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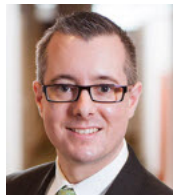
# Understanding Interest on Property Awards

by Alan C. Eidsness and Jaime Driggs

The time value of money is a common consideration and interest is often an issue both in the initial division of property and also post-decree. However, important distinctions exist between the rules which govern interest in each of those settings.



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In making the initial division of property, the district court is required to account for the time value of money by making a property award presently payable, ordering interest if payments are structured over time, or making findings of fact explaining why no interest is being awarded. *Thomas v. Thomas*, 407 N.W.2d 124, 127 (Minn. Ct. App. 1987) (reversing interest-free property award structured over four years and remanding for imposition of interest or findings explaining denial of interest). With all of the complexities that go in to adjudicating the division of property in a contested case, interest on a deferred property award may be something that is simply overlooked. But failing to order interest or explain the denial of interest is a clear basis for reversal per *Thomas*. See, e.g., *Carlsen v. Carlsen*, 2010 WL 1189808, at \*3 (Minn. Ct.

App. Mar. 30, 2010) (citing *Thomas* and reversing for not ordering interest on property payment schedule or making findings explaining denial of interest); *Patient v. Patient*, 2000 WL 369355, at \*3 (Minn. Ct. App. Apr. 11, 2000) (citing *Thomas* and reversing for not ordering “reasonable interest” on homestead lien or making findings explaining denial of interest). Thus, when submitting a proposed judgment and decree following trial, be sure to address interest to avoid creating grounds for reversal.

Although *Thomas* makes it clear that interest must be addressed, the district court has considerable discretion in this regard. There is no entitlement to interest and the district court may deny interest entirely. See *Nolan v. Nolan*, 354 N.W.2d 509, 513 (Minn. Ct. App. 1984) (affirming amended judgment which deferred \$250,000 lump-sum award to interest-free payments over four years as part of district court’s “overall reassessment of the equities of the distribution”); *Thomas v. Thomas*, 383 N.W.2d 727, 728-29 (Minn. Ct. App. 1986) (rejecting argument that Minn. Stat. § 549.09 entitled husband to interest on his lien and affirming denial of interest based on overall division of property) (note that this is not the 1987 *Thomas* decision).

This discretion includes the power to set an equitable rate of interest which differs from the statutory judgment interest rate. District courts

making a division of property are “vested with a broad discretion which reasonably embraces the fixing of an equitable interest rate where interest is due, and the exercise of that discretion is not controlled by statutory or legal interest rates applicable to other cases.” *Johnson v. Johnson*, 84 N.W.2d 249, 256 (Minn. 1957). In *Johnson*, the Supreme Court reversed interest at the statutory 6% rate because that was higher than the prevailing market rate of 3%. *Id.* Although this discretion would allow the district court to set interest at a rate lower than the judgment rate, c.f. *Flynn v. Flynn*, 402 N.W.2d 111, 118-19 (Minn. Ct. App. 1987) (affirming interest of 6% instead of 8% judgment rate on attorney fee award payable over three years), it probably does not allow the district court to set interest at a rate higher than the judgment rate. See *Fernandez v. Fernandez*, 373 N.W.2d 636, 638 (Minn. Ct. App. 1985) (reversing interest awarded in excess of judgment rate) and *Levine v. Levine*, 2001 WL 978851, at \*4 (Minn. Ct. App. Aug. 28, 2001) (same); but see *Tarlan v. Sorensen*, 2001 WL 185098, at \*4 (Minn. Ct. App. Feb. 27, 2001) (citing *Johnson* and rejecting argument that district court erred by ordering interest in excess of judgment rate) and *Haefele v. Haefele*, 2003 WL 21524868, at \*9-10 (Minn. Ct. App. Jul. 8, 2003) (reversing interest in excess of judgment rate not because it was error

as a matter of law but because rate was higher than market rates).

It makes sense that a district court have discretion to select a rate of interest or to deny interest because awarding interest is simply a function of the court's duty to make a just and equitable division of property. See *Redleaf v. Redleaf*, 807 N.W.2d 731, 734 (Minn. Ct. App. 2011) (recognizing that task of "balance[ing] a multitude of competing social and economic objectives...demands that a district court have broad discretion in dividing marital assets and accounting for the time value of money"). As a practical matter, this discretion would appear to be necessary since any attempt to restrict a district court's discretion could easily be circumvented by dividing property to achieve the equitable result.

However, once the district court has made a final division of property, the district court's discretion over interest is terminated. *Redleaf*, 807 N.W.2d at 735. Interest at the statutory judgment rate becomes an entitlement. *Id.* In the context of post-decree enforcement of property awards, the district court has no discretion to suspend interest or reduce the rate. *Id.* Failing to award interest post-decree is an alteration of a party's substantive rights and is tantamount to an impermissible modification of the division of property which is final and not modifiable under Minn. Stat. § 518A.39, subd. 2(f). See *Brodsky v. Brodsky*, 733 N.W.2d 471, 478 (Minn. Ct. App. 2007) (affirming award of interest to wife on mortgage payments she made post-decree which husband was obligated to make and failed to make and noting that failing to award interest would have altered wife's rights under the judgment and decree). When a property payment is

missed, interest accrues from the date that payment is due (which is not necessarily the date of the judgment and decree). *Riley v. Riley*, 385 N.W.2d 883, 888 (Minn. Ct. App. 1986) (reversing and remanding for imposition of interest as of September 10, 1984 because payment was due within 30 days of entry of the judgment and decree on August 10, 1984).

Thus, in contrast to the considerable discretion over interest in making the initial division of property, the district court's lack of discretion thereafter means that interest takes on a new role post-decree. The absence of discretion provides leverage to the party entitled to interest, allowing interest to become not only compensation for the time value of money but also a tool for enforcement. This leverage is especially pronounced for awards of property over \$50,000 which accrue interest at a whopping 10% under Minn. Stat. § 549.09, subd. 1(c)(2). Even smaller property awards arguably trigger the 10% rate if they may be consolidated with other unpaid obligations to cross the \$50,000 threshold. See *Estate of Rutt*, 824 N.W.2d 641, 647 (Minn. Ct. App. 2012) (holding that \$50,000 threshold is applied to judgments as delineated by the district court and need not be met by individual claims upon which judgment is based).

The value of dollars on a property balance sheet today will diminish if the award is paid out over time. Interest accounts for this diminution in value and preserves the division of property as set forth in the balance sheet. Although interest must be addressed, it is just one of the many moving pieces which the district court must consider in exercising its discretion to fashion a just and equitable division of marital

property. Understanding the role interest plays is important both when advocating for the initial division of property and in enforcing the property award post-decree.

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