

COURT OF APPEALS
ASHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

ASSET ACCEPTANCE LLC

Plaintiff-Appellee

vs.

TERRY L. MACK

Defendant-Appellant

: JUDGES:
: Hon. William B. Hoffman, P.J.
: Hon. Sheila G. Farmer, J.
: Hon. Julie A. Edwards, J.
:
:

: Case No. 03COA055
:
:

: OPINION

CHARACTER OF PROCEEDING: Appeal from the Municipal Court, Case No. 90CVF62

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: March 18, 2004

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Farmer, J.

{¶1} On March 14, 1990, Bank One was granted judgment against appellant, Terry Mack, in the amount of \$1,718.98 plus thirteen percent interest. The judgment was subsequently assigned to appellee, Asset Acceptance LLC.

{¶2} On August 4, 2003, appellee filed a motion to revive judgment. By judgment entry filed September 18, 2003, the trial court granted the motion with accrued interest from the original date of judgment.

{¶3} Appellant filed an appeal and this matter is now before this court for consideration. Assignment of error is as follows:

I

{¶4} "THE TRIAL COURT COMMITTED PREJUDICIAL ERROR IN REVIVING A LAPSED JUDGMENT TO INCLUDE INTEREST FROM THE DATE OF THE ORIGINAL JUDGMENT. THIS ERROR IS REFLECTED IN THE RECORD BY THE JUDGMENT ENTRY DATED SEPTEMBER 18, 2003."

I

{¶5} Appellant claims the trial court erred in reviving a lapsed judgment to include interest. Consistent with this court's reasoning in *Ucker v. Ucker* (April 26, 1999), Fairfield App. No. 98CA00055, this court finds a dormant judgment may accrue interest.

{¶6} The sole assignment of error is denied.

{¶7} The judgment of the Municipal Court of Ashland County, Ohio is hereby affirmed.

By Farmer, J.

and

Edwards, J. concur.

Hoffman, P.J. dissents.

Hoffman, P.J., dissenting

{¶8} I respectfully dissent.

{¶9} I participated in this Court's decision in *Ucker v. Ucker* (April 26, 1999), Fairfield App. No. 98CA00055, unreported. Upon revisiting *Ucker*, I now believe our decision therein was in error.

{¶10} I would adopt the rationale and holding of *Huntington National Bank v. Battaglia* (March 25, 1994), Portage County App. Nos. 92-P-0100, 92-P-0101, unreported. In accordance therewith, I would reverse the trial court's judgment and remand the matter to it to recompute interest pursuant to *Battaglia*.

JUDGE WILLIAM B. HOFFMAN