

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

THOMAS DENNIS and SONYA CHERRY,)	No. ED103904
)	
Appellants,)	Appeal from the Circuit Court
)	of St. Louis County
vs.)	
)	Hon. Robert S. Cohen
RIEZMAN BERGER, P.C. and MERCY)	
HOSPITAL, JEFFERSON,)	
)	Filed:
Respondents.)	September 20, 2016

Thomas Dennis and Sonya Cherry (“Appellants”) appeal from the judgment of the trial court dismissing with prejudice their petitions against Riezman Berger, P.C. (“Riezman”), and Mercy Hospital Jefferson (“Mercy”) alleging violations of the Federal Collection Practices Act and the Missouri Merchandising Practices Act and Cherry’s additional claim for wrongful garnishment. In their motions to dismiss both petitions, Riezman argued that Appellants’ claims were premised on the same allegations that the underlying judgments entered against Appellants for nontort debt did not specifically provide for the collection of post-judgment interest on the judgment and that the subsequent collection of such interest violated the FDCPA and MMPA, and in the case of Cherry, established a wrongful garnishment claim. Riezman claimed that Missouri law does not require a judgment to expressly allow for the collection of post-judgment interest in order for it to be collected from the judgment debtor and that, therefore, Appellants failed to state a cause of action upon which relief could be granted. Appellants argue that the trial court erred in dismissing their petitions because the judgments entered in the underlying collection cases did not include an award of post-judgment interest and Section 408.040 does not provide for post-judgment interest to automatically attach to a judgment.

REVERSED AND REMANDED.

Division Three holds:

The collection of post-judgment interest on a judgment, regardless of whether it was on a nontort or tort action, substantively changes the judgment, and the plain language of Section 408.040 indicates that trial court has a mandatory duty to grant post-judgment interest where sought, not that such interest is automatic on every judgment. Because post-judgment interest is not an automatic award and must be included in the judgment, the petitions were improperly dismissed

Opinion by: Robert G. Dowd, Jr., J.
Angela T. Quigless, P.J. and Lisa S. Van Amburg, J., concur.

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THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.