

STATE OF MICHIGAN
COURT OF APPEALS

IRENE E. RUBIN,

Plaintiff-Appellee,
Cross-Appellant,

v

IRVING A. RUBIN,

Defendant-Appellant,
Cross-Appellee.

UNPUBLISHED

No. 155254
LC No. 89-366467-DO

IRENE E. RUBIN,

Plaintiff-Appellee,

v

IRVING A. RUBIN,

Defendant-Appellant.

No. 157172
LC No. 89-366467-DO

IRENE E. RUBIN,

Plaintiff-Appellant,

v

IRVING A. RUBIN,

Defendant-Appellee.

No. 160669
LC No. 89-366467-DO

* Circuit judge, sitting on the Court of Appeals by assignment.

Before: Markman, P.J., and Marilyn Kelly and L.V. Bucci,* JJ.

MARILYN KELLY, J. (concurring in part and dissenting in part).

I concur with the majority opinion except with respect to the application of the usury statute to the imposition of interest on overdue payments.

When parties enter into a consent judgment of divorce and agree to a division of property, the usury statute may be applicable to late payments. MCL 438.31; MSA 19.15(1); *Clifford v Clifford*, 434 Mich 480; 453 NW2d 675 (1990); *Norman v Norman*, 201 Mich App 182, 189; 506 NW2d 254 (1993). However, it does not follow that it applies in this case. Here, the divorce judgment was nonconsensual. I see good reason to permit trial judges to use their discretion to award higher post judgment interest to a delinquent party in a nonconsensual divorce case. The purpose of the usury statute is to “protect the necessitous borrower from extortion.” *Wilcox v Moore*, 354 Mich 499, 504; 93 NW2d 288 (1958); *Visioneering Incorporated Profit Sharing Trust v Belle River Joint Venture*, 149 Mich App 327, 340; 386 NW2d 185 (1986). By contrast, the purposes of awarding interest on overdue payments under a divorce judgment are (1) to prevent the delinquent party from realizing a windfall and (2) to assure prompt compliance with the court’s orders. *Reigle v Reigle*, 189 Mich App 386, 394; 474 NW2d 297 (1991); *Ashbrenner v Ashbrenner*, 156 Mich App 373, 377; 401 NW2d 373 (1986).

Imposing the usury statute’s five percent cap on interest for overdue payments in a nonconsensual divorce judgment would, in many instances, dissuade prompt compliance. Where the delinquent party can obtain a return on the money owing at a rate greater than five percent, he would realize a windfall by paying belatedly. He or she may also wish to defy the court or punish the former spouse. Judges must have the discretion to impose an interest rate that dissuades a party from attempting to gain from late payment.

I would affirm the interest rate imposed by the trial judge in this case as it did not constitute an abuse of discretion. *Reigle, supra*, pp 393-394.

/s/ Marilyn Kelly