Circuit Court for Baltimore City
Case No.: 24-C-18-005008

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1632

September Term, 2019

ESTATE OF TYRENKA DORSEY

v.

KAPLAN HIGHER EDUCATION CORPORATION

Nazarian,
Leahy,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned)

JJ.

Opinion by Leahy, J.

Filed: May 23, 2022

The Estate of Tyrenka Dorsey, appellant,[1] appeals from an order of the Circuit Court for Baltimore City denying Ms. Dorsey's motion to alter or amend the court's earlier order denying her "Request for Unpaid Balance From Respondent Of Arbitration Award" ("Request") in which she requested pre-judgment interest under the judgment confirming her arbitration award.

In June of 2018, after a multi-day arbitration, an arbitrator found that appellee Kaplan Higher Education Corporation ("Kaplan") had breached an enrollment agreement with Ms. Dorsey, and the arbitrator awarded Ms. Dorsey $44,414 due to Kaplan's breach. Ms. Dorsey filed a petition to confirm the arbitration award in the circuit court, and the court ordered judgment in Ms. Dorsey's favor in the amount of $44,414.00, "plus post-judgment interest at the legal rate" and costs. On May 31, 2019, the clerk entered the judgment on the docket, and Kaplan sent a check for the full amount of the arbitration award, post-judgment interest, and costs.

On July 9, 2019, thirty-nine days after the clerk entered the judgment, Ms. Dorsey filed the Request in the circuit court for an award of pre-judgment interest in the amount

[1] Tragically, Ms. Dorsey passed away shortly after this appeal was filed. The appeal was recaptioned as *Estate of Tyrenka Dorsey v. Kaplan Higher Education Corp.*, No. 1632, September Term 2019, to reflect that Ms. Dorsey's estate is the real party in interest. For simplicity, we refer to both Ms. Dorsey and her estate throughout this opinion as "Ms. Dorsey."

of $3,739.73. Ms. Dorsey presents three questions that we have combined into one: Did the circuit court err in denying Ms. Dorsey's request for pre-judgment interest?[2]

As we explain, Ms. Dorsey was not entitled to pre-judgment interest under the judgment confirming her arbitration award. To the extent that her Request sought to amend the judgment to include pre-judgment interest, it was properly denied by the court because she filed her Request, and the motion to modify, after the judgment was enrolled. Accordingly, we affirm the judgment of the circuit court.

BACKGROUND

In 2011, Ms. Dorsey entered into an enrollment agreement with TESST, a technical for-profit college formerly operated by Kaplan, to become a certified medical assistant. Ms. Dorsey successfully completed her first five courses required within the program before learning that she had failed her sixth course, "MAR150." A Kaplan administrator advised Ms. Dorsey that she would be able to retake MAR150 without additional cost, but that she would need to complete two other courses remaining in the program first.

By February 13, 2012, Ms. Dorsey had completed the other two remaining courses and was scheduled to retake MAR150 during the term beginning on March 15, 2012. Although Ms. Dorsey maintained that she had been told she would "be on break" from February 14 to March 15, Kaplan deemed Ms. Dorsey withdrawn from the program on

[2] The questions presented by Ms. Dorsey in her brief appear in the appendix at the end of this opinion.

February 16 "because she was 'not enrolled in a mod[ule]' for 14 days"[3] and terminated her financial aid. Because Ms. Dorsey had insufficient financial resources to enroll in MAR150 after Kaplan terminated her financial aid, she did not return to the program and, instead, gained employment at Johns Hopkins Hospital (albeit not as a medical assistant and at a lower salary).

Ms. Dorsey initiated arbitration with Kaplan in April of 2016 pursuant to the enrollment agreement. On June 29, 2018, after a multi-day arbitration, the arbitrator found that Kaplan had breached the enrollment agreement and awarded Ms. Dorsey: (1) $2,414—the amount of her tax refund confiscated by the federal government as partial repayment of her financial aid; and (2) $42,000—the amount she lost in income between 2013 and 2018 due to Kaplan's breach.

Ms. Dorsey filed a petition to confirm the arbitration award in the circuit court. On March 18, 2019, the circuit court entered an order striking the petition because it was not signed by a petitioner or an attorney. On April 30, 2019, Ms. Dorsey filed a signed version of the petition to confirm arbitration. Consequently, on May 28, 2019, the court ordered that "judgment be, and hereby is ENTERED in favor of [Ms. Dorsey] and against [Kaplan] in the amount of $44,414.00, **plus post-judgment interest** at the legal rate." (Emphasis added). The court also ordered that Kaplan "pay the costs of these proceedings" and directed the clerk to close the matter. Three days later, on May 31, the clerk entered the judgment on the docket. On June 10, 2019, Kaplan sent to Ms. Dorsey by overnight courier

[3] It is unclear from the record why Ms. Dorsey was not at that time scheduled to begin the MAR150 course offered on March 15, 2012.

a check in the amount of $44,910.55—representing the full amount of the arbitration award, $95.00 for filing fees, and $401.55 for post-judgment interest.[4] The judgment was then indexed on June 21, 2019 and a notice of recorded judgment was issued on the same date.

Ms. Dorsey filed a "Request for Unpaid Balance from Respondent of Arbitration Award" on July 21, 2019—39 days after the judgment was entered. In her Request, Ms. Dorsey sought an additional $3,739.73 in interest from June 28, 2018 through May 28, 2019—the period between the date on which the arbitration award was issued and the date on which the court's judgment was entered. Ms. Dorsey characterized this as "a total of 11 months of post interest." Ms. Dorsey acknowledged in her Request that she had already received $44,910.55 from Kaplan.

The court denied Ms. Dorsey's Request on August 19, 2019. The court's "Order Denying Amendment To Judgment" provided, in relevant part, that "the [R]equest will be denied because the judgment based on the arbitration award has already been entered." On August 27, Ms. Dorsey filed a "Motion to Alter or Amend" the court's denial of her Request for unpaid balance. In an order entered on September 23, 2019, the court found

[4] Kaplan provided post-judgment interest at the legal rate of 10% per annum only for the period between May 28, 2019—the date that the circuit court ordered judgment—and June 30, 2019.

"no reason to reconsider the prior order[,]" and denied the motion to alter or amend. Ms. Dorsey noticed an appeal on October 17, 2019.

DISCUSSION

Ms. Dorsey maintains that the circuit court erred by failing to grant her Request for post-award, pre-judgment interest, and by failing to grant her motion to alter or amend. She contends that the court's denial of her Request was not a final order, and that the Court's denial of her motion to alter or amend the court's denial "has no statements of findings based on law and evidence." Ms. Dorsey also avers that Kaplan exhibited bad faith and "refused to abide by their binding arbitration agreement with [her] triggering the accrual of post-award, pre-judgment interest[.]"

Kaplan responds that Ms. Dorsey is not entitled to pre-judgment interest. Kaplan points out that the arbitration award "explicitly *did not* award pre-judgment interest," and that the arbitration agreement provides only that "[a]ny award rendered by the arbitrator may be entered in any court having competent jurisdiction." Kaplan asserts that it paid Ms. Dorsey the post-judgment interest to which she was entitled and that the circuit court was well within its discretion to deny her Request for pre-judgment interest. We agree.

Although Ms. Dorsey states in her Request that she is seeking "a total of 11 months of *post interest*," her Request is, more accurately, one for *pre-judgment* interest because she seeks interest for the period between the date of the arbitration award and the circuit court's order confirming the judgment. (Emphasis added). In contrast to post-judgment

interest, which Maryland Rule 2-604(b) explicitly requires on a money judgment,[5] Maryland Rule 2-604(a) dictates that, "[a]ny pre-judgment interest awarded by a jury or by a court sitting without a jury shall be separately stated in the verdict or decision and included in the judgment." There is thus a "distinct difference between pre-judgment interest which is a part of damages and interest on a judgment which does not constitute part of the damages." *Md. State Highway Admin. v. Kim*, 353 Md. 313, 327 (1999) (quoting *Austin v. State*, 831 S.W.2d 789, 791 (Tenn. App. 1991)).

Ms. Dorsey did not appeal the circuit court's entry of judgment confirming the arbitration award. Rather, she appeals the circuit court's orders denying her Request for pre-judgment interest under the court's enrolled order. Our review of a trial court's order concerning the award of pre-judgment interest is mixed, as Maryland law provides factual and procedural requirements for an award of pre-judgment interest.[6] *Nationwide Prop. & Cas. Ins. Co. v. Selective Way Ins. Co.*, 473 Md. 178, 189 (2021). Under Maryland Rule 8-131(c), we review the court's decision "on both the law and the evidence." We "will not set aside the judgment of the trial court on the evidence unless clearly erroneous[.]" *Id.*

[5] Md. Rule 2-604(b) provides: "Post-Judgment Interest. A money judgment *shall* bear interest at the rate prescribed by law from the date of entry." (Emphasis added).

[6] The procedural requirements entitling a party to pre-judgment interest are set out in Maryland Rule 2-604(a), which provides: "Any pre-judgment interest awarded by a jury or by a court sitting without a jury shall be separately stated in the verdict or decision and included in the judgment." This Court has narrowly construed this rule, holding that a "jury's addition of the words 'plus interest' after the amount of the compensatory award was insufficient to satisfy the requirement in [Maryland] Rule 2-604(a) that an award of prejudgment interest be 'separately stated in the verdict.'" *Fraidin v. Weitzman*, 93 Md. App. 168, 218-19 (1992).

Here, we are only reviewing whether the trial court decided correctly that its enrolled judgment did not include pre-judgment interest, and not whether the court should have awarded pre-judgment interest because, as we will address shortly, the Request was filed more than 30 days after the judgment was entered. Accordingly, we review the court's interpretation of its order *de novo*, *see United States v. Spallone*, 399 F.3d 415, 423 (2d Cir. 2005), and we construe the court order in the same manner as other written documents and contracts, *Taylor v. Mandel*, 402 Md. 109, 125 (2007). If the language of the order is clear and unambiguous, we will, considering the context in which the words are used, give effect to their plain and usual meaning. *Id.*

Ms. Dorsey claims, essentially, that she is entitled to pre-judgment interest as a matter of right. However, pre-judgment interest "as a matter of right is the exception rather than the rule[.]" *Ver Brycke v. Ver Brycke*, 379 Md. 669, 702 (2004). Pre-judgment interest is "allowable as a matter of right when the obligation to pay and the amount due had become certain, definite, and liquidated by a specific date prior to judgment so that the effect of the debtor's withholding payment was to deprive the creditor of the use of a fixed amount as of a known date." *Id*. at 702-03 (quotation marks and citations omitted). In other words, the right to pre-judgment interest arises when there has been a failure to make payment on a "day certain":

> the right to pre-judgment interest as of course arises under written contracts to pay money on a day certain, such as bills of exchange or promissory notes, in actions on bonds or under contracts providing for the payment of interest, in cases where the money claimed has actually been used by the other party, and in sums payable under leases as rent. Pre-judgment interest has been held a matter of right as well in conversion cases where the value of the chattel converted is readily ascertainable.

Buxton v. Buxton, 363 Md. 634, 656 (2001). *See also Atlantic States Const. Co. v. Drummond & Co.*, 251 Md. 77, 85 (1968) (awarding pre-judgment interest where payment to subcontractor was due "without demand, no later than 30 days" after general contractor was paid by property owner); *Affiliated Distillers Brands Corp. v. R.W.L. Wine & Liquor Co.*, 213 Md. 509, 516 (1957) (awarding pre-judgment interest for amounts past-due under a promissory note).

In this case, the judgment confirming the arbitration award, entered on May 28, 2019, ordered that Kaplan pay "**post-judgment interest** at the legal rate." (Emphasis added). The judgment simply does not provide for pre-judgment interest. It is notable also that the arbitration award did not provide for pre-judgment interest, nor did it set a date by which Kaplan was obligated to pay Ms. Dorsey. The arbitration agreement, as well, did not provide any indication as to when an arbitration award must be paid. The Arbitration agreement provided only that, "[a]ny award rendered by the arbitrator may be entered in any court having competent jurisdiction." We see no error or abuse of discretion by the circuit court in denying Ms. Dorsey's request for pre-judgment interest under these facts.

To the extent that Ms. Dorsey challenges the court's decision not to amend the judgment confirming the arbitration award to include pre-judgment interest, we hold that her contention is barred by the doctrine of res judicata. *See Facey v. Facey*, 249 Md. App. 584, 604-05, *cert. denied*, 475 Md. 680 (2021) ("[O]nce a final judgment is enrolled, res judicata applies to any subsequent actions in which the parties and the claims are the same."). Ms. Dorsey did not file her Request in the circuit court for an award of her pre-judgment interest until 39 days after the clerk entered the judgment. After 30 days, if the

losing party does not ask the trial court to amend the judgment or note an appeal, the judgment becomes enrolled, and courts may revise a judgment only in narrow circumstances. *Facey*, 249 Md. App. at 604-05.

Ms. Dorsey did not file a motion for reconsideration, notice of appeal, or otherwise ask the circuit court to amend its judgment within 30 days of its entry. *See* Maryland Code (1973, 2020 Repl. Vol), Courts and Judicial Proceedings Article ("CJP"), § 6-408; Md. Rule 2-535(a). By the time that Ms. Dorsey filed her Request for unpaid balance, the judgment was enrolled, and the court's authority to revise the judgment was limited to fraud, mistake, or irregularity as contemplated by Maryland Rule 2-535. Ms. Dorsey did not attack the validity of the judgment on one of those bases in her Request or in her motion to alter or amend filed below. To the extent her brief on appeal contains several bald allegations of bad faith and deception by Kaplan, these claims are not preserved, and in any case, they do not fit within the narrow delineations of fraud, jurisdictional mistake, or irregularity required to invoke the court's revisory powers under Maryland Rule 2-535(b). *See Facey*, 249 Md. App. at 632 ("Extrinsic fraud *perpetrates an abuse of judicial process by preventing an adversarial trial and/or impacting the jurisdiction of the court*." (emphasis in original)); *Claibourne v. Willis*, 347 Md. 684, 692 (1997) ("mistake" as contemplated by Maryland Rule 2-535(b) is "limited to a jurisdictional error, such as where the Court lacks the power to enter the judgment"); *De Aris v. Klingler-De Arriz*, 179 Md. App. 458, 469 (2008) (irregularity is a nonconformity of process or procedure and "[c]ourts, therefore, have held that if the judgment under attack was entered in conformity with the practice and procedures commonly used by the court that entered it, there is no

irregularity justifying the exercise of revisory powers under Rule 2–535(b)" (quotation omitted)).

We conclude that the circuit court did not err or abuse its discretion in denying Ms. Dorsey's Request or motion to alter or amend.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED; COSTS TO BE PAID BY APPELLANT.

APPENDIX

Ms. Dorsey presents three questions for our review, here presented verbatim:

1. Did the circuit court err or mistake when it denied Appellants Request for Unpaid Balance from Appellee by stating; "[t]he request will be denied because The judgment based on the arbitration award has already been entered. The judgment is not amended periodically to include post judgment interest, even if Plaintiff is entitled such interest. This Order therefore does not mean that Plaintiff is not entitled to the interest, only that a new judgment will not be issued" . . . . All litigants have the right of redress of a court's orders, judgments, rulings, decisions, by motions, requests, petitions the like. The court's denial of Appellant's request was not a final order, Maryland Rule 6-40.8

2. Did the circuit court err or mistake when it denied Appellants Motion to Alter or Amend Judge Lawrence P. Fletcher-Hills denial of Appellants Request for Unpaid Balance from Appellee or the Alternative Under The Court Revisory Power . . ., based on their statement that "[T]he Court has carefully considered the Plaintiff's Motion to Alter or Amend Judge Lawrence P Fletcher-Hill's denial of Petitioner Request for Unpaid Balance from Respondent /or in the Alternative under the Court's Revisory Power and finds no reason to reconsider the prior order". Here the court has no statements of findings based on law and evidence, of rationale/support for their reasons why they find no reason to reconsider the prior order. This renders Maryland Rule 2-535 as of no effect.

3. Did the Circuit Court err or mistake when they treated Appellant's Motion to Alter or Amend Judge Lawrence P Fletcher-Hill's denial of Appellant's Request for Unpaid Balance from Appellee or in the Alternative / Under the Court's Revisionary Power, as a Motion for Reconsideration. . . . Order Denying Reconsideration. Pursuant with Md Rule 8-605, a party May file a motion for reconsideration of a decision by the Court that disposes of an appeal appeal.