

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION THREE

WILLIAM AMBROSIO, et. al.,  
Plaintiffs and Respondents,  
v.  
JAMES S. KOENIG, et al.,  
Defendants and Appellants.

A127483

(Marin County  
Super. Ct. No. CIV 096186)

Appellants James S. Koenig and National Union Fire Insurance Company filed separate appeals from an order granting a preliminary injunction in favor of respondents. After the parties filed opening and responsive briefs, the trial court granted appellants' demurrers to the first amended complaint without leave to amend, and entered a judgment denying respondents' request for injunctive relief and dismissing the action with prejudice. Appellants now ask us to dismiss their appeals because of the subsequent proceedings in this matter. We conclude appellants' motions to dismiss should be granted as the judgment of dismissal moots these appeals.

Respondents argue we should not dismiss these appeals because the trial court did not have jurisdiction to grant the demurrers—thereby terminating the preliminary injunction by operation of law—while these appeals were pending. We disagree. Concededly, “the perfecting of [these] appeal[s] stay[ed] proceedings in the trial court” related to the preliminary injunction order (Code Civ. Proc., § 916, subd. (a)), and the trial court lacked jurisdiction to modify or dissolve the preliminary injunction during the pendency of these appeals. (*Walmart Foods v. United Food & Commercial Workers*

*Union* (2001) 87 Cal.App.4th 145, 154; *Environmental Coalition of Orange County, Inc. v. AVCO Community Developers, Inc.* (1974) 40 Cal.App.3d 513, 525.) Nevertheless, “[i]t is well settled that an injunction *pendente lite* remains in force only until rendition of the final judgment in the case. . . . ‘An injunction by order is a provisional remedy, and temporary in its character. It assumes a pending litigation in which all questions are to be settled by a judgment and operates only until the judgment is rendered.’ ” (*Peoples Ditch Co. v. Foothill Irr. Dist.* (1930) 103 Cal. App. 321, 325.) Thus, while a preliminary injunction is appealable (Code Civ. Proc., § 904.1, subd. (a)(6)), “the appeal d[oes] not operate to deprive the court of power to proceed to a final hearing of the case,” which in this instance was in the nature of the demurrers, and entry of a judgment of dismissal that explicitly denied respondents’ request for injunctive relief. (*Doudell v. Shoo* (1911) 159 Cal. 448, 455.) We therefore apply the following rule: “[W]here the provisional remedy is granted, and the defendant appeals, the action may be tried and decided while the appeal is pending. The preliminary injunction will then be merged in the permanent injunction or *will terminate on denial of a permanent injunction. In either case, the appeal from the order granting the preliminary injunction is rendered moot and may be dismissed.* [Citations.]” (6 Witkin, Cal. Procedure (5th ed. 2008) Provisional Remedies, § 402, p. 344; italics added.)

We decline respondents’ suggestion that we consider these appeals despite their mootness. “We may, in appropriate circumstances, exercise our discretion to retain and decide an issue which is technically moot. [Citation.] We do so when the issue is of substantial and continuing public interest. [Citation.] Such a resolution is particularly appropriate when the issue is ‘presented in the context of a controversy so short-lived as to evade normal appellate review’ [citations], or when it is likely to affect the future rights of the parties [citation].” (*Chantiles v. Lake Forest II Master Homeowners Assn.* (1995) 37 Cal.App.4th 914, 921.) These appeals from the preliminary injunction do not present issues of continuing public interest and importance that are likely to recur but evade normal appellate review, and we see no reason to exercise our discretion to resolve them at this time. Respondents acknowledge that a dismissal of these appeals does not

leave them without recourse. They may appeal from the judgment of dismissal, which will allow review of the same issues—or at least many of the same issues—that are raised on these appeals.<sup>1</sup>

**DISPOSITION**

The appeals are dismissed. Each party shall bear their own costs.

\_\_\_\_\_  
McGuiness, P.J.

We concur:

\_\_\_\_\_  
Pollak, J.

\_\_\_\_\_  
Siggins, J.

\_\_\_\_\_  
<sup>1</sup> In light of our determination, we deny as moot the parties' requests for judicial notice, which were deferred for consideration until this time.