[Cite as *Crown Heating & Cooling, Inc. v. Trickett,* 2005-Ohio-1256.]

THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

PORTAGE COUNTY, OHIO

CROWN HEATING & COOLING, INC.,	:	**MEMORANDUM OPINION**
Plaintiff-Appellee,	:	**CASE NO. 2003-P-0108**
- vs -	:	
HOWARD J. TRICKETT, et al.,	:	
Defendant-Appellant.	:	

Civil Appeal from the Common Pleas, Case No. 96 CV 1027.

Judgment: Appeal dismissed.

Rex Wayne Miller, 606 Belden Whipple Building, 4150 Belden Village Street, N.W., Canton, OH, 44718-3651 (For Plaintiff-Appellee).

Douglas M. Kehres, 638 West Main Street, Ravenna, OH 44266 (For Defendant-Appellant).

JUDITH A. CHRISTLEY, J., Ret., Eleventh Appellate District, sitting by assignment.

{¶1} On October 1, 2003, appellant, Howard J. Trickett, filed a notice of appeal from a September 2, 2003 judgment of the Portage County Court of Common Pleas. In that judgment, the trial court denied appellant's motion to vacate the earlier decisions of the trial court.

{¶2} On December 4, 2003, appellee, Crown Heating & Cooling, Inc., filed a motion to dismiss this appeal and to award attorney fees and costs pursuant to App.R. 23 based upon its allegation that this is a frivolous appeal. No response has been filed by appellant. In fact, appellant never filed a brief in this case and, accordingly, this appeal could be dismissed for failure to prosecute pursuant to App.R. 18(C).

{¶3} In the memorandum in support of the motion to dismiss, appellee asserts that the appeal is moot because appellant voluntarily satisfied the trial court judgment prior to filing his notice of appeal. The record reflects that on August 11, 2003, prior to the trial court denying his motion to vacate and prior to his filing the present appeal, appellant fully paid the trial court's judgment causing appellee to file a satisfaction of judgment in the trial court.

{¶4} In *Blodgett v. Blodgett*, (1990), 49 Ohio St.3d 243, the Supreme Court of Ohio held that "a satisfaction of judgment renders an appeal from that judgment moot." Id. at 245. See, also, *Hagood v. Gail* (1995), 105 Ohio App.3d 780, 785.

{¶5} Since there is no indication that appellant's satisfaction of judgment was anything other than voluntary, it is clear that the instant appeal is moot and must be dismissed.

{¶6} Accordingly, appellee's motion to dismiss the appeal is hereby granted. It is the order of this court that the instant appeal is dismissed.

DIANE V. GRENDELL, J., concurs,

WILLIAM M. O'NEILL, J., dissents with Dissenting Opinion.

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WILLIAM M. O'NEILL, J., dissenting.

{¶7} For the reasons that follow, I must dissent from the majority in this matter.

{¶8} I cannot accept the proposition that in all cases the payment of a judgment renders the matter in controversy moot for all purposes. The Seventh District Court of Appeals answered the question most succinctly when it stated that "a rule that payment *ipso facto* constitutes abandonment of the right to appeal would benefit nobody."[1]

{¶9} The court went on to reason that there are any number of legitimate reasons a debtor may rely upon to first pay a debt, and then contest the propriety of the debt itself. As stated by the court:

{¶10} "One can easily presume several reasons why a defendant may prefer to pay a judgment rather than seek a stay or await execution. Commercial interest might be cheaper than legal interest. A judgment lien filed in a county attaches to all real property in that county and makes all of it unmarketable, or at least not mortgageable. In these days of the credit crunch, a defendant may prefer to pay a judgment rather than have to answer 'yes' to the standard credit and employment application form question: Do you have outstanding judgments against you? The decision in *Kelm v. Hess*,[2] which suggests that a stay and bond are just as good, misses this point entirely.

1. *Federal Land Bank of Louisville v. Wilcox* (1991), 74 Ohio App.3d 474, 477-478.
2. *Kelm v. Hess* (1983), 8 Ohio App.3d 448.

{¶11} "We may be absolutely wrong, but believe we are in accord with *Lynch* and *Rauch*,[3] because a rule that payment *ipso facto* constitutes abandonment of the right to appeal would benefit nobody. It will not cut down on appeals because counsel will prevent clients from paying judgments and always move for a stay. It does not benefit the trial courts, because it adds the extra step of execution or stay which the defendant must resort to even if he would pay the judgment now. It does not benefit the defendant who ordinarily would seek a stay, and who would pay the judgment before the appeal was decided only if he had a very good reason for doing so. Finally, it does not benefit the plaintiff who won at trial, and who one way or another must wait to collect on his judgment. We feel confident we are on solid ground in holding that the Supreme Court did not intend to adopt a rule which benefits nobody."[4]

{¶12} Regarding the instant appeal, the only pleading filed by appellee is the motion to dismiss and requesting attorney fees. The text of this pleading is just over one page in length. The majority has held in "abeyance" the question of attorney fees. It is certainly possible that there will be more time spent in determining the issue of attorney fees than was spent on the entire defense of this appeal. The practical effect of awarding attorney fees would be to "punish" appellant, and I cannot agree with that concept.

{¶13} Finally, I note that appellant has not filed a brief in this matter. Therefore, I would dismiss this matter for appellant's failure to prosecute the appeal and, since the

3. *Lynch v. Lakewood City Bd. of Edn.* (1927), 116 Ohio St. 361; *Rauch v. Noble* (1959), 169 Ohio St. 314.
4. *Federal Land Bank of Louisville v. Wilcox*, 74 Ohio App.3d at 477-478.

merits of the case would not be reached, deny appellee's request for attorney fees.