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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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JAMES L. PECK,	)	Appeal from the Circuit Court
	)	of Du Page County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 06—SR—1796
	)	
DUILIO PIEROTTI, JR.,	)	
	)	
Defendant-Appellee	)	Honorable
	)	Kenneth A. Abraham and
(Nancy J. Smith, n/k/a Nancy Lehrer,	)	Paul M. Fullerton,
Defendant).	)	Judges, Presiding.

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JUSTICE HUDSON delivered the judgment of the court.  
Justices Hutchinson and Zenoff concurred in the judgment.

**ORDER**

*Held:* (1) The trial court properly denied plaintiff damages; plaintiff failed to present sufficient evidence by which interest could be calculated and awarded as damages; although plaintiff asserted that he presented sufficient evidence that he was entitled to fees and costs as damages, he did not contest the trial court's ruling that it lacked authority to award them; (2) plaintiff's assertion of judicial bias was implausible and unsupported by any evidence; mere alleged errors were insufficient to show bias.

James L. Peck, the plaintiff, appeals from a judgment against him in his small claims action against Duilio Pierotti, Jr. At the close of Peck's evidence, the trial court ruled that he had failed to put on sufficient evidence of damages from Pierotti's actions and that it lacked authority to award

as damages attorney fees paid by Peck in a related suit. Peck now appeals, arguing that his evidence allows calculation of lost interest as damages, that he presented evidence of his attorney fees, and that the judges displayed bias against him. We affirm. We conclude (1) that Peck has failed to explain how the evidence admitted permits any calculation of interest, (2) that he has not successfully set out a legal basis for treating his legal expenses as damages, and (3) that he has failed to show bias by the judges of whom he complains.

### BACKGROUND

We start with by setting out relevant background from a related case, *In re Estate of Plummer*, No. 2—05—0070 (2005) (unpublished order under Supreme Court Rule 23). We emphasize that we intend the background facts from *Plummer* only as an aid to understanding and do not intend them to establish the facts in this appeal. (Per our holding in *Peck v. Pierotti*, No. 2—07—0373 (2008) (unpublished order under Supreme Court Rule 23), a previous appeal in this matter, Pierotti neither was a party to the proceedings in *Plummer* nor were his interests represented in that case.)

Per *Plummer*, Peck was the housemate of Loretta Plummer, and, in Plummer's last years, he was also her caregiver. Before her disability, Plummer had made Peck the pay-on-death (p.o.d.) beneficiary of a bank account (or accounts) of hers. Pierotti, then the public guardian, was appointed Plummer's plenary guardian at some time after she became disabled. In *Plummer*, this court noted that the record did not make clear whether or not a different person had served as guardian initially. Nevertheless, despite Pierotti's appointment, Peck continued to use one p.o.d. account to pay some of Plummer's necessary expenses, such as the real estate taxes on her house. In July 1998, the guardian (Pierotti or another) transferred \$5,000 from the account to deal with expenses, including

attorney fees. At some time in 1998, Pierotti closed the account or accounts at issue to consolidate Plummer's assets.

After Plummer died, Peck filed a claim against the estate for the funds that had been in the p.o.d. account or accounts. The probate court ruled that Peck should receive the money that had been in the account or accounts when Pierotti consolidated them, \$9,897.71, and also \$3,563 used to pay attorney fees.

Peck appealed, asserting that he should have received all the money present when the guardian took over, including that which he and the guardian had used for ordinary expenses. This court agreed. It held that the guardian (whoever it was at the time) had a duty to carry out Plummer's estate plan and that, although Peck himself interfered with that plan, he could seek correction of the mistake that was both his and the guardian's. This court therefore increased the award to \$19,897.71.

On September 21, 2006, Peck filed the small claims complaint involved in this appeal. He named as defendants Pierotti and Pierotti's one-time employee, attorney Nancy J. Smith. He asserted that Pierotti's improper handling of two p.o.d. accounts had caused him to incur four kinds of damages: (1) loss of interest on the funds taken from the accounts during Plummer's lifetime; (2) loss of interest on the funds when the guardian consolidated Plummer's accounts; (3) interest that he lost when he did not receive the funds immediately upon Plummer's death as he would have had they remained in the accounts; and (4) legal fees he incurred in his successful effort to recover the funds from the estate. Judge Joseph S. Bongiorno was the primary judge presiding in the first stages of these proceedings.

Peck initially had difficulty serving Smith, so that the case went forward against Pierotti alone. Pierotti moved to dismiss, asserting that Peck's claim was *res judicata* based on the judgment against the estate, that the judgment in *Plummer* had fully satisfied Peck's claim, and that Peck had "no standing to buy [*sic*] a claim for a closed estate on his behalf." The court granted the motion on January 10, 2007. The court denied a motion to reconsider, simultaneously making a finding of appealability under Supreme Court Rule 304(a) (eff. Jan. 1, 2006). Peck appealed.

At roughly the same time, Smith entered the case. Peck's claim against Smith went to trial, and the court denied the claim in full. Peck appealed that ruling as well.

Next, we ruled (in *Peck*, No. 2—07—0373 ) that, because Pierotti was not a party to, and was not in privity with, any party in *Plummer*, Peck's claim against Pierotti was not *res judicata*. We also rejected Pierotti's claim that dismissal was proper on the basis that he had lacked a duty to Peck—that his only duty was to Plummer, his ward. We held that Pierotti had a duty to Peck as p.o.d. beneficiary that was comparable to the duty that the executor of a decedent's estate has to the estate's beneficiaries. We therefore remanded the matter to the trial court for further proceedings.

Peck, on May 7, 2008, filed a "Motion to Reactivate Complaint," mailing it to counsel for Pierotti. Judge Kenneth A. Abraham was assigned to the case.

On May 16, 2008, the court held a hearing on Peck's motion. The court expressed surprise that the two appeals had been handled separately and suggested that it was improper for Peck to have failed to give notice to Smith of his motion. It ordered Peck to send notice to Smith.

On June 3, 2008, the court, held a hearing to consider whether to have a trial while the appeal concerning Smith was pending. It asked Peck who his witnesses would be, suggesting that Pierotti would be one. Peck responded by asking about the process necessary to require Pierotti's presence.

The court told Peck that “[o]nce the trial is set, all parties, pursuant to local rules, need to be present at trial.” The court postponed the trial pending a resolution of the appeal.

That resolution came in *Peck v. Smith*, No. 2—08—0018 (2009) (unpublished order under Supreme Court Rule 23), in which we held that Smith, as Pierotti’s employee, did not share Pierotti’s duty to Peck. We further held that Peck had not successfully alleged breach of a tort-type duty to him.

Some litigation of discovery issues followed. The court denied discovery to both sides. It ordered the parties to exchange statements of the case with one another.

The trial took place on October 7, 2009, before Judge Paul M. Fullerton. Peck asked if Pierotti was present, and defense counsel replied that “no [Illinois Supreme Court Rule] 237 [notice] was served upon us.” See Ill. S. Ct. R. 237(b) (eff. July 1, 2005). The court ruled that Pierotti’s presence was not required. Peck said that, under the circumstances, he would be his only witness. The court stated that it was familiar with both parties’ statements of the case. Peck started by testifying to facts paralleling the background we described as arising from the *Plummer* proceedings.

The court stopped Peck and asked him specifically what his damages were, saying that it understood him to be claiming court costs and legal fees stemming from the *Plummer* proceedings and lost interest. Peck agreed, and the court told him to provide evidence of those damages.

Peck asked to enter into evidence a spreadsheet calculation of lost interest. The court ruled that he had not provided an adequate foundation for it. The court then allowed Peck to enter photocopies of checks that Pierotti had written on a guardianship account and a copy of what he described as the last statement Plummer received for one contested account. Defense counsel said that he did not object. Other potentially relevant items the court admitted include a letter showing

the date on which Peck received payment of the estate case award from the public guardian, and a bank statement that “showed a transfer of \$5,000 by Pierotti.”

Further, Peck testified that he paid \$1,850 to the firm of “Dave Tollender” for legal advice in the *Plummer* case. The court did not allow receipts from the firm into evidence, on the basis that Peck had not properly disclosed them.

Defense counsel declined to cross-examine Peck and did not put on evidence. The court then heard argument from both sides.

Defense counsel argued that the court “lacked jurisdiction” to award attorney fees relating to the *Plummer* case, that that would be something that this court would have done during that appeal. He did not suggest that Peck was lying or mistaken about the amount that he had paid. He also argued that Peck had put on no evidence of the amount of the principal on which Peck claimed to have lost interest or of the applicable interest rate. The court did not allow Peck a rebuttal argument.

The court ruled, agreeing with the defense position that Peck had failed to present evidence of the amount of the principal, the interest rate, or the period over which the interest was lost. It further ruled that it lacked the authority to award attorney fees. Although the court did not explicitly rule that Peck had failed to make a *prima facie* case, the overall tenor of the oral ruling is that the court was deciding that issue, and not specifically ruling on the weight of the evidence.

On November 6, 2009, Peck filed a motion to reconsider in which he attempted to present additional evidence of interest rates. He also included a partial calculation of the damages with citations to admitted evidence. The court denied the motion on December 23, 2009, and Peck timely appealed.

## ANALYSIS

We will first consider Peck’s argument that the trial court erred in ruling that Peck failed to present evidence of damages from loss of interest. We will then turn to his claim that the court erred in ruling that it lacked authority to treat attorney fees as an injury for which it could award damages. Finally, we address Peck’s assertion that the court showed bias against him.

We deem that the trial court, when it ruled that Peck had failed to present evidence of his lost-interest damages, granted what amounted to a motion for a directed finding by Pierotti. “In all cases tried without a jury, defendant may, at the close of plaintiff’s case, move for a finding or judgment in his or her favor.” 735 ILCS 5/2—1110 (West 2008). If the plaintiff has failed to offer some evidence to support every element essential to his or her cause of action, the court must grant such a motion. *In re Foxfield Subdivision*, 396 Ill. App. 3d 989, 992 (2009). “Because whether a plaintiff has failed to present a *prima facie* case is a question of law, the trial court’s ruling is reviewed *de novo* on appeal.” *Id.*

Peck fails to persuade us that the court erred in ruling that his evidence was insufficient to allow a calculation of lost interest. One element necessary for any interest calculation is the amount of the principal on which the interest accrues. A second is the applicable interest rate, and a third is the period over which it accrues. For Peck to have presented evidence sufficient to allow an interest calculation—any interest calculation at all—he would need to have evidence of all of those elements. A successful showing that his evidence was sufficient would need, at a minimum, to show where in the evidence each of those elements can be found. Peck has failed to show how the evidence provides for the necessary calculations.

Peck, in his brief, refers us to his motion to reconsider; that source gives sources for some, but not all, of the necessary information. In the motion, he states that the “savings account balance was \$19,002.67 on June 30, 1997.” For this he properly cites the copy of the bank statement admitted into evidence. This he asserts to be the full principal on which he should have received interest, but he does not explain why that would be so. Indeed, the evidence would support an inference that the June 30, 1997, statement was the last statement before the guardian took control of the account. Hence, for the purpose of resolving this appeal, we will assume for that \$19,002.67 was the principal when Pierotti assumed responsibility for the account.

Peck next begins an indirect calculation of the applicable interest rate. This is unpersuasive on at least two points. First, Peck asserts that (in July 1997) “Pierotti transferred \$5000 to checking and wrote five checks totaling \$7,012.” He cites to evidence that supports those contentions as well. From there, however, the argument fails to track the evidence. His next assertion is that “[a]fter \$10,000 was removed, the balance would have been \$9,002.67.” He does not explain why he concluded that \$10,000 had been removed, making every calculation that follows questionable. Second, Peck states that “[w]hen the account was closed on April 19, 1999, the balance was \$9,897.71.” He cites an admitted document from which that figure comes, and we will assume for the sake of argument that the evidence provided *prima facie* support for that figure. He then reasons that the difference between \$9,002.67 and \$9,897.71, which is \$895.04, must have been interest. That figure is, of course, dependent on \$9,002.67 being correct. He does not explain the discrepancy between the interest rate shown in the bank statement on which he relied, which was 2.50% (or a 2.53% effective annual rate), and the rate implied by his assumption that the \$895.04 is interest, which is at least 5.26% (or a 5.40% effective annual rate). His assumptions thus imply that the

interest rate on the account more than doubled in the relevant period. We find this to be a dubious assertion.

Peck then concludes that the interest that he would have received on the \$19,002.67 would have been directly proportionate to the interest that he calculates the account to have earned on principal of \$9,002.67. We accept the notion that a change in principal would produce a proportionate change in interest. However, as we noted earlier, the assumption that \$9,002.67 was the principal on which interest did accrue is unsupported. Further, this assumption implies an unexpected jump in the interest rate. This, in turn, calls into question the initial assumption regarding the amount of the principal in the first place. Thus, any conclusion about the actual interest rate is highly speculative. Peck's attempt to extract an interest rate from the evidence therefore fails, and with it his attempt to show lost-interest damages.

Peck also argues that he presented evidence of losses incurred in the form of court costs and the attorney fees in *Plummer*. That argument fails to address the basis on which the court ruled against him. The court ruled that it lacked authority to treat such losses as damages compensable in the current case, apparently assuming that such losses are compensable only through fee shifting in the original case. Thus, its conclusion would be the same regardless of the strength of the evidence. Peck's argument is thus inapposite.

Next, Peck asserts that the trial court exhibited bias against him. We disagree. We note that Peck has failed to point to anything in the record showing the claimed bias. It is well established that “[a] circuit judge is presumed to be impartial and the burden of overcoming this presumption rests with the party asserting bias.” *Anderson v. Alberto-Culver USA, Inc.*, 337 Ill. App. 3d 643, 663 (2003).

Peck's claim focuses on events before the trial—sometimes years before the trial. He asserts that these events show a pattern of plotting and collusion by which the court intended to leave him unready for the Pierotti trial. However, his claims lack even weak evidence. For the most part, he points to judges making incorrect rulings of law that this court later corrected; scheduling mistakes that occurred, and disagreements between judges regarding courtroom procedures or the rules of evidence. Such matters do not establish evidence of bias, at most they may be construed as occasional occurrences in the litigation process.

Peck does discuss two specific occurrences that he claims show the bias of the judge presiding at the time. He asserts that Judge Abraham showed bias against him by misleading him about the need to subpoena Pierotti:

“Th[e] transcript shows the Judge telling Peck that Pierotti must show and no subpoena is needed. \*\*\* The Judge did say pursuant to court rules, but the court rules say you must have a subpoena. This is double talk and it was meant to mislead.”

Initially, we note that the assertion that the judge's purportedly erroneous advice was “meant to mislead” is nothing but pure speculation. Moreover, “Allegedly erroneous findings and rulings by the trial court are insufficient reasons to believe that the court has a personal bias for or against a litigant.” *Eychaner v. Gross*, 202 Ill. 2d 228, 280 (2002). Moreover, Peck has failed to support his assertion that Judge Abraham was incorrect that “[o]nce the trial is set, all parties, pursuant to local rules, need to be present at trial,” in that nothing in Peck's brief addresses the content of the local rules. Peck also asserts that Judge Fullerton showed bias by requiring a pretrial “Statement of the Case.” He asserts that no rule or law provides for such a statement, but does not explain why, even

if requiring such a statement is improper, the requirement favors one party over another. Peck therefore has failed to show how either circumstance tends to demonstrate bias.

CONCLUSION

For the reasons we have stated, we affirm the judgment of the circuit court of Du Page County.

Affirmed.