRUMBULL COUNTY, OHIO

ALFRED HIRSH, JR.,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2003-T-0164**
- vs -	:	
ROBERT J. LAMBERT, et al.,	:	
Defendant-Appellant.	:	

Civil Appeal from the Court of Common Pleas, Case No. 00 CV 64.

Judgment: Affirmed.

Ronald A. Sears, 2240 Illuminating Building, 55 Public Square, Cleveland, Ohio 44413-1901 (For Plaintiff-Appellee).

Mark S. Hura, Williams, Sennett & Scully Co., L.P.A., 2241 Pinnacle Parkway, Twinsburg, OH 44087-2367 (For Defendant-Appellant).

DONALD R. FORD, P.J.

{¶1} Appellant, Robert J. Lambert, appeals from the October 17, 2003 judgment entry of the Trumbull County Court of Common Pleas, in which the trial court granted the motion for prejudgment interest of appellee, Alfred Hirsh, Jr.

{¶2} Appellee was involved in an automobile accident on December 22, 1998, in Geauga County. His vehicle was struck by a car operated by Jennifer S. Loehrke ("Loehrke"). Loehrke lost control of her car due to the failure to yield the right of way by

appellant, who had made an improper left hand turn in front of Loehrke's auto. The state trooper investigating the accident determined that appellant was responsible for the crash. Both appellee's and Loehrke's vehicles were damaged and had to be towed from the scene. Appellant's car was not damaged, and he did not remain at the scene. Three weeks after the accident, appellee began medical treatment for injuries he sustained. He incurred $9,325.25 in medical bills and property damage.

{¶3} Appellee filed a complaint against appellant and Loehrke on January 12, 2000. In a letter dated January 23, 2002, appellant's insurance carrier, Allstate, made an offer of settlement to appellee in the amount of $3,500 as the maximum offer. No other offers were made by Allstate.

{¶4} A jury trial commenced on January 27, 2003, and concluded on January 29, 2003. The jury returned a verdict in the amount of $35,000, in favor of appellee and against appellant and Loehrke, finding appellant ninety percent and Loehrke ten percent responsible.

{¶5} On February 11, 2003, appellee filed a motion for prejudgment interest against appellant. Loehrke satisfied her portion of the verdict, and a satisfaction of judgment was filed on March 7, 2003. Appellant satisfied his portion of the verdict in full, and a satisfaction of judgment was filed with the court on April 25, 2003.

{¶6} In a judgment entry dated October 17, 2003, the trial court granted appellee's motion for prejudgment interest because appellant did not make a good faith monetary settlement offer. Appellant timely filed the instant appeal and now raises a single assignment of error for our review:

{¶7} "The trial court erred in granting [appellee's] motion for pre-judgment interest because Allstate, the insurance carrier for [appellant], made a good faith monetary settlement offer after rationally evaluating the medical evidence."

{¶8} Under his sole assignment of error, appellant claims that the trial court abused its discretion in granting appellee's motion for prejudgment interest.

{¶9} A trial court's decision as to the award of prejudgment interest is within its sound discretion. *Schafer v. RMS Realty* (2000), 138 Ohio App.3d 244, 306; *Huffman v. Hair Surgeon, Inc.* (1985), 19 Ohio St.3d 83, 87. We do not reweigh the evidence presented at trial or substitute our judgment for that of the trial court's; instead, absent an arbitrary, unreasonable, or unconscionable ruling, this court is bound to affirm the decision of the trial court. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶10} The party seeking prejudgment interest has the burden of proving that the opposing party failed to make a good faith effort to settle the case. *Moskovitz v. Mt. Sinai Med. Ctr.* (1994), 69 Ohio St.3d 638, 659. A judgment awarding a party's motion for prejudgment interest will not be reversed absent an affirmative showing that some competent, credible evidence does not support the underlying decision. *Fultz v. St. Clair* (Dec. 20, 2002), 11th Dist. No. 2001-L-165, 2002 WL 31862200, at 12.

{¶11} R.C. 1343.03(B) and (C)(1) govern prejudgment interest in tort actions, and provide that: interest on a judgment, decree, or order for the payment of money rendered in a civil action based on tortious conduct and not settled by agreement of the parties, shall be computed from the date the cause of action accrued to the date on which the money is paid if upon motion of any party to the action, the court determines at a hearing held subsequent to the verdict or decision in the action that the party

required to pay the money failed to make a good faith effort to settle the case and that the party to whom the money is to be paid did not fail to make a good faith effort to settle the case.

{¶12} R.C. 1343.03 sets forth certain requirements that must be met in order for a party to recover prejudgment interest. First, a party seeking interest must petition the court, and the motion must be filed after judgment and in no event later than fourteen days after entry of judgment. *Cotterman v. Cleveland Elec. Illum. Co.,* (1987), 34 Ohio St.3d 48, paragraph one of the syllabus. Second, the trial court must hold a hearing on the motion. Third, the court must find that the party required to pay the judgment failed to make a good faith effort to settle. Lastly, the court must determine that the party to whom the judgment is to be paid did not fail to make a good faith effort to settle the case. *Moskovitz*, supra, at 658.

{¶13} Here, the main issue is whether appellant made a good faith effort to settle. A party will be deemed to have made a good faith effort to settle if the party (1) fully cooperated in discovery, (2) rationally evaluated his or her risks and potential liability, (3) did not attempt to unnecessarily delay the proceedings, and (4) made a good faith monetary settlement offer or responded in good faith to an offer from the other party. *Kalain v. Smith* (1986), 25 Ohio St.3d 157, syllabus. A party may have failed to make a good faith settlement effort even though he or she has not acted in bad faith. Id. at 159. However, to show a lack of good faith under R.C. 1343.03(C), a party must prove more than bad judgment or negligence; rather, a lack of good faith imports a dishonest purpose, conscious wrongdoing, or breach of a known duty based on some

ulterior motive or ill will in the nature of fraud. *Detelich v. Gecik* (1993), 90 Ohio App.3d 793, 796, citing *Ware v. Richey* (1983), 14 Ohio App.3d 3.

{¶14} Although appellant notes that the trial court did not conduct a hearing on the motion for prejudgment interest, we note that "a trial court does not abuse its discretion by ruling on a motion for prejudgment interest without holding a hearing if the respondent has notice and the opportunity to respond to the movant's arguments, and the court determines that there are no genuine issues of fact material to the issue of prejudgment interest that would preclude resolution of the issue based upon the trial court's own observations of the parties' settlement efforts and its reading of their briefs." *Goudy v. Stockton* (Sept. 14, 2001), 2d Dist. No. 2001-CA-46, 2001 WL 1048525, at 3.

{¶15} In the case at hand, in appellee's motion for prejudgment interest, he attached several letters from his attorney to appellant's insurance carrier. There was evidence that appellee had incurred medical expenses and property damage in the amount of $9,325.25. There was also evidence that appellee demanded $50,000 to settle the matter, and appellant's insurance carrier made an offer of $3,500, as the maximum offer. Furthermore, appellant had notice and the opportunity to respond to appellee's arguments and did. Additionally, both parties agreed to waive an evidential hearing on this issue. Consequently, aside from the medical items and expert opinions that were presented in evidence during the trial, we are without the benefit of evidential input on various exchanges between counsel and the trial court as such factors may bear on the issue of good faith and the ultimate question of abuse of discretion. Hence, there was no error.

{¶16} Moreover, appellant argues that the trial court abused its discretion in granting appellee's motion for prejudgment interest because he did not make a good faith effort to settle the case. Appellant maintains that if the evidence is considered in its totality, Allstate made a good faith effort to settle the case.

{¶17} Specifically, appellant submits that he did not unnecessarily delay the proceeding and that he rationally and objectively evaluated his risks and potential liability by considering the December 1998 motor vehicle accident. He also claims that Loehrke's comparative negligence and appellee's delay in seeking medical treatment for three weeks were taken into account in arriving at a settlement figure. Appellee contends that appellant failed to cooperate in discovery proceedings and that he failed to make a good faith settlement offer. Appellant never answered the interrogatories that were propounded to him by appellee.

{¶18} On March 27, 2001, appellee's counsel sent appellant's attorney a letter outlining the specials for appellee, which totaled $9,325.25. Appellee demanded $50,000. In January 2002, appellant's attorney responded with an offer of $3,500, which was the maximum offer and was rejected by appellee. The jury returned a verdict in the amount of $35,000 to appellee, of which appellant was responsible for ninety percent, or $31,500.

{¶19} It is our view that the trial court's award of prejudgment interest is supported by some competent, credible evidence. Hence, the trial court did not abuse its discretion by finding that an award of prejudgment interest to appellee was appropriate since appellant did not make a good faith offer.

{¶20} For the foregoing reasons, appellant's lone assignment of error is not well-taken. The judgment of the Trumbull County Court of Common Pleas is affirmed.

CYNTHIA WESTCOTT RICE, J.,

ROBERT A. NADER, J., Ret.,
Eleventh Appellate District,
sitting by assignment,

concur.