

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

FILED
December 17, 1998
Cecil Crowson, Jr.
Appellate Court
Clerk

CARL LAWSON, Administrator of) C/A NO. 03A01-
9806-BC-00185)
the Estate of JEFFREY LYNN)
LAWSON, and BESSIE and CARL)
LAWSON, as next of kin to)
JEFFREY LYNN LAWSON,)
)
Claimants-Appellants,)
)
v.) APPEAL AS OF RIGHT FROM THE
) TENNESSEE CLAIMS COMMISSION,
) EASTERN DIVISION
)
)
)
)
STATE OF TENNESSEE,)
)
Defendant-Appellee.) HONORABLE MICHAEL S. LACY,
) COMMISSIONER

For Appellants

For Appellee

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OPINION

REVERSED AND REMANDED

Susano, J.

This appeal involves a claim for post-trial, prejudgment interest. It arises out of an action for damages brought by Bessie and Carl Lawson ("the claimants") for the wrongful death of their son, Jeffrey Lynn Lawson ("Mr. Lawson"). After Mr. Lawson, an inmate at the Southeastern Tennessee State Regional Correctional Facility in Pikeville, Tennessee, was murdered by another inmate, the claimants filed this action against the State of Tennessee with the Tennessee Claims Commission. The matter was tried before Claims Commissioner Michael S. Lacy ("Commissioner") on June 29 and 30, 1994. Some three years later, on July 28, 1997, the Commissioner entered judgment in favor of the claimants for \$75,000, finding that the State had been negligent in the care, custody and control of Mr. Lawson.¹

Following entry of the judgment, the claimants filed a motion seeking post-judgment and prejudgment interest. The Commissioner then entered an order awarding the claimants post-judgment interest in the amount of \$4,233.30²; however, he declined to grant the claimants prejudgment interest, finding that such an award would be "inappropriate." The claimants appealed from the Commissioner's judgment, raising the following issue for our consideration:

Does the Commissioner's refusal to award post-trial prejudgment interest amount, under

¹The State initially appealed that judgment; however, it subsequently dismissed its appeal, and paid the judgment to the claimants on February 15, 1998. Hence, the State's liability, and the amount of damages awarded by the Commissioner, are not at issue on this appeal.

²No issues concerning the award of post-judgment interest are raised on this appeal.

the particular circumstances involved, to a manifest and palpable abuse of discretion on his part, justifying reversal on appeal?

I.

Citing the three-year delay between the hearing and the entry of the Commissioner's judgment, the claimants contend that equitable considerations justify an award of prejudgment interest in this case; but they do not seek such interest for the period of time between their son's death on October 9, 1989, and the hearing on June 29-30, 1994. Rather, they focus on the period of time following the hearing and insist that the Commissioner's failure to resolve their case in a timely manner unfairly diluted their award and unjustly enriched the State. The claimants argue that they are entitled to prejudgment interest of \$25,200 for the period from June 30, 1994, the last day of the hearing, to July 28, 1997, the date of entry of the Commissioner's judgment.

The State, on the other hand, argues that the Commissioner lacked jurisdiction to award prejudgment interest in a tort claim. It bases this assertion on the fact that the relevant statute, T.C.A. § 9-8-307(d), does not specifically authorize an award of prejudgment interest, and, in fact, specifically refers to another code section that pertains only to *post-judgment* interest. T.C.A. § 9-8-307(d) provides, in pertinent part, as follows:

If the claimant is successful..., the state shall pay such interest as the commissioner may determine to be proper, not exceeding the legal rate as provided in § 47-14-121....

T.C.A. § 9-8-307(d). T.C.A. § 47-14-121 states that interest on judgments shall be calculated at the rate of 10% *per annum*. The State points out that this latter statute addresses only post-judgment interest; therefore, so the argument goes, T.C.A. § 9-8-307(d) does not authorize a claims commissioner to award prejudgment interest.³ The State further argues that Commissioner Lacy did not have -- contrary to the claimants' assertion -- "equitable" jurisdiction to award such interest. Finally, in the alternative, the State contends that even if the Commissioner did have jurisdiction to award prejudgment interest, he did not abuse his discretion in declining to do so in this case. In this connection, the State argues that prejudgment interest is not allowable as a matter of right in cases involving unliquidated damages in tort, and that the Commissioner's denial of prejudgment interest did not constitute an abuse of discretion.

II.

The Supreme Court has recently addressed the subject of prejudgment interest:

³The general statutory provisions regarding prejudgment interest are set forth at T.C.A. § 47-14-123. That section provides, in pertinent part, as follows:

Prejudgment interest, i.e., interest as an element of, or in the nature of, damages, as permitted by the statutory and common laws of the state as of April 1, 1979, may be awarded by courts or juries in accordance with the principles of equity at any rate not in excess of a maximum effective rate of ten percent (10%) per annum;....

An award of prejudgment interest is within the sound discretion of the trial court and the decision will not be disturbed by an appellate court unless the record reveals a manifest and palpable abuse of discretion. **Spencer v. A-1 Crane Service, Inc.**, 880 S.W.2d 938, 944 (Tenn. 1994); **Otis v. Cambridge Mut. Fire Ins. Co.**, 850 S.W.2d 439, 446 (Tenn. 1992).... Generally stated, the abuse of discretion standard does not authorize an appellate court to merely substitute its judgment for that of the trial court.

Myint v. Allstate Ins. Co., 970 S.W.2d 920, 927 (Tenn. 1998); **Alexander v. Inman**, 974 S.W.2d 689, 698 (Tenn. 1998). A trial court's -- or commissioner's -- discretion, however, is not absolute. **Wilder v. Tennessee Farmers Mut. Ins. Co.**, 912 S.W.2d 722, 727 (Tenn.App. 1995).

The Supreme Court has stated that

[s]everal principles guide trial courts in exercising their discretion to award or deny prejudgment interest. Foremost are the principles of equity. Tenn.Code Ann. § 47-14-123. Simply stated, the court must decide whether the award of prejudgment interest is fair, given the particular circumstances of the case.

Myint, 970 S.W.2d at 927. The Supreme Court in **Myint** also noted two other considerations that factor into a trial court's decision. **Id.** The first concept "provides that prejudgment interest is allowed when the amount of the obligation is certain, or can be ascertained by a proper accounting, and the amount is not disputed on reasonable grounds"; the second concept is that "interest is allowed when the existence of the obligation itself

is not disputed on reasonable grounds." *Id.* (citing *Mitchell v. Mitchell*, 876 S.W.2d 830, 832 (Tenn. 1994)). The Court further explained that the certainty of the existence or amount of an obligation will bolster a claim for prejudgment interest; however, the absence of such certainty clearly does not necessarily require that prejudgment interest be denied. *Myint*, 970 S.W.2d at 928. In other words,

[t]he certainty of the plaintiff's claim is but one of many nondispositive facts to consider when deciding whether prejudgment interest is, as a matter of law, equitable under the circumstances.

Id.

III.

We first turn to the question of whether the Commissioner had jurisdiction to award prejudgment interest in a case such as this. We cannot agree with the State that such an award is beyond the jurisdiction of a claims commissioner. As noted above, the relevant code provision, found at T.C.A. § 9-8-307(d), provides that in the event a claimant is successful, the State "shall pay such interest as the commissioner may determine to be proper...." It is true that no specific mention of prejudgment interest is made in the relevant provisions; by the same token, however, T.C.A. § 9-8-307(d) does not distinguish between prejudgment and post-judgment interest, nor does it expressly prohibit an award of the former. We believe that this provision, strictly construed, is broad enough to authorize the

granting of prejudgment interest in the discretion of the Commissioner. Furthermore, we disagree with the State's assertion that the statute's reference to T.C.A. § 47-14-121 means that an award of prejudgment interest is not authorized. On the contrary, the reference to T.C.A. § 47-14-121 appears to have been included for the sole purpose of providing a ceiling on the rate of interest that a commissioner may award.

We therefore hold that Commissioner Lacy did have jurisdiction to award prejudgment interest to the claimants. Having so determined, we now turn to the question of whether his refusal to make such an award in this case constitutes a "manifest and palpable abuse of discretion." *Myint*, 970 S.W.2d at 927.

We first note that the instant case differs from the typical prejudgment interest case. In the instant case, the claimants do not request interest for the period of time prior to the hearing. In most cases involving a claim for prejudgment interest, the relevant time frame is pre-trial, between the date of the event giving rise to the litigation and the date of the entry of the judgment. Here, however, the claimants ask us to determine whether, considering the inordinate amount of time that passed between the hearing and the entry of the judgment, they are entitled to prejudgment interest for all or part of that period. Under the circumstances of this case, we believe that the answer to that question is yes.

Over three years elapsed between the completion of the hearing and the entry of the Commissioner's judgment. However, the record indicates that at the close of the hearing, the Commissioner and the attorneys for both sides anticipated that the parties would file proposed findings of fact. It appears that the State filed its proposed findings on August 22, 1994, but that the claimants did not submit their proposed findings until approximately February 9, 1995. Although the claimants filed a "Motion for Ruling" almost two years later, in December, 1996, the Commissioner's judgment was not filed until July 28, 1997. At that point, over three years had passed since the completion of the hearing, or approximately two years and five months since the claimants' submission of their proposed findings of fact.

In our estimation, three years is an unreasonable period of time for a single trier of fact to decide a negligence case involving a relatively straightforward claim that the State had been negligent in returning feuding inmates to the general prison population at the same time. Aside from the issue of the State's liability, the only real questions at issue involved calculation of the pecuniary value of Mr. Lawson's life, his pain and suffering, and the other expenses normally associated with a wrongful death action. The Commissioner's 11-page opinion does not indicate that extensive legal research was required to reach his decision; nor can we find in the record any other apparent justification for the delay.

Under the circumstances of this case, it would be unfair to deprive the claimants of the use of their recovery during the inordinately long period of time this matter was under advisement with the trier of fact. See **Myint**, 970 S.W.2d at 927. Accordingly, we hold that the Commissioner's decision to deny the claimants' request for prejudgment interest constitutes a "manifest and palpable abuse of discretion." **Id.**; **Alexander**, 974 S.W.2d at 692; **Wilder**, 912 S.W.2d at 727. In so holding, we acknowledge that neither the existence, nor the amount, of the State's obligation to the claimants was certain; however, as we have previously explained, these are not the only factors to be considered in the prejudgment interest analysis. **Myint**, 970 S.W.2d at 927-28. On the contrary, the overriding consideration is what is equitable under the particular circumstances of the case. **Id.** at 927. We hold that in this instance, fairness mandates an award of prejudgment interest to the claimants. **Id.**

The question remains whether the claimants are entitled to prejudgment interest for all, or only a portion of, the period of time between the completion of the hearing and the entry of the judgment. As indicated earlier, the Commissioner did not receive the claimants' proposed findings of fact until February, 1995. His final decree was entered approximately two years and five months later. Under these circumstances, an award of prejudgment interest from the date of the hearing would not be appropriate; however, we believe that the claimants are entitled to prejudgment interest from the point at which the Commissioner reasonably could have been expected to render a decision. In our opinion, that point would have been approximately 90 days after

the filing of the last proposed findings of fact.⁴ Since the claimants submitted their proposed findings on or around February 9, 1995, 90 days from that date would be approximately May 10, 1995. The Commissioner's judgment was filed on July 28, 1997, roughly twenty-six months after the aforementioned 90-day period. We therefore conclude that the claimants are entitled to prejudgment interest for a period of two years and two months.

IV.

The Commissioner's order denying the claimants' request for prejudgment interest is reversed. This case is remanded to the Claims Commission for the entry of an order modifying the judgment to award the claimants prejudgment interest in the amount of \$16,250.⁵ Costs on appeal are assessed to the appellee.

Charles D. Susano, Jr., J.

CONCUR:

Herschel P. Franks, J.

Don T. McMurray, J.

⁴When the last proposed findings of fact were filed, this matter had already been under advisement for over seven months.

⁵The amount of the judgment was \$75,000. Therefore, prejudgment interest, calculated at 10% *per annum*, see T.C.A. § 47-14-123, for a period of two years is \$15,000, and for an additional two months is \$1,250, for a total of \$16,250.