theory. But we do not think that, even under the pleading theory, it is a lesser included offense. As pled, to prove sexual abuse, Kosrae had to prove the licking and the fingering and that the victim was under 13. To prove disturbing the peace, Kosrae had to prove the licking and that the victim was unreasonably disturbed or annoyed. Thus, the victim's age and the fingering were facts that Kosrae had to prove to obtain a sexual abuse conviction that it did not have to prove to obtain the disturbing the peace conviction. That the victim was unreasonably disturbed or annoyed was a fact that Kosrae had to prove to obtain the disturbing the peace conviction that it did not have to prove for the sexual abuse conviction. Kosrae did not have to prove that the victim was unreasonably disturbed or annoyed to prove sexual abuse. Thus, the greater offense of sexual abuse can be committed without committing the lesser offense of disturbing the peace.

V. Conclusion

Accordingly, we vacate Presley N. Benjamin's sentences and remand the matter to the Kosrae State Court for it to conduct a sentencing hearing in compliance with Kosrae Criminal Procedure Rule 32(a) and with the benefit of the presentence investigation required by Kosrae Criminal Procedure Rule 32(c)(1).

* * * *

FSM SUPREME COURT APPELLATE DIVISION

WEBSTER GEORGE, Appellant, vs. SEMEON T. SIGRAH, Appellee.	)	APPEAL CASE NO. K3-2012 KSC Civil Action No. 67-96
WEBSTER GEORGE, Appellant, vs. ERSINA V. GEORGE, Appellee.	)	APPEAL CASE NO. K4-2012 KSC Civil Action No. 30-96

OPINION

Argued: October 7, 2013
Decided: October 22, 2013

BEFORE:

Hon. Dennis K. Yamase, Associate Justice, FSM Supreme Court
Hon. Ready E. Johnny, Associate Justice, FSM Supreme Court
Hon. Richard H. Benson, Specially Assigned Justice, FSM Supreme Court*

*retired FSM Supreme Court justice

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* * * *

HEADNOTES

Judgments

When, although the judge signed the judgment on September 13, 2007, the clerk did not enter it until September 17, 2007, September 17, 2007 is the judgment date. George v. Sigrah, 19 FSM R. 210, 215 n.2 (App. 2013).

Appellate Review – Standard – Civil Cases – De Novo

Since Kosrae State Court orders in aid of judgment and the accrual of post-judgment interest are governed by Kosrae statutes and since an issue on a statute's application is an issue of law, the review will be de novo. George v. Sigrah, 19 FSM R. 210, 216 (App. 2013).

Appellate Review – Standard – Civil Cases – Abuse of Discretion; Appellate Review – Standard – Civil Cases – De Novo

If, whether attorney's fees should have been awarded presents a question of law, that question is reviewed de novo, but when it is within the trial court's discretion to award attorney's fees, the grant or denial of an attorney's fees request is reviewed under the abuse of discretion standard. George v. Sigrah, 19 FSM R. 210, 216 (App. 2013).

Appellate Review – Standard – Civil Cases – Abuse of Discretion

A trial court abuses its discretion when its decision is clearly unreasonable, arbitrary, or fanciful; or it is based on an erroneous conclusion of law; or the record contains no evidence upon which the court could rationally have based its decision. George v. Sigrah, 19 FSM R. 210, 216 (App. 2013).

Judgments – Interest

Money judgments bear interest as provided by law. Under the applicable Kosrae statute, the Kosrae State Court has no discretion. All judgments for the payment of money bear nine percent interest from the date the judgment is entered. George v. Sigrah, 19 FSM R. 210, 216 (App. 2013).

Judgments – Interest

All Kosrae State Court money judgments automatically bear 9% interest regardless of whether the court specifically ordered it, or remembered to put it in the judgment, or whether it is stated in the judgment. George v. Sigrah, 19 FSM R. 210, 217 (App. 2013).

Judgments – Interest

A judgment holder might voluntarily agree to waive his or her statutory right to 9% interest on a money judgment either as an inducement for the defendant to stipulate to a judgment or to pay it off quickly (pay in full by ___ and I'll waive the interest) or for some other reason, but the Kosrae State Court does not have the authority to suspend or vacate liability for the 9% post-judgment interest as that would be an act inconsistent with the law. George v. Sigrah, 19 FSM R. 210, 217 (App. 2013).

Judgments – Interest

The nine percent on Kosrae State Court judgments is simple interest from date of entry since the statute does not authorize compounding. George v. Sigrah, 19 FSM R. 210, 217 n.4 (App. 2013).

Attorneys' Fees – Court-Awarded

Generally, a court will award attorney's fees only when such fees are provided for by statute or in a contract between the parties. But if the defendant acts vexatiously, or in bad faith, or presses frivolous claims, or employs oppressive litigation practices, the trial court may award attorney's fees to the prevailing party even when no statute or contractual provision authorizes attorney's fees. George v. Sigrah, 19 FSM R. 210, 218 (App. 2013).

Attorneys' Fees – Court-Awarded

The mere non-payment of a judgment does not constitute the vexatiousness or bad faith needed to entitle a judgment creditor to an attorney's fees and costs award. There must be something more. George v. Sigrah, 19 FSM R. 210, 218 (App. 2013).

Attorneys' Fees – Court-Awarded

A party seeking an attorney's fee award must submit supporting documentation showing the attorney's hourly rate, the date, the work done, and the amount of time spent on each service for which a claim for compensation is made. George v. Sigrah, 19 FSM R. 210, 218 (App. 2013).

Attorneys' Fees – Court-Awarded

When the record is adequate to show that the judgments did not go unpaid because of the appellees' bad faith or vexatious behavior, the trial court's denials of attorney's fees requests may be affirmed. George v. Sigrah, 19 FSM R. 210, 218 (App. 2013).

Costs – Allowed; Costs – When Taxable

Appellate costs are awarded to the prevailing party under FSM Appellate Procedure Rule 39. Rule 39 costs are only those costs incurred because of the appeal, not costs incurred in the trial division proceedings. George v. Sigrah, 19 FSM R. 210, 218 (App. 2013).

Appellate Review – Briefs, Record, and Oral Argument; Costs – Allowed; Costs – Procedure

The cost of printing or otherwise producing necessary copies of briefs, appendixes or copies of records is taxable in the Supreme Court appellate division by stating them in an itemized and verified bill of costs which the party must file with the appellate clerk, with proof of service, within 14 days after the entry of the appellate judgment. George v. Sigrah, 19 FSM R. 210, 220 (App. 2013).

Appellate Review – Briefs, Record, and Oral Argument; Costs – Procedure

Costs incurred in the preparation and transmission of the record and the costs of the reporter's

transcript must be taxed in the court appealed from as costs of the appeal in favor of the party entitled to costs. George v. Sigrah, 19 FSM R. 210, 219 (App. 2013).

Costs – Disallowed

When nothing in the record indicates that the prevailing party ever timely filed his verified bills of costs with the appropriate court clerks and when it is now too late to file them, he has waived his right to the appellate costs by his failure to timely file verified bills of cost. George v. Sigrah, 19 FSM R. 210, 219 (App. 2013).

Costs

Costs are not synonymous with a party's expenses since only certain types of expenses are cognizable as costs. George v. Sigrah, 19 FSM R. 210, 219 (App. 2013).

Costs – Allowed; Costs – Disallowed

Service costs and others that are generally allowed to a prevailing party should be taxed if proven. Certain other expenses, such as phone calls, postage, and in-house copying, are generally not allowed. The determination of costs awarded to the prevailing party is a matter generally within the trial court's discretion. George v. Sigrah, 19 FSM R. 210, 219 (App. 2013).

Costs – Disallowed

Unexplained costs are disallowed. George v. Sigrah, 19 FSM R. 210, 219 (App. 2013).

Judgments – Interest; Judgments –Payment and Satisfaction

Partial payments on a judgment are to be first applied to the accrued interest and then to reduction of the principal with the subsequent statutory interest being computed only on the remaining principal. George v. Sigrah, 19 FSM R. 210, 219 (App. 2013).

Debtors' and Creditors' Rights – Orders in Aid of Judgment; Judgments – Payment and Satisfaction

A $300 payment on a 1998 judgment could not have reduced the principal by $300, and considering the age of the judgment and how little has been paid, it likely did not reduce the principal at all. Therefore the part of the trial court order in aid of judgment reducing the judgment principal by $300 is reversed. George v. Sigrah, 19 FSM R. 210, 219-20 (App. 2013).

Attachment and Execution; Debtors' and Creditors' Rights – Orders in Aid of Judgment

The purpose of an order-in-aid-of-judgment hearing is for the trial court to examine the question of the judgment debtor's ability to pay and determine the fastest way in which the judgment debtor can reasonably satisfy the judgment. A writ of execution (or garnishment or attachment) can issue as part of an order in aid of judgment. George v. Sigrah, 19 FSM R. 210, 220 (App. 2013).

Attachment and Execution – Garnishment; Debtors' and Creditors' Rights – Orders in Aid of Judgment

When the $50 monthly payments barely cover the monthly interest plus some of the accrued interest, if some of the rental payments to the judgment debtor can be garnished while complying with Kosrae Code § 6.2409(1) that allows debtors to retain property and income to provide reasonable living requirements, the trial court must do so unless there is an even faster way to satisfy the judgment. This is for the trial court to determine at a hearing where the parties present the necessary evidence for a determination. George v. Sigrah, 19 FSM R. 210, 220 (App. 2013).

Debtors' and Creditors' Rights – Orders in Aid of Judgment

A judgment creditor has discovery tools available to him under Kosrae Civil Procedure Rule 69(a) under which a judgment creditor may obtain discovery from any person, including the judgment debtor. George v. Sigrah, 19 FSM R. 210, 220 n.6 (App. 2013).

Debtors' and Creditors' Rights – Orders in Aid of Judgment

Often at an order-in-aid-of-judgment hearing, the judgment debtor, having been subpoenaed as a witness by the judgment creditor, will be called to testify, about his or her finances, assets, income, and ability to pay. Based on this evidence and other evidence the judgment creditor has introduced through other witness testimony or documentary exhibits, as well as any evidence similarly introduced by the judgment debtor, the trial judge makes his findings about the fastest way in which the judgment debtor can reasonably satisfy the judgment and fashions his order in aid of judgment accordingly. Argument of counsel is not evidence on which the court can base its factual findings. George v. Sigrah, 19 FSM R. 210, 220-21 (App. 2013).

Debtors' and Creditors' Rights – Orders in Aid of Judgment

When the order-in-aid-of-judgment hearing is on the judgment creditor's motion, his counsel should have the opportunity to present his evidence and his witnesses first and the judgment debtor's counsel should present his side next with the judgment editor's counsel having any last words. Any future order-in-aid-of-judgment hearing should follow this procedure. George v. Sigrah, 19 FSM R. 210, 221 (App. 2013).

Costs

When the appellant was only partially successful in his appeals, the court will order that the costs of the appeals be borne by the parties with the exception that, since the reporter's transcripts were particularly helpful, the appellant will be awarded the cost of the reporter's transcripts of the trial court's order-in-aid-of-judgment hearings. George v. Sigrah, 19 FSM R. 210, 221 (App. 2013).

Costs

Costs for a reporter's transcripts are taxed in the court appealed from in the case that was appealed. George v. Sigrah, 19 FSM R. 210, 221 (App. 2013).

* * * *

COURT'S OPINION

DENNIS K. YAMASE, Associate Justice:

These two appeals arose from September 2012 orders in aid of judgment issued by the Kosrae State Court in Civil Actions No. 30-96 and 67-96. Since the appellant was the same in both appeals and most of the issues were the same, we consolidated the appeals for oral argument and for this opinion. We reverse the orders in aid of judgment in part and we affirm in part. Our reasoning follows.

I. Background

A. *Appellee Semeon T. Sigrah*

On February 17, 1998, the Kosrae State court entered a stipulated judgment for $4,989.15 in Webster George's favor against Semeon T. Sigrah. The judgment included the sentence: "Post judgment interest shall accrue at the statutory rate." After an earlier motion for an order in aid of judgment was dismissed for lack of action, George filed a new motion for an order in aid of judgment on June 22, 2010, but no action was taken on it either. On October 24, 2010, George filed a motion for a writ of garnishment, which was granted on April 11, 2011, but which was vacated on April 14, 2011. On September 20, 2011, George again filed a motion for an order in aid of judgment which Sigrah opposed on September 23, 2011. The motion was heard on September 11, 2012. Sigrah did not appear although his counsel did.

The trial court, in its September 19, 2012 written order, required Sigrah to pay $50 monthly but vacated all post-judgment interest unless Sigrah missed a monthly payment[1] and denied Webster George's requests for attorney's fees and costs and ignored his requests for writs of garnishment and attachment. Webster George timely appealed.

B. *Appellee Ersina V. George*

On September 17, 2007, the Kosrae State Court, after trial, entered a judgment[2] in Webster George's favor against Ersina V. George "in the amount of $6,220.52 with post-judgment interest at the statutory rate." Judgment at 2 (Sept. 17, 2007). Ersina George appealed. On January 12, 2010, we affirmed the Kosrae State Court judgment with costs awarded to the appellee, Webster George. George v. George, 17 FSM Intrm. 8, 10 (App. 2010).

No payments were made on the judgment. Between May 14, 2010 and September 20, 2011, Webster George filed three motions seeking orders in aid of judgment and writs of garnishment, attachment, or execution, but all were denied. Webster also sought attorney's fees and costs. Those were also denied.

On September 11, 2012, the Kosrae State Court heard Webster George's renewed motion for a writ and ordered Ersina George to pay Webster $35 a month to be garnished from a $75 monthly rental payment, denied attorney's fees and costs, and, although it is not in the September 19, 2012 written order, vacated the post-judgment interest from the September 17, 2007 judgment date until September 11, 2012.[3] This appeal followed.

II. Issues Presented

Webster George contends that the Kosrae State Court erred in its order in aid of judgment against judgment debtor Semeon T. Sigrah 1) by vacating the statutory post-judgment interest; 2) by violating his due process rights when it vacated the interest; 3) by denying him attorney's fees and costs; 4) by denying motions for writs of garnishment and attachment; 5) by lowering the balance of the judgment principal amount due; and 6) by basing its order on defense counsel's argument and not on admitted evidence.

Webster George contends that the Kosrae State Court erred in its order in aid of judgment against judgment debtor Ersina V. George 1) by vacating the statutory post-judgment interest; 2) by violating his due process rights when it vacated the interest; 3) by denying him his attorney's fees and costs, including costs awarded by the FSM Supreme Court appellate division; and 4) by altering the balance of the judgment principal amount due.

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[1] The written order merely says, "If Defendant skips a monthly payment, post judgment of 9% applies." At the hearing, the judge stated that the interest would only resume starting September 11, 2012. No. 67-96 Tr. at 16 (Sept. 11, 2012).

[2] Although the judge signed the judgment on September 13, 2007, the clerk did not enter it until September 17, 2007. Therefore September 17, 2007 is the judgment date.

[3] The parties evidently understood the post-judgment interest to be revoked from defense counsel's query of whether "the terms in this case are the same as Semeon's case?" and the trial judge's affirmative response. No. 30-96 Tr. at 14 (Sept. 11, 2012). "Semeon's case" refers to George v. Sigrah, Civ. No. 67-96, which is on appeal as K3-2013 and which is consolidated in this opinion.

III. Standard of Review

Kosrae State Court orders in aid of judgment and the accrual of post-judgment interest are governed by Kosrae statutes. An issue on a statute's application is an issue of law that we review de novo. Barrett v. Chuuk, 16 FSM Intrm. 229, 232 (App. 2009).

If, whether attorney's fees should have been awarded presents a question of law, that question is reviewed de novo, FSM Dev. Bank v. Adams, 14 FSM Intrm. 234, 246 (App. 2006), but when it is within the trial court's discretion to award attorney's fees, the grant or denial of an attorney's fees request is reviewed under the abuse of discretion standard. A trial court abuses its discretion when its decision is clearly unreasonable, arbitrary, or fanciful; or it is based on an erroneous conclusion of law; or the record contains no evidence upon which the court could rationally have based its decision. Jano v. King, 5 FSM Intrm. 326, 330 (App. 1992).

IV. Analysis

Webster George asks us to reverse the September 2012 Kosrae State Court rulings. He asks us to hold that he is entitled to the statutory post-judgment interest and to his attorney's fees and costs in both cases; to reverse the reduction of the principal amount of the judgment in each case; and to order that Sigrah's income and property be garnished. He also asks that we rule that the trial court erred by relying on the defense counsel's statement and argument alone without the support of evidence when the trial court fashioned its order in aid of judgment against Sigrah.

A. *Post-Judgment Interest*

1. *Right to Statutory Interest*

The Kosrae State Court in its September 2012 order in No. 67-96 permanently vacated or suspended all of Sigrah's liability for the statutory 9% post-judgment interest unless Sigrah missed one of his $50 monthly payments. And in its September 2012 order in No. 30-96, the trial court permanently vacated or suspended all of Ersina George's liability for post-judgment interest. Webster George contends that this is legal error.

The appellees contend that the vacation of the 9% post-judgment interest was proper because the Kosrae State Court, under Kosrae State Code § 6.101, "can do all acts, not inconsistent with law or rule, required for the due administration of justice." They also contend that the statute imposing 9% annual interest on money judgments, Kos. S.C. § 6.2401, is not self-executing so that the 9% interest does not accrue unless the Kosrae State Court specifically orders that it be imposed. Sigrah contends that since the Kosrae State Court had imposed the 9% interest in the February 17, 1998 judgment against him, it had the power to vacate that part of the judgment – the 9% interest – based on good cause.

Money judgments bear interest as provided by law. The applicable Kosrae statute reads: "A judgment for the payment of money bears interest at the rate of nine percent a year from the date of its entry." Kos. S.C. § 6.2401. The statute does not read that a judgment may bear 9% interest or that a court may impose 9% interest on a judgment. The statute is clear. The Kosrae State Court has no discretion. All judgments for the payment of money bear nine percent interest from the date the judgment is entered.

The statute is self-executing – for a judgment to bear nine percent interest no action need be taken by the court other than the entry of a judgment for the payment of money. Thus, all Kosrae State

Court money judgments automatically bear 9% interest regardless of whether the court specifically ordered it, or remembered to put it in the judgment, or whether it is stated in the judgment. Similar post-judgment interest statutes produce the same result. *See* Mobil Oil Micronesia, Inc. v. Benjamin, 10 FSM Intrm. 100, 103 (Kos. 2001) (under 6 F.S.M.C. 1401, judgment creditor entitled to 9% statutory interest even if the judgment does not so state); *see also* Grimsley v. MacKay, 93 F.3d 676, 678 (10th Cir. 1996) (post-judgment interest automatically accrues even absent express inclusion in the judgment itself); Christian v. Joseph, 15 F.3d 296, 298 (3d Cir. 1994) (statutory post-judgment interest automatically accrues regardless of whether trial court order provided for payments of post-judgment interest); Ford v. Alfaro, 785 F.2d 835, 842 (10th Cir. 1986) (trial court abused its discretion in failing to award statutory post-judgment interest); Waggoner v. R. McGray, Inc., 743 F.2d 643, 644 (9th Cir. 1984) (statutory post-judgment interest accrues from date of judgment regardless of whether judgment expressly includes it); Felton v. Board of Comm'rs, 853 F. Supp. 1099, 1101 (S.D. Ind. 1994) (court has no discretion to reduce or remove statutory post-judgment interest obligation); Bluestem Tel. Co. v. Kansas Corp. Comm'n, 176 P.3d 231, 234-35 (Kan. Ct. App. 2008) (statutes providing for post-judgment interest mean that judgments bear interest automatically regardless of whether it was prayed for in a pleading or expressly included in the judgment).

A judgment holder might voluntarily agree to waive his or her statutory right to 9% interest on a money judgment either as an inducement for the defendant to stipulate to a judgment or to pay it off quickly (pay in full by ___ and I'll waive the interest) or for some other reason. But Webster George never made any such agreements with either Semeon Sigrah or Ersina George.

The Kosrae State Court does not have the authority to suspend or vacate liability for the 9% post-judgment interest.[4] That would be an act inconsistent with the law. Kosrae Code § 6.101 only permits the trial court to do acts "not inconsistent with law." Furthermore, the Kosrae State Court cannot amend or repeal a Kosrae statute. Only the Kosrae Legislature can do that.

Accordingly, the trial court orders vacating (or suspending) the 9% statutory post-judgment interest must be reversed.

2. *Post-Judgment Interest and Due Process*

Webster George contends that his constitutional right to due process was violated since his right to post-judgment interest was vacated at the September 11, 2012 hearing without prior notice to him that the court would consider it. Since the statutory right to post-judgment interest is clear, we need not address whether the Kosrae State Court violated Webster George's right to due process. Reinstatement of the mandatory 9% interest in both cases resolves the interest issue wholly in Webster George's favor.

B. *Attorney's Fees and Costs*

1. *Attorney's Fees*

Webster George contends that he is entitled to attorney's fees because Semeon Sigrah has been non-compliant and sporadic in his payments on the judgment since 1998 and because Ersina George had not been paying anything until the September 2012 order. Webster George contends that he has shown the basis – time and amount – for an attorney's fee award. The Kosrae State Court, at the

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[4] This nine percent is simple interest from date of entry since the statute does not authorize compounding. *See* Aggregate Sys., Inc. v. FSM Dev. Bank, 9 FSM Intrm. 569, 570 (Chk. 2000).

September 11, 2012 hearing, cited Rule 37 as a proper vehicle to ask for a fee and cost awards, No. 30-06 Tr. at 20 (Sept. 11, 2012), but otherwise gave no reason for its denials.

Generally, a court will award attorney's fees only when such fees are provided for by statute or in a contract between the parties. George v. Albert, 17 FSM Intrm. 25, 34 (App. 2010); FSM Dev. Bank v. Adams, 14 FSM Intrm. 234, 256 (App. 2006). But if the defendant acts vexatiously, or in bad faith, or presses frivolous claims, or employs oppressive litigation practices, the trial court may award attorney's fees to the prevailing party even when no statute or contractual provision authorizes attorney's fees. Albert, 17 FSM Intrm. at 34 (citing Semens v. Continental Air Lines, Inc. (III), 2 FSM Intrm. 200, 208 (Pon. 1986)).

No attorney fee statute is applicable to these cases. No contract provides for attorney's fees either. Kosrae Civil Procedure Rule 37 cited by the trial court is inapplicable. It applies to fees and costs awarded as a result of discovery sanctions. That leaves the ground that Webster George emphasized.

Webster George asserts that he is entitled to attorney's fees under the principle that Sigrah and Ersina George acted improperly, vexatiously, or in bad faith over the years that he has been trying to collect those judgments. At oral argument, Webster George asserted that because he has been unable to get the defendants to pay their judgments over all these years that that constitutes vexatiousness or bad faith. We conclude that the mere non-payment of a judgment does not constitute the vexatiousness or bad faith needed to entitle a judgment creditor to an attorney's fees and costs award. There must be something more.

Furthermore, a party seeking an attorney's fee award must submit supporting documentation showing his hourly rate, the date, the work done, and the amount of time spent on each service for which a claim for compensation is made. Jackson v. George, 10 FSM Intrm. 531, 533 (Kos. S. Ct. Tr. 2002). The records Webster George submitted do not reach that level of specificity.

The record is adequate to show that the judgments did not go unpaid because of the appellees' bad faith or vexatious behavior.[5] We therefore affirm the trial court's denials of Webster George's attorney's fees requests.

2. *Costs*

a. *Appellate Court's Costs Award*

Webster George contends that the Kosrae State Court improperly ignored our award of costs to him in Ersina George's unsuccessful appeal of the judgment against her. He contends that the trial court should add these costs to his judgment against Ersina George.

Appellate costs are awarded to the prevailing party under FSM Appellate Procedure Rule 39. Rule 39 costs are only those costs incurred because of the appeal, not costs incurred in the trial division proceedings. The cost of printing or otherwise producing necessary copies of briefs, appendixes or copies of records is taxable in the Supreme Court appellate division, FSM App. R. 39(c), by stating them in an itemized and verified bill of costs which the party must file with the appellate clerk, with proof of service, within 14 days after the entry of the appellate judgment, FSM App. R. 39(d); Nena v. Kosrae (III), 6 FSM Intrm. 564, 568-69 (App. 1994) (when a judgment is affirmed on appeal, appeal

[5] The problem may be that Ersina resides in Berryville, Arkansas and Semeon Sigrah resides in Hawaii.

costs are usually taxable against the appellant if the appellee timely files its bill of costs with the appellate division). Costs incurred in the preparation and transmission of the record and the costs of the reporter's transcript must be taxed in the court appealed from as costs of the appeal in favor of the party entitled to costs. FSM App. R. 39(e); Nena (III), 6 FSM Intrm. at 569 (bill of costs for trial transcripts must be filed in trial court appealed from).

Nothing in the record indicates that Webster George ever timely filed his verified bills of costs with the appropriate court clerks. It is now too late to file them. Webster George has waived his right to the appellate costs by his failure to timely file verified bills of cost.

b. *Other Costs*

Webster George also seeks, in both cases, an award for costs for the trial court proceedings. Costs are not synonymous with a party's expenses since only certain types of expenses are cognizable as costs. Amayo v. MJ Co., 10 FSM Intrm. 371, 385 (Pon. 2001). Service costs and others that are generally allowed to a prevailing party should be taxed if proven. Berman v. Pohnpei, 17 FSM Intrm. 360, 374 (App. 2011). Certain other expenses, such as phone calls, postage, and in-house copying, are generally not allowed. *E.g.*, Carlos Etscheit Soap Co. v. McVey, 17 FSM Intrm. 148, 151 (Pon. 2010), *aff'd*, 17 FSM Intrm. 427, 441 (App. 2011); Bank of the FSM v. Truk Trading Co., 16 FSM Intrm. 467, 471 (Chk. 2009). The determination of costs awarded to the prevailing party is a matter generally within the trial court's discretion. Ray v. Electrical Contracting Corp., 2 FSM Intrm. 21, 25 (App. 1985).

At oral argument, Webster George stated that the costs sought are related to the attorney's fees and were for preparation of the post-judgment motions and the like. These costs cannot be allowed. Webster George's expenses are otherwise unexplained. Unexplained costs are disallowed. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM Intrm. 198, 206 (Yap 2010). Accordingly, we affirm the trial court's disallowance of costs.

C. *Altering Judgment Principal Amounts*

Webster George contends that the Kosrae State Court erred when it lowered the principal judgment amount due by $300 in the Sigrah case (No. 67-96) and when it lowered the principal amount due in the Ersina George case (No. 30-96) from $6,220.52 to $6,000.

The reason the trial court lowered the principal amount in the Ersina George case (No. 30-96) to $6,000 is not apparent. This figure was used throughout the hearing and then included in the September 19, 2012 order. It may be that it was just a round number used for convenience sake and was not really meant as a reduction of the principal. Nevertheless, the reduction of the judgment principal (if it was reduced) is hereby reversed.

In the Sigrah case (No. 67-96), the trial court lowered the principal amount by $300 because at the hearing Webster George had agreed that that was the amount of the payments that Sigrah had made. No. 67-96 Tr. at 14 (Sept. 11, 2012). Partial payments on a judgment are to be first applied to the accrued interest and then to reduction of the principal with the subsequent statutory interest being computed only on the remaining principal. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM Intrm. 664, 670 (App. 1996). The $300 paid in the Sigrah case (No. 67-96) therefore could not have reduced the principal by $300. Considering the age of the judgment and how little has been paid, it likely did not reduce the principal at all. The part of the trial court order in aid of judgment reducing the judgment principal in No. 67-96 by $300 is therefore reversed.

D. *Garnishment and Execution*

Webster George contends that the Kosrae State Court erred by denying his motions for writs of garnishment, execution, and attachment in the Sigrah case (No. 67-96). He states that Sigrah's court-filed financial statement shows that he owns real estate and two houses that are rented out to tenants and he contends that those rental payments could be garnished.

At the trial court hearing, Sigrah suggested that there was no need to consider the issuance of these writs as long as he was making his monthly payments. The trial court written order did not address these writs but at the hearing the trial judge indicated that there was no evidence, only argument, about sources that could be garnished. No. 67-96 Tr. at 5 (Sept. 11, 2012).

The purpose of an order-in-aid-of-judgment hearing is for the trial court to examine "the question of the judgment debtor's ability to pay and determine[] the fastest way in which the judgment debtor can reasonably satisfy the judgment." Kos. S.C. § 6.2409(1). A writ of execution (or garnishment or attachment) can issue as part of an order in aid of judgment. Kos. S.C. § 6.2409(5). Since the $50 monthly payments barely cover the monthly interest (about $37.38) plus some of the accrued interest (see part C. *supra*) if some of the rental payments can be garnished while complying with Kosrae Code Section 6.2409(1) (allowing debtors to retain property and income to provide reasonable living requirements), the trial court must do so unless there is an even faster way to satisfy the judgment. Since Sigrah does not reside on Kosrae, garnishment of his rental income may be a viable option. This is for the trial court to determine at a hearing where the parties present the necessary evidence for a determination. Webster George may renew his motion to garnish.

E. *Conduct of Order in Aid of Judgment Hearing*

Webster George contends that the order-in-aid-of-judgment hearings were improperly conducted. He contends that in the Sigrah hearing that the trial court relied on the defense counsel's statement and argument alone without the support of evidence when the trial court fashioned its order in aid of judgment and that in both cases the trial judge had the defense counsel make his presentation first even though the hearings were on Webster George's motions. No witnesses testified. We make some comments here as a matter of future guidance.

Often, at a order in aid of judgment hearing, the judgment debtor, having been subpoenaed as a witness[6] by the judgment creditor, will be called to testify, *see* Kos. S.C. § 6.2409(2), about his or her finances, assets, income, and his ability to pay. Based on this evidence and other evidence the judgment creditor has introduced through other witness testimony or documentary exhibits, as well as any evidence similarly introduced by the judgment debtor, the trial judge makes his findings about "the fastest way in which the judgment debtor can reasonably satisfy the judgment" and fashions his order in aid of judgment accordingly.

We have noted before that argument of counsel is not evidence on which the court can base its

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[6] This did not happen in either of these two cases. Notarized financial statements were filed for each judgment debtor. We realize that this may have been the only viable way for the hearings to proceed because the two judgment debtors reside off-island beyond the reach of the trial court's subpoena power. While this deprives the judgment creditor of the ability to examine the judgment debtors under oath about their finances, we note that judgment creditor has some discovery tools available to him under Kosrae Civil Procedure Rule 69(a) (judgment creditor "may obtain discovery from any person, including the judgment debtor") that he may use in addition to the financial statements that the judgment debtors filed with the court.

factual findings. Livaie v. Weilbacher, 13 FSM Intrm. 139, 144 (App. 2005); In re Attorney Disciplinary Proceeding, 9 FSM Intrm. 165, 172 (App. 1999); *see also* Kosrae v. Nena, 13 FSM Intrm. 63, 67 (Kos. S. Ct. Tr. 2004).

Any reliance on counsel's argument as evidence was misplaced but, as the court had Sigrah's financial statement in front of it, it could rely on that. No other evidence was before the trial court. Furthermore, the trial court procedure was unusual. Although the hearing was on Webster George's motions to collect his judgment, he did not present his case first. Sigrah's counsel went first and presented his argument before Webster George's counsel was even heard. Since the hearing was on Webster George's motions, Webster George's counsel should have had the opportunity to make his presentation first. He did not. Sigrah's counsel should have presented his side next with Webster George's counsel having any last words. The same was true of the hearing on the Ersina George order in aid of judgment. At any future order-in-aid-of-judgment hearing, the trial court should allow Webster George to present his evidence and his witnesses first before the judgment debtor's counsel.

V. Conclusion

Accordingly, we reverse the trial court's vacation or suspension of statutory post-judgment interest; we affirm the trial court's denial of attorney's fees and costs requests; we reverse the lowering of the principal judgment amount in each case until the accrued interest has been paid; and we note that garnishment may be included in a future order in aid judgment directed to judgment debtor Semeon T. Sigrah and we further note that the conduct of the order-in-aid-of-judgment hearings can be improved. Future trial court proceedings in these two cases shall be consistent with this opinion.

Because the appellant was only partially successful in his appeals, the costs of these appeals shall be borne by the parties with the exception that, since the reporter's transcripts were particularly helpful, Webster George is awarded the cost of the reporter's transcripts of the order-in-aid-of-judgment hearings in the trial court. FSM App. R. 39(a) ("if a[n order] is affirmed or reversed in part, or is vacated, costs shall be allowed only as ordered by the court"). Costs for the reporter's transcripts are taxed in the court appealed from in the case that was appealed. FSM App. R. 39(e).

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