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A Primer on the Effect of Post-Trial Motions For Attorneys' Fees, Pre-Judgment Interest, and Costs in Federal Court on Previously-Issued Money Judgments

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This article presents a short primer on the effect, if any, of post-judgment motions for attorneys' fees, pre-judgment interest, and costs on the finality of previously-issued money judgments.

With one limited exception, post-judgment motions for attorneys' fees do not affect the finality of a previously-issued money judgment. In other words, such a motion does not constitute a Rule 59(e) tolling motion. A post-judgment motion for pre-judgment interest is considered a Rule 59(e) tolling motion, while a post-judgment motion for costs is not. Fortunately for the practitioner, there is substantial guidance on these issues.

A. Attorneys' Fees

In *Budinich v. Becton Dickinson & Co.*,² the Supreme Court held that the imposition and amount of attorneys' fees are always collateral to the merits of an action. Explaining that a "bright-line rule" would serve litigants and courts best, the Budinich Court held that for purposes of appeal pursuant to 28 U.S.C. § 1291, a decision by a district court on the merits was a final decision "whether or not there remains for adjudication a request for attorneys' fees attributable to the case."³ The underlying reason why requests for post-judgment attorneys' fees do not deprive a prior judgment of finality is because such requests are "not part of the merits of the action to which the fees pertain."⁴

The Court premised its holding on its prior decision in *White v. New Hampshire Dept. of Employment Security*,⁵ in which it concluded that a request for attorneys' fees made pursuant to 42 U.S.C. § 1988 was not a Rule

59(e) motion for reconsideration. The Court explained that a post-judgment motion for attorneys' fees would not be considered a motion for reconsideration since such a motion does not involve "reconsideration of matters properly encompassed in a decision on the merits."⁶ "[A] request for attorney's fees...raises legal issues collateral to the main cause of action, issues to which Rule 59(e) was never meant to apply."⁷ The Court quoted from a pre-split Fifth Circuit case as follows: "[A] motion for attorney's fees is unlike a motion to alter or amend a judgment. It does not imply a change in the judgment, but merely seeks what is due because of the judgment. It is, therefore, not governed by the provisions of Rule 59(e)."⁸

Notwithstanding the rule enunciated by the Supreme Court that attorneys' fees are always collateral to the merits of an action, several lower courts have concluded otherwise where attorneys' fees are deemed to be inseparable from the merits. See, e.g., *Carolina Power & Light Co. v. Dynegy Marketing & Trade*, 415 F.3d 354, 360-62 (4th Cir. 2005) (holding that if a "stand alone" claim for attorneys' fees that could be brought as an independent claim remains unresolved, a district court's decision is not final for purposes of appeal); *Lampkin v. Int'l Union, United Auto Workers*, 154 F.3d 1136, 1140 (10th Cir. 1998) (noting that the rule enunciated in *Budinich* "is not universally applicable," and holding that on the facts before it, the award of attorneys' fees constituted an award of compensatory damages that only "incidentally" happened to be measured by the attorneys' fees incurred by the plaintiff); *Holmes v. J. Ray McDermott & Co.*, 682 F.2d 1143, 1146 (5th Cir. 1982) ("When...attorney's fees are an integral part of the merits of

the case and the scope of relief, they cannot be characterized as costs or as collateral and their determination is a part of any final, appealable judgment.").

B. Pre-judgment Interest

In *Osterneck v. Ernst & Whinney*,⁹ the Supreme Court distinguished post-judgment motions for pre-judgment interest from post-judgment motions for attorneys' fees, holding that the former did, in fact, constitute a Rule 59(e) motion for reconsideration because "prejudgment interest traditionally has been considered part of the compensation for plaintiff."¹⁰ The *Osterneck* Court explained that because the determination as to whether to award pre-judgment interest can require an examination of matters like the availability of alternative investments and a plaintiff's delay in bringing suit, this determination is *not* "wholly collateral to the judgment in the main cause of action."¹¹ The rule of law concerning pre-judgment interest applies whether the determination is mandatory or discretionary under applicable law.¹²

In 1993, Fed. R. App. P. 4(a)(4) was amended to include a motion for attorneys' fees among those that will toll the time for filing a notice of appeal if the district court extends that deadline pursuant to Rule 58.¹³ Thus, notwithstanding the rule of law enunciated by prior Supreme Court precedent, a post-judgment motion for attorneys' fees would toll the time to file a notice of appeal like a Rule 59(e) motion if the district court extends the time to file same pursuant to Rule 58.¹⁴ Specifically, Rule 58(c)(1) provides, in relevant part, that entry of a money judgment may not be delayed, nor the time to file a notice of appeal extended, in order to tax costs or award attorneys' fees, except as provided by Rule 58(c)(2).¹⁵ Rule 58(c)(2), in turn, pro-

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vides the limited circumstance where a post-judgment motion for attorneys' fees can extend the time for filing a notice of appeal.¹⁶

C. Costs

Post-judgment motions seeking costs do not affect the finality of a previously-issued money judgment. In *Buchanan v. Stanships, Inc.*,¹⁷ the Supreme Court recalled its holding in *White, supra*, and concluded that the post-judgment motion to tax costs at issue sought what "was due because of the judgment."¹⁸ The Court explained that an assessment of costs sought pursuant to Rule 54(d) does not "involve reconsideration of any aspect of the decision on the merits."¹⁹ In further support of its conclusion that a post-judgment motion for costs did not constitute a Rule 59(e) tolling motion, the Court cited *FCC v. League of Women Voters*, 468 U.S. 364, 373-74 n.10 (1984) and *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 172 (1974), both of which deemed motions to tax costs "collateral" to the judgment on

the merits.

In *Moody National Bank, supra*, the Fifth Circuit found significant the omission of any reference to a motion to tax costs in Rule 58(c)(2), which, as discussed above, provides the basis upon which a post-judgment motion for attorneys' fees might be deemed a Rule 59(e) tolling motion. There is other recent case law holding that post-judgment motions to tax costs do not constitute Rule 59(e) tolling motions.²⁰

D. Conclusion

While the general rule is that post-judgment motions for attorneys' fees are always collateral to the merits and, therefore, not considered Rule 59(e) tolling motions, if the attorneys' fees are inseparable from the merits then the previously-issued judgment will not be considered final for purposes of appeal. A post-judgment motion for pre-judgment interest, unlike a post-judgment motion to tax costs, is deemed a Rule 59(e) tolling motion. Litigants faced with these issues should start their analysis, and possibly end it, with the above-discussed Supreme Court case law.

(Endnotes)

1 Mr. Avron is an attorney with the law firm of Berger Singerman, P.A. and a resident of the firm's Boca Raton office. Mr. Avron's primary practice areas are corporate reorganization and appellate litigation.

2 486 U.S. 196 (1988).

3 *Id.* at 202-03.

4 *Id.* at 200.

5 455 U.S. 445 (1982).

6 *Id.* at 451 (citing *Browder v. Director, Illinois Dept. of Corrections*, 434 U.S. 257 (1978)).

7 *Id.* (footnote omitted).

8 *Id.* (quoting *Knighton v. Watkins*, 616 F.2d 795, 797 (5th Cir. 1980)).

9 489 U.S. 169, 175 (1989).

10 *Id.*; *City of Milwaukee v. Cement Div., Nat'l Gypsum Co.*, 515 U.S. 189, 197 (1995) (same); *West Virginia v. United States*, 479 U.S. 305, 310 n.2 (1987) (same).

11 489 U.S. at 176.

12 *Crowe v. Bolduc*, 365 F.3d 86, 92-93 (1st Cir. 2004).

13 *Moody Nat'l Bank of Galveston v. GE Life and Annuity Assurance Co.*, 383 F.3d 249, 252 (5th Cir. 2004).

14 See *Id.*

15 Fed. R. Civ. P. 58(c)(1); *Moody Nat'l Bank*, 383 F.3d at 252.

16 Fed. R. Civ. P. 58(c)(2); *Moody Nat'l Bank*, 383 F.3d at 252.

17 485 U.S. 265, 268-69 (1988).

18 *Id.* (italics in original).

19 *Id.*

20 See, e.g., *Employers Ins. of Wasau v. Titan Int'l, Inc.*, 400 F.3d 486, 489 (7th Cir. 2005); *Foulston Siefkin, LLP v. Wells Fargo Bank, N.A.*, Case No. 3:02-CV-0139-L, 2007 WL 1813766, *4 (N.D. Tex. June 22, 2007).