COURT OF APPEALS
DECISION
DATED AND RELEASED

June 17, 1997

NOTICE

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 97-0550-FT

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

IN RE THE MARRIAGE OF:

PAULINE ORSTED,

PETITIONER-RESPONDENT,

V.

ERVIN ORSTED,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Door County: JOHN D. KOEHN, Judge. *Affirmed.*

MYSE, J. Ervin Orsted appeals an order denying his motion to find Pauline Orsted (Johns) in contempt for failure to make an equalizing payment of $26,000 as required by the divorce judgment and denying his request for interest at the rate of 12% from the date of the divorce judgment until the date of

payment.[1] Ervin contends that the equalizing payment is contained in a judgment and all judgments earn interest at the rate of 12%. Accordingly, Ervin argues that the trial court erred by refusing to require 12% interest be accrued on the debt from the date of judgment to the date of payment. Because this court concludes that the divorce judgment did not provide for the accrual of interest and that the time for appealing the divorce judgment has passed, and because this court concludes that the equalizing payment was a debt rather than a judgment that accrues interest, the trial court did not err by refusing to require interest payments not provided for by the terms of the divorce judgment. The order finding Pauline not to be in contempt and requiring the payment of the $26,000 without interest from the date of judgment to the date of demand for payment is therefore affirmed.

The parties were divorced on February 17, 1994, with the terms of the divorce judgment reflecting a marital settlement agreement executed by the parties. As part of the marital settlement agreement, the parties agreed that the homestead would be awarded to Pauline who would be responsible for making payments on the then existing $18,000 mortgage on said property and further, that Pauline would be required to make an equalizing payment of $26,000 to Ervin. The marital settlement agreement provided that Ervin was to have a lien on the real estate to secure payment in the amount Pauline owed as an equalizing payment. The terms of the judgment did not require any interest on the equalizing payment nor did the judgment provide a date by which such payment should be made.

[1] This is an expedited appeal under RULE 809.17, STATS.

Ervin's contention that the divorce judgment was a judgment entitled to 12% interest under the provisions of § 815.05(8), STATS., presents a question of statutory interpretation which this court considers without deference to the trial court's determination. *See* ***State ex rel. Frederick v. McCaughtry***, 173 Wis.2d 222, 225, 496 N.W.2d 177, 179 (Ct. App. 1992). Ervin also argues that the court's failure to require the payment of interest in the original judgment is error. Whether this court has jurisdiction to consider Ervin's contention of error in the original divorce judgment is a question of law. *See* ***Socha v. Socha***, 183 Wis.2d 390, 393, 515 N.W.2d 337, 338 (Ct. App. 1994).

We first must address the posture of this appeal. The judgment was entered in 1994 and was not appealed. By its terms, an equalizing payment was to be made but no provision in the judgment required interest be calculated on the amount due nor was a date for payment reflected in the judgment. Ervin's current contention that the trial court erred by failing to include an interest rate in the judgment is an attack on the original divorce judgment. Accordingly, a review of the judgment can only be had if a timely appeal from its provisions has been made. *See* ***Pratsch v. Pratsch***, 201 Wis.2d 491, 495, 548 N.W.2d 852, 853-54 (Ct. App. 1996); § 809.10(1)(b), STATS. More than three years has elapsed since the judgment and no appeal of the judgment has been filed. This matter is now before us on an appeal from a contempt motion brought by Ervin against Pauline for failure to make payment of the equalizing payment as required under the divorce judgment. Because this court has no jurisdiction to review the original divorce judgment, Ervin's claim that the trial court erred by not including an interest payment in that judgment cannot be reviewed. *See* ***Pratsch***, 201 Wis.2d at 495, 548 N.W.2d at 853-54.

This court, however, does have jurisdiction to review the order finding Pauline was not in contempt for failure to pay the equalizing payment and the contention that the court erred by not applying § 815.05(8), STATS., to require interest on the equalizing payment. Ervin contends that because the equalizing payment was contained in the judgment it accrued interest at the rate of 12% under the provisions of § 815.05(8). The trial court did not find Pauline in contempt for failing to make the payment because it reasoned the debt was due on demand, demand had not been made, and the period of interest did not run from the date of the divorce judgment.

The requirement for an equalizing payment, while contained in the judgment, is not a money judgment. The requirement for an equalizing payment and the terms upon which the payment is to be made may properly be reflected in a divorce judgment. Such a provision, however, is evidence of debt and not a money judgment. The divorce judgment was evidence of a debt Pauline owed to Ervin. *See* 46 AM. JUR. 2D *JUDGMENTS* § 10 (1994) (A judgment "may also be described as a form of indebtedness, a debt of record, notice of the debtor-creditor relationship, a security of record showing a debt due from one person to another, or a new debt of the highest dignity.") (footnotes omitted). In this case, an equalizing payment was required but the time at which payment was due was unspecified. The equalizing payment then became a debt due on demand. *See* ***In re Starer's Estate***, 20 Wis.2d 268, 272, 121 N.W.2d 872, 875 (1963).

The interest rate provided for in § 815.05(8), STATS., is not applicable to obligations that are not due as of the date of judgment. Section 815.05(8) reads: "[E]very execution upon a judgment for the recovery of money shall direct the collection of interest at the rate of 12% per year on the amount recovered from the date of the entry thereof until paid." The divorce judgment

setting forth the equalizing payment did not give Ervin a judgment for the recovery of money due on the date of judgment. Rather, the divorce judgment evidences a debt Ervin is owed and a future obligation of Pauline. The statute on its face does not apply to this circumstance. The debt reflected in the divorce judgment could be converted to a judgment if Pauline had failed to make payment under the terms of the divorce judgment, but Ervin had not demanded payment or reduced the amount owed to judgment for the period of time he is attempting to collect interest.

This court concludes that the creation of a debt from one party to another in a divorce judgment is governed by the terms as set forth in the judgment and is not a money judgment to which statutory interest under § 815.05(8), STATS., attaches. This court concludes that the trial court's analysis correctly reflects the status of this obligation as a debt due with interest to accrue only upon the demand for payment.

By the Court.—Order affirmed.

This opinion will not be published. RULE 809.23(1)(b)4, STATS.