COURT OF APPEALS
DECISION
DATED AND RELEASED

April 9, 1996

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.

NOTICE

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

Nos. 94-1281
94-2012

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

CHRISTEN MICHAELA SHANNON, a Minor, by her Guardian ad Litem,

Plaintiff,

v.

COMMERCIAL UNION INSURANCE COMPANIES, DONNA SCHULTZ and ESTATE OF STEVEN SCHULTZ,

Defendants-Appellants,

JAMES P. SHANNON, EDITH ANNE RACHEL SHANNON, UNITED SERVICES AUTOMOBILE ASSOCIATION, WEST ALLIS MEMORIAL HOSPITAL and STATE OF WISCONSIN DEPARTMENT OF HEALTH AND SOCIAL SERVICES,

Defendants,

v.

94-2012

PECK & CAREY, S.C.,

Respondent.

No. 94-2012

**CHRISTEN MICHAELA SHANNON,
a minor, by her Guardian
ad Litem,**

Plaintiff,

v.

**UNITED SERVICES AUTOMOBILE
ASSOCIATION,**

Defendant-Respondent,

**COMMERCIAL UNION INSURANCE
COMPANIES, ESTATE OF
STEVEN SCHULTZ, DONNA SCHULTZ,
WEST ALLIS MEMORIAL HOSPITAL
and STATE OF WISCONSIN DEPARTMENT
OF HEALTH AND SOCIAL SERVICES,**

Defendants,

**JAMES P. SHANNON and EDITH
ANNE RACHEL SHANNON,**

Defendants-Appellants.

APPEAL from orders of the circuit court for Milwaukee County: MICHAEL P. SULLIVAN, Judge. *Affirmed in part; reversed in part.*

Before Sullivan, Schudson and Myse, JJ.

PER CURIAM. In appeal No. 94-1281, Commercial Union Insurance Companies, Donna Schultz, and the Estate of Steven Schultz (collectively, Commercial Union) appeal from an order of the circuit court entered on May 17, 1994. The order directed Commercial Union to pay Peck & Carey, S.C., post-judgment interest on attorney fees approved in an order approving a minor's settlement. Consummation of the settlement and payment of the attorney fees were delayed by an appeal from the order approving the settlement. *See* ***Shannon v. United Serv. Auto. Ass'n***, No. 91-2456 (Wis. Ct. App. Feb. 22, 1994) (unpublished per curiam). Essentially, Commercial Union contends that the order approving a minor's settlement is not a judgment under § 815.05(8), STATS., upon which post-judgment interest accrues. Alternatively, Commercial Union contends that if the order was a judgment under § 815.05(8), interest did not accrue while the prior appeal was pending. We conclude that the order approving a minor's settlement did not award Peck & Carey a judgment for purposes of § 815.05(8), and we reverse the May 17, 1994, order.

In appeal No. 94-2012, James P. Shannon and Edith Anne Rachel Shannon, as the natural parents and guardians of Christen Michaela Shannon and as trustees of the Christen Michaela Shannon Irrevocable Supplement Trust, appeal from an order limiting the post-judgment interest payable to the trustees by United Services Automobile Association. This order was entered on July 15, 1994. The Shannons contend that their daughter is entitled to additional post-judgment interest calculated on an annuity payment or on the value to her of the entire settlement. We reject their claim because the order approving a minor's settlement was not a judgment for purposes of § 815.05(8), STATS., and we affirm the July 15, 1994, order.

I. FACTS

This case had its genesis in the near drowning of Christen Michaela Shannon in 1984. Peck & Carey represented the child in the ensuing litigation, with attorney Harry F. Peck serving as her guardian ad litem. In 1991, a settlement agreement was submitted to the court for approval. The settlement agreement provided, in part, that Commercial Union would pay its $300,000 policy limits to the guardian ad litem to be paid over to Peck & Carey for attorney fees. The settlement agreement also provided that United Services

would purchase an annuity for the minor's benefit. The annuity would provide for specified payments to the trustee in 1992, 1993, and 1994. Additional payments, to be used primarily for medical expenses, would be payable commencing on the child's eighteenth birthday. Eight such payments were guaranteed with alternative payees identified in the event the child did not survive to age twenty-six.

The circuit court approved the settlement agreement over the objection of the parents, and they appealed from the order. The parents requested a stay of execution of the agreement pending appeal. Commercial Union and United Services joined in the motion. The stay was granted. This court affirmed the trial court's order on February 22, 1994, and the Wisconsin Supreme Court denied a petition for review.

After the court of appeals' decision was released, Peck & Carey demanded payment of the $300,000 for attorney fees, plus post-judgment interest at twelve percent per annum pursuant to § 815.05(8), STATS. On a motion brought to enforce the demand, the trial court concluded that the order approving a minor's settlement was a final order that had the same effect as a judgment. The court ruled that post-judgment interest accrued from October 3, 1991, the date the order approving the minor's settlement was entered. The trial court also concluded that the interest accrued to Peck & Carey.[1]

In a separate motion, the parents also sought post-judgment interest from October 3, 1991, on the face amount of the annuity to be purchased by United Services. The annuity was to fund the three annual payments as well as the payments becoming due after the minor's eighteenth birthday. The trial

[1] Because the Shannons claimed that any post-judgment interest accruing on the $300,000 belonged to the child, Commercial Union named them as respondents in the appeal. Additionally, the Shannons, as the natural parents and guardians of Christen Michaela Shannon, as well as trustees of the Christen Michaela Shannon Irrevocable Supplement Trust, filed a cross-appeal challenging the portion of the order awarding interest to Peck & Carey. By order dated May 25, 1995, this court dismissed the cross-appeal and the Shannons from the appeal. The court concluded that "neither [the daughter] nor her parents, acting on her behalf, have standing to participate in this appeal."

court held that post-judgment interest only accrued on the past due payments and only from the date the payments became due.

II. JURISDICTIONAL CHALLENGE

As a preliminary matter, Peck & Carey raise a jurisdictional challenge to Commercial Union's appeal. The firm contends that Commercial Union is precluded from challenging the award of post-judgment interest. Citing ***Ver Hagen v. Gibbons***, 55 Wis.2d 21, 25, 197 N.W.2d 752, 754 (1972), and ***Harris v. Reivitz***, 142 Wis.2d 82, 86, 417 N.W.2d 50, 52 (Ct. App. 1987), the firm argues that by not objecting to post-judgment interest in the prior appeal, Commercial Union waived its right to do so now.

The present appeal is distinguishable from the authorities on which Peck & Carey relies. The order presently under review did not result from a motion to reconsider, vacate, or modify the prior order. *See* ***id.*** Rather, the motion requested the trial court to interpret the prior order "as is." Further, the claim to post-judgment interest was not made until after the decision in the prior appeal was released when Peck & Carey initiated the post-appeal motion to construe the prior order. The motion clearly raised a new issue. *See* ***Reivitz***, 142 Wis.2d at 88-89, 417 N.W.2d at 52-53. Therefore, the present order granting the motion is appealable.

III. STANDARD OF REVIEW

The issue common to both appeals is whether the trial court correctly held that post-judgment interest accrued on the order approving the minor's settlement. This requires us to construe the order and apply relevant statutes to the order, particularly § 815.05(8), STATS., (post-judgment interest) and § 807.10(1), STATS., (provision authorizing approval of minor's settlement). A court order or judgment is interpreted in the same manner as other written documents. ***Jacobson v. Jacobson***, 177 Wis.2d 539, 546, 502 N.W.2d 869, 873 (Ct. App. 1993). Construction of the document is only allowed if it is ambiguous,

and the determination of whether it is ambiguous presents a question of law, which this court reviews *de novo*. ***Id.*** at 547, 502 N.W.2d at 873.

Similarly, the construction of a statute presents a question of law. ***De Bruin v. State***, 140 Wis.2d 631, 635, 412 N.W.2d 130, 131 (Ct. App. 1987). Statutory analysis begins with an examination of the language of the statute to determine whether the language is clear or ambiguous. ***Id.*** Where the language is clear and has a plain meaning, no construction is permitted; a court must give effect to the plain meaning. ***City of Milwaukee v. Lindner***, 98 Wis.2d 624, 632, 297 N.W.2d 828, 832 (1980). We keep in mind, however, that we construe statutes to reach a common sense meaning and to avoid unreasonable or absurd results. ***State v. Britzke***, 108 Wis.2d 675, 681, 324 N.W.2d 289, 291 (Ct. App. 1982), *aff'd*, 110 Wis.2d 728, 329 N.W.2d 207 (1983).

Finally, it follows that the application of a statute to an order or judgment, when it involves interpretation of the statute or the order or judgment, also presents a question of law. Therefore, in the present appeals, we review the issues presented without deference to the trial court's decision.

IV. ORDER APPROVING THE MINOR'S SETTLEMENT AGREEMENT

After reciting the parties' appearances, the order approving the minor's settlement ordered as follows:

> 1. The minor's settlement, as set forth in Exhibits A and B attached to this order, is approved for the reasons stated in the court's oral decision rendered on September 6, 1991, and incorporated herein.
>
> 2. The guardian ad litem is directed to do all things necessary to consummate the minor's settlement.
>
> 3. The claims of the minor plaintiff, the State of Wisconsin Department of Health and Social Services,

> and West Allis Memorial Hospital are dismissed on the merits.
>
> 4. This order does not affect the claims of James P. Shannon and Edith Ann Rachel Shannon.

Exhibit A was the settlement agreement, and exhibit B set forth additional settlement terms pertaining to West Allis Memorial Hospital, a subrogated health care provider, and to West Allis Memorial Hospital Employee Health Protection Plan, the Shannons' health insurance carrier.

As previously described, the settlement agreement provided that United Services would purchase an annuity naming the trustees as the beneficiary and that Commercial Union would pay its policy limits to the guardian ad litem. The guardian ad litem would pay the latter to the minor's attorneys for fees and disbursements. In addition, the guardian ad litem, on behalf of the minor, and certain subrogated health care providers would give Commercial Union and its insureds, Donna Schultz and the Estate of Steven Schultz, complete releases. The settlement agreement provided that the minor's personal injury action would be dismissed on the merits without costs. The agreement was contingent on a court decision that the guardian ad litem had the right to release claims assigned to the minor by the Shannons and on court approval of the settlement.

V. COMMERCIAL UNION'S APPEAL OF MAY 17, 1994, ORDER

Essentially, Commercial Union contends that the order approving the minor's settlement is not a "judgment" upon which post-judgment interest accrues. Post-judgment interest is authorized by § 815.05(8), STATS. The statute provides that "every execution upon a judgment for the recovery of money shall direct the collection of interest at the rate of [twelve percent] per year on the amount recovered from the date of the entry thereof until paid." "A judgment is the determination of the action." Section 806.01(1)(a), STATS. By case law, the statute allowing post-judgment interest applies to all money judgments,

including those collected without execution. ***Burlington N. R.R. v. City of Superior***, 159 Wis.2d 434, 436-37 n.4, 464 N.W.2d 643, 644 n.4 (1991).

Commercial Union first argues that the order approving the minor's settlement is not a judgment under § 815.05(8), STATS., because the parties, the trial court, and the court of appeals all denominated the document as an "order" and not as a judgment. For purposes of determining the appealability of a document, the court of appeals is not bound by the label used to identify the document. ***Town of Fitchburg v. City of Madison***, 98 Wis.2d 635, 647-48, 299 N.W.2d 199, 205 (1980). The court looks to the document itself to determine its significance. ***Id.*** The same practice applies when determining whether a document is a judgment for purposes of post-judgment interest. Accordingly, we reject Commercial Union's argument that the title of the document controls.[2]

Commercial Union also argues that § 807.10(1), STATS., the statute under which the trial court approved the minor's settlement, does not give the order the "same force and effect as a judgment." Section 807.10(1) is part of the statute governing the approval of settlement agreements involving minors. Subsections (1) and (2) of the statute state:

> (1) A compromise or settlement of an action or proceeding to which a minor or mentally incompetent person is a party may be made by the general guardian, if the guardian is represented by an attorney, or the guardian ad litem with the

[2] Similarly, we reject Peck & Carey's argument that Commercial Union is estopped from challenging the post-judgment interest because, in the motion for a stay during the prior appeal, Commercial Union adopted United Services' identification of the prior order as having the "effect of a final judgment pursuant to Wis. Stats. 808.03(1)," STATS. The language Peck & Carey focuses on in United Services' motion papers was not made in reference to issues regarding post-judgment interest or the issuance of execution. The papers filed with the motion concentrated on the irreparable harm that would occur if the guardian ad litem acted under the order approving the minor settlement and the order was later reversed on appeal.

> approval of the court in which such action or proceeding is pending.
>
> (2)A cause of action in favor of or against a minor or mentally incompetent person may, without the commencement of an action thereon, be settled by the general guardian, if the guardian is represented by an attorney, with the approval of the court appointing the general guardian, or by the guardian ad litem with the approval of any court of record. An order approving a settlement or compromise under this subsection and directing the consummation thereof shall have the same force and effect as a judgment of the court.

Peck & Carey argued, and the trial court agreed, that the final sentence in subsection (2), which gave the order approving the minor's settlement the same force and effect as a judgment, also applied to (1).

Whether an order approving a minor's settlement entered in a pending lawsuit has the "same force and effect as a judgment" presents a question of statutory construction. Here, the language is clear. Although the legislature specifically gave an order the effect of a judgment when litigation was not previously pending, it did not do so when the settlement occurred after litigation was commenced. Ordinarily, when a provision contained in one statute is omitted from a similar statute on a related subject, it is an indication that the different treatment is intentional. ***Kimberly-Clark Corp. v. Public Serv. Comm'n***, 110 Wis.2d 455, 463, 329 N.W.2d 143, 147 (1983).[3]

[3] Section 807.10(2), STATS., entered the statutes in 1949 as § 260.23(5). Mary A. Hohmann & James W. Dwyer, *Guardians ad Litem in Wisconsin*, 48 MARQ. L. REV. 445, 450-451 (1965). Section 807.10(1) had previously been adopted by supreme court order that established separate, but similar, sections for minors and for incompetent persons. ***Id.*** In 1949, the revisor proposed an act to consolidate, revise, and renumber the prior provisions. ***Id.*** During the legislative process the bill was amended to add present day § 807.10(2). Legislative Reference Bureau file for Laws of

Further, the "same force and effect of a judgment" language serves a necessary purpose in a subsection 2 proceeding. The language clearly gives such an order the effect of issue preclusion (collateral estoppel) and claim preclusion (*res judicata*) against a minor and those in privity with him or her. RESTATEMENT (SECOND) OF JUDGMENTS ch. 1 intro. (1982). Without this effect, a minor, upon reaching majority, could potentially relitigate a claim the guardian ad litem and the defendants had resolved.

Similar language is unnecessary when an order approving a minor's settlement is entered where a lawsuit is pending. There, the underlying matter will be disposed of either by a judgment of dismissal on the merits or by an agreed judgment awarding the minor identified damages from specified parties. In either event, the judgment has preclusive effect.

An order approving a minor's settlement entered when litigation is pending may be a judgment or partial judgment for purposes of § 815.05(8), STATS., if such intent is clear from the circumstances existing at the time of entry or the language of the order itself.[4] If the settlement requires the immediate payment of money to an existing entity or person, the order may also contain language granting a judgment for the agreed-upon sum. Even in the absence of such language, the circumstances may support inferring that the intent is to subject any delay in the payment of the amount due to post-judgment interest. If amounts due under an agreed-upon settlement are actually paid at the hearing or prior to entry of the order, the order could contain language dismissing the complaint with prejudice. Where the settlement agreement is complex or contemplates multiple actions to finalize the settlement, the order may merely authorize the future conduct. Later entry of a judgment disposing of the litigation would then be necessary. In these circumstances, the intent that any part of the order be a judgment pursuant to § 815.05(8), STATS., should probably not be inferred absent specific language indicating that it is.

(..continued)
1949, ch. 301. The materials from the legislative history do not contain any memoranda discussing the amendment. ***Id.***

[4] The best evidence of intent, of course, would be for the trial court to specifically address the issue of post-judgment interest in the order itself. This is especially true where only part of the settlement is capable of immediate consummation.

Here the order approving the minor's settlement dismissed the claims of the minor, the Wisconsin Department of Health and Social Services, and West Allis Memorial Hospital. The order is internally inconsistent, however, because it also approved and incorporated the settlement, which contemplated the payment of money, and the order directed the guardian ad litem to "do all things necessary to consummate the minor's settlement." Neither the settlement agreement nor the order approving the minor's settlement contained a deadline for completing the settlement, but immediate consummation was unlikely. After the settlement proposal was approved and the order signed, a trust was to be established,[5] United Services was to purchase an annuity policy, and releases were to be prepared and executed. Additionally, the settlement agreement was contingent on a court decision that the guardian ad litem had the right to release claims assigned to the minor by the Shannons. The Shannons vigorously objected to the settlement, and the contingency was not finally resolved until the supreme court denied their petition for review. Thus, we cannot conclude that the order approving the minor's settlement was intended to be a judgment for purposes of § 815.05(8), STATS. Therefore, the payment from Commercial Union was not subject to post-judgment interest. The order entered May 17, 1994 is reversed.[6]

VI. THE SHANNONS' APPEAL OF THE JULY 15, 1994 ORDER

In their appeal, the Shannons' contend that the Christen Michaela Shannon Irrevocable Supplemental Trust was entitled to post-judgment interest on the entire amount due from United Services, with interest accruing from the

[5] The record is not clear on when the trust was established. There is correspondence from the guardian ad litem in 1994 that indicates Peck & Carey was drafting the trust documents. There is also correspondence from the same time and also from Peck & Carey that the trust was formally known as the Christen Michaela Shannon Irrevocable Supplemental Trust, dated December 3, 1990.

[6] Furthermore, we can not conclude that the order approving the minor's settlement granted a judgment to Peck & Carey. First, Peck & Carey was not a party to the lawsuit. Additionally, the settlement agreement provided that Commercial Union would pay the face amount of its policy to the guardian ad litem as the representative of the minor. In turn, the guardian ad litem would pay Peck & Carey pursuant to the contract between the law firm and the minor's parents. Court authorization of the payment under the contract was only required because the payment came from the minor's funds.

date of the order approving the minor settlement. The trial court awarded interest only on the past due annual payments, and interest accrued from the date the payments became due.[7] In particular, the Shannons seek post-judgment interest either on the balance of the annuity payment or on the value to the minor of the entire settlement.

The disposition of this appeal is controlled by our discussion of the Commercial Union's appeal of the May 17, 1994, order. The order approving the minor's settlement was not intended to be a judgment for purposes of § 815.05(8), STATS. Therefore, the trust was not entitled to post-judgment interest, and the order of July 15, 1994, is affirmed.[8]

By the Court. – Orders affirmed in part; reversed in part.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

[7] United Services has not appealed from the trial court's order; therefore, the correctness of this portion of the court's July 15, 1994, order is not before this court.

[8] Further, awarding post-judgment interest on deferred payments is contrary to the purpose of post-judgment interest. Post-judgment interest is awarded to compensate a plaintiff for the forbearance of the income-producing ability of money due. *See* ***Hauboldt v. Union Carbide Corp.***, 160 Wis.2d 662, 686, 467 N.W.2d 508, 517 (1991). Here, the minor's guardian ad litem agreed to the deferral of payments. Because the parties (except the Shannons) agreed that the funds would not be available for the minor's use until the payments were due, the minor was not denied the use of the money.