

Rel: June 14, 2019

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# SUPREME COURT OF ALABAMA

OCTOBER TERM, 2018-2019

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Pope, McGlamry, Kilpatrick, Morrison & Norwood, P.C.

v.

Jason DuBois

Appeal from Etowah Circuit Court  
(CV-12-900349)

STEWART, Justice.

Pope, McGlamry, Kilpatrick, Morrison & Norwood, P.C. ("the firm"), appeals from a judgment of the Etowah Circuit Court ("the trial court") awarding postjudgment interest to

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Jason DuBois. For the reasons set forth herein, we reverse the judgment and remand the cause.

### Facts and Procedural History

DuBois brought an action in the trial court asserting a worker's compensation claim and tort claims against various defendants. DuBois was represented in the underlying action by two attorneys who were employed by the firm. After DuBois's attorneys ended their employment with the firm, DuBois terminated the firm's representation. The two former attorneys of the firm, however, continued to represent DuBois. The firm then intervened in the action, asserting an attorney-fee lien and claiming attorney fees and expenses. DuBois subsequently obtained settlements from the defendants, which disposed of all the claims he had asserted, but the firm's claim for attorney fees and reimbursement of expenses remained pending. The trial court ordered the clerk of the Etowah Circuit Court ("the trial-court clerk") to deposit the settlement funds "in an interest bearing account and to retain said funds until further order of the court."

Following a bench trial on the attorney-fee dispute, the trial court entered a judgment finding that the firm was not entitled to any fees or reimbursement of expenses. The firm

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appealed that judgment to the Court of Civil Appeals and filed in the trial court a motion seeking to stay execution of the judgment and the disbursement of funds on deposit with the trial-court clerk pending the outcome of the appeal. In support of its motion to stay, the firm offered a letter of credit as security for the appeal in the amount of \$199,185. The trial court stayed execution of the judgment pending resolution of the appeal.

On July 14, 2017, the Court of Civil Appeals issued an opinion affirming the trial court's judgment. Pope, McGlamry, Kilpatrick, Morrison & Norwood, P.C. v. DuBois, 266 So. 3d 1064 (Ala. Civ. App. 2017). The firm filed a petition for the writ of certiorari in this Court, which this Court granted. On June 22, 2018, after holding oral argument, this Court quashed the writ. Ex parte Pope, McGlamry, Kilpatrick, Morrison & Norwood, P.C., 266 So. 3d 1083 (Ala. 2018).

On June 29, 2018, the day after this Court and the Court of Civil Appeals issued their certificates of judgment, DuBois filed a motion in the trial court seeking the disbursement of the funds being held by the trial-court clerk. The trial court entered an order directing the disbursement of the funds, and,

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on July 4, 2018, DuBois filed a motion seeking the determination of postjudgment interest, citing § 8-8-10, Ala. Code 1975, and Rule 37, Ala. R. App. P. The trial court directed both parties to submit a proposed order with their calculation of postjudgment interest. Instead, the firm filed a response to DuBois's motion in which it asserted that there was no "money judgment" against the firm from which interest could accrue under § 8-8-10. DuBois replied, asserting that the purpose of postjudgment interest is to compensate for the loss of use of funds and requested the amount of \$100,517.94 in postjudgment interest. On August 7, 2018, the trial court entered an order filed under seal awarding postjudgment interest to DuBois. On September 18, 2018, the firm filed its notice of appeal.

#### Discussion

The firm's sole argument on appeal is that the trial court erred by awarding DuBois postjudgment interest under § 8-8-10. The firm asserts that there was no "money judgment" on which interest could accrue and that the stay of the judgment did not trigger the accrual of postjudgment interest. The firm

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relies on § 8-8-10 and Bank Independent v. Coats, 621 So. 2d 951, 952 (Ala. 1993).

Section 8-8-10 authorizes the accrual of postjudgment interest for "money judgments" and provides, in particular:

"(a) Judgments for the payment of money, other than costs, if based upon a contract action, bear interest from the day of the cause of action, at the same rate of interest as stated in the contract; all other judgments shall bear interest at the rate of 7.5 percent per annum, the provisions of Section 8-8-1 to the contrary notwithstanding; provided, that fees allowed a trustee, executor, administrator, or attorney and taxed as a part of the cost of the proceeding shall bear interest at a like rate from the day of entry."

In Coats, Bank Independent sued the Coatses alleging that Mr. Coats had fraudulently conveyed a note and mortgage secured by certain real property to Mrs. Coats in a divorce action. After an unrelated entity purchased the real property from Mrs. Coats, it interpleaded the purchase amount into the trial court in Bank Independent's pending action against the Coatses. After a jury determined that there had been no fraudulent conveyance, the trial court entered a judgment in favor of the Coatses, awarding the interpleaded funds to Mrs. Coats. Bank Independent appealed that judgment, and the interpleaded funds were placed in an interest-bearing account, earning interest at a rate of 7.5%, pending the resolution of

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the appeal. After this Court affirmed the trial court's judgment, Mrs. Coats filed a motion in the trial court seeking postjudgment interest. The trial court awarded Mrs. Coats 12% postjudgment interest, the amount permitted by § 8-8-10 at the time, but credited Bank Independent for the amount of interest the funds had earned in the interest-bearing account. Bank Independent appealed to this Court, which found that "the judgment following the jury's verdict was not a 'money judgment' that would entitle Mrs. Coats to 12% post-judgment interest pursuant to § 8-8-10" because "[t]he interpleaded sum was not money that Bank Independent owed to Mrs. Coats pursuant to any note, mortgage, judgment, or other indebtedness, nor was it awarded as the result of any legal claims against Bank Independent." 621 So. 2d at 953.

DuBois argues that Coats is distinguishable because, in that case, Bank Independent was not seeking relief that involved the payment of money or the award of damages while, in the present case, the firm sought the payment of money. In Coats, Bank Independent sought to set aside Mr. Coats's conveyance of the house to Mrs. Coats as fraudulent. In this case, the firm sought to impose a lien for an award of attorney fees on a portion of the interpleaded funds. The

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trial court determined that the firm was not entitled to the relief it requested, and, as a result of that determination, DuBois was entitled to retain the entirety of the interpleaded funds, much like the judgment in Coats "allowed Mrs. Coats to properly receive the benefit of the sale of her property." 621 So. 2d at 952.

We conclude that there simply was not a money judgment against the firm that would permit the accrual of postjudgment interest pursuant to § 8-8-10. The settlement sum interpleaded into court from the underlying case "was not money that [the firm] owed to [DuBois] pursuant to any note, mortgage, judgment, or other indebtedness, nor was it awarded as the result of any legal claims against [the firm]." Coats, 621 So. 2d at 953. Accordingly, based on § 8-8-10 and the holding in Coats, the firm was not required to pay postjudgment interest to DuBois; therefore, the judgment is reversed and the cause is remanded.

REVERSED AND REMANDED.

Parker, C.J., and Bolin, Shaw, Wise, Bryan, Sellers, Mendheim, and Mitchell, JJ., concur.