

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0739**

Joseph Roach, et al.,
Appellants,

vs.

County of Becker,
Defendant,

Thomas Alinder, et al.,
Respondents,

Gary Heitkamp Construction, Inc., et al.,
Respondents.

**Filed February 1, 2021
Reversed and remanded
Smith, Tracy M., Judge**

Becker County District Court
File No. 03-C5-05-000667

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Considered and decided by Smith, Tracy M., Presiding Judge; Hooten, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

Appellants Joseph and Jennifer Roach challenge the district court's order stopping the accrual of postjudgment interest on a judgment for damages owed to them by respondents Thomas and Sandra Alinder, Gary Heitkamp Construction, Inc., and Gary Heitkamp. We reverse and remand.

FACTS

The facts and procedural history of this case are recited at length in previous opinions by this court.¹ In brief, the Roaches and Alinders own adjacent shoreline properties in Becker County. Initially, the Alinders' property was at a lower elevation than the Roaches' property. In 2003, the Alinders obtained a permit to build a new house on their property and contracted with Heitkamp to build the house. Construction activities included adding fill to the Alinders' property, which elevated it above neighboring properties and caused water to run off onto the Roaches' property.

Following years of litigation against the county and respondents, including multiple appeals to this court, the Roaches eventually obtained a restoration order directing respondents to remove enough "net fill" to restore the Alinders' property to its preconstruction elevation. The Roaches also secured the right to go to trial on their claims

¹ *Roach v. County of Becker*, No. A19-2083, 2020 WL 4281003 (Minn. App. July 27, 2020), *review granted* (Minn. Oct. 20, 2020) (*Roach IV*); *Roach v. County of Becker*, No. A16-0915, 2017 WL 1316117 (Minn. App. Apr. 10, 2017) (*Roach III*); *Roach v. County of Becker*, No. A12-0132, 2012 WL 6097133 (Minn. App. Dec. 10, 2012) (*Roach II*), *review denied* (Minn. Feb. 19, 2013); *In re Decision of Becker Cty. Zoning Adm'r*, No. A07-1580, 2008 WL 4224508 (Minn. App. Sept. 16, 2008) (*Roach I*).

against respondents for any damages remaining following implementation of the restoration order.

The damages claims were set for a jury trial. Before trial, the district court dismissed the county as a party based on its discretionary immunity. The trial was then held in April 2019, and the jury awarded the Roaches \$560,000 in damages, including \$300,000 in future damages. The jury apportioned the absent-party county 20% of the fault and divided the remaining fault equally between Heitkamp and the Alinders.

Respondents brought a posttrial motion for a new trial, based on various grounds related to the amount of damages. Meanwhile, the Roaches brought a posttrial motion seeking attorney fees under the Minnesota Watershed Law,² preverdict interest, leave to amend the complaint to add a claim for punitive damages, and judgment as a matter of law (JMOL) eliminating any apportionment of liability to the county.

With respect to the Roaches' posttrial motion, the district court awarded some, but not all, of the preverdict interest that they sought and denied their requests for attorney fees, the opportunity to seek punitive damages, and JMOL regarding the county's liability. The district court conditionally granted respondents' motion for a new trial pending the Roaches' acceptance of a remittitur agreement. The district court's order remitted the award of future damages from \$300,000 to \$0. The Roaches petitioned this court for discretionary review of the district court's order, which we denied. The Roaches then

² Minn. Stat. § 103D.545 (2018).

accepted the remittitur, and, on October 28, 2019, the district court entered final judgment in their favor for \$514,885.77—including costs and disbursements and preverdict interest.³

On December 27, 2019, the Roaches filed an appeal from the final judgment, challenging the district court’s rulings on their posttrial motion.⁴ *Roach IV*, 2020 WL 4281003, at *1. Respondents did not appeal the judgment against them. As to the Roaches’ appeal, respondents argued that, by accepting the remittitur agreement, the Roaches had waived their right to appeal any issue in the case. *Id.* at 2. We disagreed and addressed the Roaches’ claims. We concluded that the district court erred in its calculation of preverdict interest and its determination that the Minnesota Watershed Law does not allow for the recovery of reasonable attorney fees, but otherwise affirmed the district court’s order. *Id.* at *3-4, 6-7. We remanded the case to the district court to address the preverdict-interest and attorney-fees issues. *Id.* at *3-4, *6-7.⁵

As noted above, the district court entered its final judgment on October 28, 2019. At that time, postjudgment interest began to accrue under Minn. Stat. § 549.09, subd. 2 (2018). In the first weeks of November 2019—before the Roaches filed their appeal from the judgment—respondents communicated with the Roaches regarding paying the

³ The judgment includes the award of damages, as well as preverdict interest in the amount of \$227,511.57 and costs and disbursements in the amount of \$74,574.20.

⁴ Appellants also challenged the district court’s denial of a motion they brought against respondents for civil contempt. *Roach IV*, 2020 WL 4281003, at *2.

⁵ On October 20, 2020, the Minnesota Supreme Court granted review of our decision on the issues of whether appellants’ acceptance of a remittitur constituted a waiver of all issues and whether appellants may recover attorney fees under the Minnesota Watershed Law.

judgment. Respondents indicated their desire to pay the judgment in full and made clear that, once they did, they were entitled to a full satisfaction that would preclude the Roaches from appealing any issue in the case. The Roaches rejected respondents' offer to pay the judgment if it meant forgoing their right to appeal.

Respondents then filed a motion to deposit the amount of the Roaches' judgment against them, including interest, with the district court pursuant to Minn. R. Civ. P. 67.01. In their motion, respondents asked the district court to accept deposit of the funds and to halt the accrual of postjudgment interest. The district court granted respondents' motion. The district court's order permitted respondents to deposit the funds and ordered that postjudgment interest ceased accruing as of the date that the Roaches filed their appeal (December 27, 2019), pending a decision from this court. The order also rejected the Roaches' request to deliver the funds absent a full satisfaction of judgment from them. Respondents deposited the funds with the district court in May 2020.

The Roaches appeal.

DECISION

The Roaches argue that the district court erred as a matter of law in halting the accrual of postjudgment interest under Minn. Stat. § 549.09 (2018) because the \$514,885.77 judgment has not been paid. Respondents⁶ counter that the district court appropriately stopped the accrual of postjudgment interest because (1) under the statute,

⁶ The Alinder and Heitkamp respondents filed separate briefs and did not make identical arguments. For simplicity's sake, however, we combine their arguments for our analysis and generally attribute them to "respondents."

postjudgment interest does not accrue if an obligation is not “readily ascertainable” and the district court properly concluded that the obligation in this case is not ascertainable because the Roaches appealed from the judgment; (2) interest stops accruing under the statute when a judgment obligor tenders an offer to pay in exchange for a full satisfaction, which respondents did here; or (3) because the deposit of funds with a district court pursuant to Minn. R. Civ. P. 67.02 stops the accrual of postjudgment interest. We address each argument in turn.

I. Even if an obligation must be “ascertainable” under the postjudgment-interest statute, it is ascertainable here.

The district court concluded, and respondents urge, that Minn. Stat. § 549.09 requires that an obligation be “ascertainable” before postjudgment interest accrues and that the judgment in this case ceased to be ascertainable once the Roaches appealed because the appeal introduced a contingency placing the amount owed in question. The question of what section 549.09 requires is an issue of statutory interpretation that we review de novo. *See State v. Thonesavanh*, 904 N.W.2d 432, 435 (Minn. 2017). And the question of whether the judgment in this case was ascertainable is likewise reviewed de novo because the facts on that issue are not in dispute. *See In re Collier*, 726 N.W.2d 799, 803 (Minn. 2007).

Section 549.09, subdivision 2, provides as follows regarding the accrual of postjudgment interest: “During each calendar year, interest shall accrue on the unpaid balance of the judgment or award from the time that it is entered or made until it is paid” Although the statute does not state that the amount of damages must be “readily ascertainable” before an obligation arises, *see Eide v. State Farm Mut. Auto. Ins.*, 492

N.W.2d 549, 556 (Minn. App. 1992), respondents argue that that common-law principle applies to statutory postjudgment interest. This principle is founded on the idea that “one who cannot ascertain the amount of damages for which he might be held liable cannot be expected to tender payment and thereby stop the running of interest.” *Potter v. Hartzell Propeller, Inc.*, 189 N.W.2d 499, 518 (Minn. 1971).

The Roaches counter that there is nothing in the plain language of the statute that requires damages to be “readily ascertainable.” They also cite our language in *Hogenson v. Hogenson*, stating that “there is no requirement under section 549.09 that the damages be readily ascertainable.” 852 N.W.2d 266, 272 (Minn. App. 2014) (quotation omitted).

We need not decide whether or to what extent the common-law principle of ascertainability applies to the award of postjudgment interest under section 549.09 because, based on the undisputed facts in this case, the judgment was ascertainable. It is true that, at the time the district court issued its order, we had not yet decided the Roaches’ appeal of the denial of their posttrial motion. *See Roach IV*, 2020 WL 4281003 at *1. However, the only uncertainty introduced by the Roaches’ appeal was whether the respondents were going to owe the Roaches *more* than the \$514,885.77 judgment. In replying to the Roaches’ appeal, respondents argued that the Roaches’ acceptance of the remittitur agreement barred the Roaches’ appeal—respondents did not seek to have the remittitur agreement vitiated and a new trial ordered or otherwise seek a reduction in the amount of the judgment. As the Heitkamp respondents’ counsel acknowledged at oral argument in the present appeal, the only possible outcome when the issues in *Roach IV* are ultimately decided by the supreme court is either that the Roaches will be entitled only to the present judgment or

that their judgment will increase, with the award of additional preverdict interest and the possible award of attorney fees.

Respondents rely on *Reinhardt v. Milwaukee Mut. Ins. Co.* to argue that the judgment was uncertain. 524 N.W.2d 531 (Minn. App. 1994), *review denied* (Minn. Feb. 14, 1995). Their reliance is misplaced. Reinhardt successfully sued his insurer for underinsured-motorist benefits after winning a tort judgment against another driver for injuries sustained in a car crash. The relevant issue on appeal was when postjudgment interest on Reinhardt’s judgment against the insurer started accruing—Reinhardt argued that it began accruing on the date of the judgment in the underlying tort action. *Id.* at 535. We concluded that it did not because, while the tort action conclusively established the amount of Reinhardt’s tort damages, the underinsured-motorist calculation—which depended on a number of factors—was not made in that action. *Id.* at 535-36. This case is different. Here, the judgment entered by the district court on October 28, 2019, explicitly set forth the division of liability between the respondents and the amount of damages that each party owed. That the Roaches appealed the final judgment did not make damages any less ascertainable.

“Post-verdict and post-judgment interest . . . is compensation for the loss of use of money as a result of the nonpayment of a liquidated sum, for which liability has already been determined, not compensation for the injury giving rise to liability.” *Lienhard v. State*, 431 N.W.2d 861, 865 (Minn. 1988); *cf. McCormack v. Hanksraft Co.*, 161 N.W.2d 523, 524 (Minn. 1968) (observing that post-verdict interest is not “simply a penalty but is rather payment of a reasonable sum for the loss of the use of money to which plaintiff has been

entitled since the time the verdict was rendered”). Regardless of the outcome of the supreme court’s review of *Roach IV*, respondents will owe the Roaches, at the least, the amount of the October 28, 2019 judgment. The amount of money that the Roaches have lost the use of is therefore known.

II. Because respondents’ attempts to pay the judgment were conditional, the Roaches were never “paid” damages and thus postjudgment interest continued accruing.

Respondents argue that, even if their obligation was ascertainable, they in fact “paid” the obligation, halting the accrual of postjudgment interest under Minn. Stat. § 549.09, subd. 2, because they made a valid tender of payment to the Roaches shortly after judgment was entered.

Again, the statute provides that postjudgment interest accrues from the time judgment is entered “until it is paid.” Minn. Stat. § 549.09, subd. 2. Appellate courts construe “nontechnical words and phrases according to their plain and ordinary meanings” and “look to dictionary definitions to determine the plain meanings of words.” *Larson v. Nw. Mut. Life Ins. Co.*, 855 N.W.2d 293, 301 (Minn. 2014). The legal-dictionary definition of “pay” is “[t]o give (money) to someone because one has been ordered by a court to do so.” *Black’s Law Dictionary* 1309 (10th ed. 2014). Respondents have not given any funds to the Roaches.

Respondents argue, however, that a tender to pay constitutes payment under the statute and that they tendered payment. Appellant counters that any offer by respondents was conditional and thus was not a valid tender to pay. Assuming a judgment “is paid”

under section 549.09 by a valid tender to pay, we turn to whether such a tender was made here.⁷

In email correspondence between the parties’ counsel in November 2019, Alinders’ counsel indicated that the Alinders wished to pay their portion of the judgment. The Roaches’ counsel provided respondents’ counsel the amount of damages each respondent owed and the firm’s Tax Identification Number (TIN) to facilitate the deposit of damages. The communication between counsel broke down, though, when the Roaches made clear that they “will only provide a partial satisfaction on the judgment in order to preserve their right to appeal the judgment.”

Minnesota caselaw holds that a tender is an unconditional offer of payment. *See, e.g., Balder v. Haley*, 441 N.W.2d 539, 542 (Minn. App. 1989), *review denied* (Minn. July 27, 1989) (stating that the “essential characteristic of a tender is the unconditional nature of the offer to pay”). Respondents’ offer of payment here depended on a full satisfaction of judgment that would have foreclosed the Roaches’ right to appeal the judgment. As the Heitkamp respondents candidly acknowledge in their brief, “[q]uite frankly, Heitkamp Respondents do not dispute that had Appellants executed a full satisfaction of judgment, Appellants would waive their appellate rights.”

⁷ Much of respondents’ argument on this issue appears to relitigate whether the Roaches could appeal notwithstanding the remittitur agreement—they argue that the Roaches had no substantive rights to appeal and therefore the offer to pay in November 2019 was proper tender. This court held in *Roach IV* that accepting the remittitur agreement did not foreclose the Roaches’ entire right to appeal. *See Roach IV*, 2020 WL 4281003 at *3. That decision remains binding under the law-of-the-case doctrine and renders respondents’ argument moot. *See Peterson v. BASF Corp.*, 675 N.W.2d 57, 65 (Minn. 2004) (citations and quotations omitted), *vacated on other grounds*, 544 U.S. 1012, 125 S. Ct. 1968 (2005).

Respondents argue, though, that their insistence on a full satisfaction did not make their offer to pay conditional. They rely mainly on the Maryland case of *Cochran v. Griffith Energy Serv., Inc.*, 993 A.2d 153 (Md. Ct. Spec. App. 2010). In *Cochran*, the Court of Special Appeals of Maryland held, in part, that tender was valid even though the obligee refused payment out of fear that it would foreclose its ability to appeal. *Id.* at 170. But, even if *Cochran* were persuasive regarding Minnesota law, *see Swanson v. Swanson*, 856 N.W.2d 705, 708 (Minn. App. 2014) (stating that, in the absence of Minnesota caselaw on point, “this court may also look for guidance from foreign jurisdictions that have addressed the issue”), the case is distinguishable. The *Cochran* court based part of its analysis on the obligors’ silence when presented with an offer of payment. 993 A.2d at 169. The court concluded that, by remaining silent and later filing an appeal in the case, the obligees were seeking to “reap an unfair benefit by using the acquiescence rule as a shield to evade payment during the pendency of an appeal and later claim entitlement to post-judgment interest at the expense of a debtor-defendant who was attempting to pay the judgment.” *Id.* at 170.

But the Roaches did not remain silent in the face of respondents’ attempts to pay damages. In response to the Alinders’ offer to pay damages, the Roaches provided the firm’s TIN, broke down the amount of damages owed by each party, and informed both respondents that “any acceptance of payment by the Roaches in no way releases the Roaches’ right to appeal the judgment The Roaches specifically reserve those rights and intend to continue prosecution of their appeal.” Instead of responding with silence, the Roaches intended “to treat counsel fairly by notifying [them] of the status of the case.” *Id.*

at 169 (citing *Chesapeake Bay Distrib. Co. v. Buck Distrib. Co.*, 481 A.2d 1156, 1159 (Md. Ct. Spec. App. 1984)). The emails between the parties suggest that all parties sought to facilitate payment, and that these talks ended when respondents insisted on a full satisfaction of the judgment. Rather than spring an appeal on respondents like the obligees in *Cochran*, the Roaches made their intent to appeal clear from the beginning.

Respondents also cite to other non-Minnesota cases to argue that conditioning payment on an absolute waiver of a right to appeal is still proper tender. In *Montano v. City of South Gate*, the California Court of Appeals held that the defendant had properly tendered damages even though the offer was subject to a full satisfaction clause that would have foreclosed the plaintiffs' ability to move for a new trial. 91 Cal. Rptr. 523, 525 (Cal. Ct. App. 1970). In *Heath v. L.E. Schwartz & Sons, Inc.*, the Georgia Court of Appeals concluded that an offer to pay a personal-injury judgment in exchange for a full satisfaction was a valid tender even though it would have foreclosed the plaintiff's ability to appeal the judgment. 416 S.E.2d 113, 115 (Ga. Ct. App. 1992).

We find these cases unpersuasive. Both *Montano* and *Heath* involve a plaintiff seeking a new trial, whereas here the Roaches' appeal is more specific—their appeal relates only to the division of liability, attorney fees, and punitive damages. Thus, the judgment amount in this case will remain owing irrespective of the Roaches' success on appeal. In *Balder*, this court determined that “tender ‘is not effectual as such if it be coupled with such conditions that the acceptance of it, as tendered, will involve an admission by the party accepting it that no more is due.’” *Balder*, 441 N.W.2d at 542 (quoting *Moore v.*

Norman, 53 N.W. 809, 810 (Minn. 1892)). In this case, respondents’ offer demanded such an admission, and it was therefore not a valid tender.

Respondents also argue that, because a remittitur agreement is an agreement, the caselaw regarding interest on settlement agreements is instructive, and they rely on *Glodek v. Rowinski*, 390 N.W.2d 477, 481 (Minn. App. 1986), *review denied* (Minn. Sept. 24, 1986), to justify the halting of postjudgment interest. There, we held that, because a party challenged the settlement that they agreed to, the party had no right to interest on the settlement amount. *Id.* at 482. But *Glodek* does not apply here for two reasons. First, that case relates to prejudgment—not postjudgment—interest. *Id.* at 480. Second, and more critically, *Glodek* relates to the enforcement of an independent stock sale and partnership buy-out agreement. *Id.* at 479. While the Roaches did agree to accept a remittitur agreement, they are appealing the district court’s final judgment, which is distinct from the remittitur agreement. It may be true that a party who frustrates an agreement cannot accrue interest on that agreement, but the Roaches did not frustrate an agreement by appealing the final judgment.

In sum, on the undisputed facts of this case, respondents did not make a tender here.

III. Deposit of the funds pursuant to Minn. R. Civ. P. 67 did not stop the accrual of postjudgment interest when withdrawal of the funds was conditioned on a waiver of claims.

Finally, respondents’ argue that their deposit of funds under Minn. R. Civ. P. 67.01 halts the accrual of postjudgment interest.

We review the interpretation of court rules de novo. *See Gams v. Houghton*, 884 N.W.2d 611, 616 (Minn. 2016). Rule 67.01 provides that, “[i]n an action in which any part

of the relief sought is a judgment for a sum of money . . . a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such money or thing.” Nothing in the rule addresses the implications, if any, of a deposit of funds on the accrual of postjudgment interest under section 549.09. The parties have cited no Minnesota case holding that a deposit under Minn. R. Civ. P. 67 halts the accrual of postjudgment interest.

Respondents argue that decisions from federal and other states’ courts hold that the deposit of funds under their similarly worded rules stops the accrual of postjudgment interest and that the same principle should apply under Minnesota’s similarly-worded rule. But none of the federal or state cases cited by respondents in their briefing involved situations where the withdrawal of funds was conditioned on an absolute waiver of all related claims. *See, e.g., United States ex rel. Garrett v. Midwest Constr. Co.*, 619 F.2d 349, 353-54 (5th Cir. 1980) (recognizing that, while a deposit with the court could halt the accrual of postjudgment interest, interest stops only when the obligor offers payment “without attempting to impose conditions on its acceptance”); *Shaver Transp. Co. v. Chamberlain*, 399 F.2d 893, 895 (9th Cir. 1968) (holding that the withdrawal of a deposit of damages—which halted the running of interest under Fed. R. Civ. P. 67—“cannot be regarded as an accord and satisfaction of the entire claim”); *Coors Brewing Co. v. City of Golden*, 411 P.3d 767, 770 (Colo. App. 2013) (“It is our understanding that this money remains in the court’s registry, and that the manufacturer may withdraw it at any time.”). *Coors Brewing Co.* also suggests that the obligee must be able to access the deposited funds for postjudgment interest to stop accruing. 411 P.3d at 781 (concluding that a deposit with

the court under Colo. R. Civ. P. 67(a) tolls the accrual of postjudgment interest when the obligee can access the funds).

Here, the district court accepted the deposit of funds and conditioned its withdrawal on a full waiver of all the Roaches' claims. For the same reasons discussed in the preceding section, this condition results in the deposit not being a payment or valid tender to pay under Minn. Stat. § 549.09, subd. 2, in the circumstances of this case. Postjudgment interest therefore did not stop accruing when the district court accepted respondents' deposit of funds under rule 67.

We therefore reverse the district court's order regarding cessation of the accrual of postjudgment interest and remand the case for further proceedings.

Reversed and remanded.