

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
October 14, 2015 Session

**CARLENE GUYE JUDD ET AL. v. CARLTON GUYE ET AL.**

**Appeal from the Chancery Court for Davidson County  
No. 13161II, 14826II Carol L. McCoy, Chancellor**

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**No. M2015-00094-COA-R3-CV – Filed December 21, 2015**

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This shareholder derivative action involves a closely-held corporation founded by the plaintiff's parents. In 1995, the parents sold all of the outstanding shares to the plaintiff and her brother on credit. A promissory note and security agreement were executed in conjunction with the sale. After managing the corporation with her brother for several years, the plaintiff filed this derivative action against her brother and parents, seeking to recover corporate funds her brother was allegedly using for personal expenses and to dissolve the corporation. During the litigation, the parents gave the plaintiff notice that they were accelerating the promissory note and exercising their right to recover all of the stock sold to her pursuant to the security agreement. The validity of the parents' efforts to reclaim the stock went to trial along with the other issues. After a two-day trial, the court determined that the parents' efforts to reclaim ownership of the shares were ineffective, that the plaintiff owned 50% of the outstanding shares, thus she maintained standing to pursue the relief sought in her complaint, and awarded a judgment to the plaintiff on behalf of the corporation. Pursuant to an agreed order, the trial court appointed a receiver to wind up the corporation's business. During the pendency of this appeal, but prior to oral argument, all of the corporation's assets were sold, and its business was wound up. In this appeal, the parents contend the trial court erred by granting the plaintiff any relief because the plaintiff lacked standing to pursue her claims after the parents reclaimed all of the plaintiff's shares. Because the corporation was dissolved and all its assets sold, there is no meaningful relief this court can grant the parents in this appeal; therefore, the issue raised by the parents is no longer justiciable. Because the parents presented no justiciable issue for this court to consider on appeal, the plaintiff is entitled to recover damages for having to defend a frivolous appeal. Accordingly, we affirm the judgment of the trial court and remand for a calculation of just damages to be awarded to the plaintiff pursuant to Tenn. Code Ann. § 27-1-122.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court  
Affirmed and Remanded**

FRANK G. CLEMENT, JR., P.J., M.S., delivered the opinion of the Court, in which ANDY D. BENNETT and W. NEAL MCBRAYER, JJ., joined.

Dan E. Huffstutter, Nashville, Tennessee, for the appellants, Carl Guye, Sr. and Juanita Guye.

Jay S. Bowen and Lauren Kilgore, Nashville, Tennessee, for the appellee, Carlene Guye Judd.

## OPINION

Carl Guye, Sr. and Juanita Guye (“Parents”) founded West Meade Decorating Company (“West Meade”) in 1961, and they operated the business for 34 years. In January 1995, Parents incorporated West Meade in preparation for the sale of the business to two of their three children. On June 6, 1996, Parents sold all of the outstanding shares to their daughter, Carlene Guye Judd (“Plaintiff”) and their son, Carlton Guye (“Defendant”), for \$225,000; half of the outstanding shares were sold to Plaintiff and half to Defendant. Because Parents financed the purchase of the stock, the parties entered into a Stock Purchase Agreement, a Promissory Note, and a Security Agreement.<sup>1</sup> Plaintiff and Defendant were jointly liable to Parents on the promissory note. Although the debt owed to Parents was the personal obligation of Plaintiff and Defendant, it was agreed that West Meade would make the monthly payment, and it is undisputed that all required payments on the Note were made timely until August 2014.

Over the next few years, Plaintiff became concerned that Defendant was misusing corporate assets. Specifically, she believed that he was using a corporate credit card for his personal benefit. Plaintiff discussed her concerns with Parents and Defendant. As time passed, Plaintiff concluded that her efforts to resolve the problem were futile and sought the advice of counsel.

On February 7, 2013, Plaintiff commenced this shareholder derivative action, seeking recovery of corporate funds that Defendant was allegedly using for personal expenses and an order judicially dissolving the corporation under Tenn. Code Ann. § 48-24-301(2). Initially, Defendant and West Meade were the only defendants; however, Plaintiff amended her complaint to add Parents as additional defendants because they claimed an ownership interest in West Meade.

On March 1, 2013, three weeks after the commencement of this action, Parents sent Plaintiff a letter entitled: “Re: Notice of Acceleration of Promissory Note.” The letter

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<sup>1</sup> Plaintiff and Defendant also executed blank stock powers and transferred to Parents the original stock certificates for the shares issued to them.

stated, *inter alia*, that Plaintiff “signed a secured promissory note (‘Note’) in favor of [Parents] which Note currently has an outstanding balance of approximately [\$180,000].” Further, the letter stated that the collateral for the Note was 500 shares of West Meade stock and that Parents had possession of the Collateral along with an irrevocable stock power. The letter also provided that Parents were accelerating the Note and that they would take ownership of the collateral if Plaintiff did not pay the balance in full by March 4, 2013. When the March 1, 2013 notice was sent to Plaintiff, the Note was current, and there had been no prior default on the Note or any of Plaintiff’s obligations to Parents.

Plaintiff did not pay the balance owing on the Note. Seventeen months later, in August 2014, Parents executed a document titled “Transfer Statement Pursuant to TCA § 47-9-619,” which stated that all of West Meade’s stock had been transferred to Parents.

In September 2014, Parents filed a motion for summary judgment on the ground that Plaintiff no longer had standing to maintain this action because she no longer owned any shares of West Meade stock. Plaintiff disputed this fact, insisting that she still owned half of all outstanding shares because the alleged transfer of her shares to Parents was invalid. The trial court denied the motion based on the existence of genuine issues of material fact concerning whether Parents’ Transfer Statement was an effective transfer of Plaintiff’s shares of West Meade stock.

Following a bench trial, the trial court concluded that Plaintiff had standing to maintain the action because Parents’ attempt to reclaim Plaintiff’s shares was ineffective. The trial court further found that Defendant had abused the corporate form and wasted company resources and awarded Plaintiff a judgment against Defendant on behalf of the corporation and ordered that West Meade “shall be dissolved and a receiver appointed . . . .” Shortly thereafter, the parties entered an agreed order pursuant to which the trial court appointed a receiver to wind up West Meade’s business.<sup>2</sup> Parents perfected a timely appeal. Defendant did not appeal.

#### ANALYSIS

Parents’ sole issue on appeal is whether the trial court erred in finding that Plaintiff had standing to maintain the shareholder derivative action after they transferred all of her shares to themselves pursuant to the August 2014 “Transfer Statement.” Plaintiff does not raise an issue on appeal; however, she seeks to recover damages for defending a frivolous appeal.

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<sup>2</sup> The agreed order to liquidate the corporation was not stayed and, during oral argument before this court, it was acknowledged by both parties that the liquidation of the corporation had been completed.

We have determined that the sole issue raised by Parents is not justiciable because the liquidation of West Meade makes it impossible for this court to grant meaningful relief to Parents, and any judgment we might render on the issue they raised would have no practical legal effect.

## I. JUSTICIABILITY

Cases must remain justiciable from the time they are filed until the moment of final appellate disposition. *Norma Faye Pyles Lynch Family Purpose LLC v. Putnam Cnty.*, 301 S.W.3d 196, 203-04 (Tenn. 2009). A case ceases to be justiciable when it “no longer serves as a means to provide some sort of judicial relief to the prevailing party,” *see id.* at 204, or when it seeks “a judgment on some matter which, when rendered, cannot, for any reason, have any practical legal effect upon a then existing controversy . . . .” *Boyce v. Williams*, 389 S.W.2d 272, 277 (Tenn. 1965) (quoting 1 C.J.S. Actions § 17, p. 1017); *see Cnty. of Shelby v. McWherter*, 936 S.W.2d 923, 931 (Tenn. Ct. App. 1996). “Even though a case presented justiciable claims when it was first filed, it will be subject to dismissal on appeal if intervening events prevent or disable the appellate courts from granting the type of judicial relief that courts traditionally grant.” *Orlando Residence, Ltd. v. Nashville Lodging Co.*, No. 01A01-9807-CH-00357A, 1999 WL 1040544, at \*3 (Tenn. Ct. App. Nov. 17, 1999) (citing *Ford Consumer Fin. Co. v. Clay*, 984 S.W.2d 615, 616 (Tenn. Ct. App. 1998)).

In cases involving the receivership and liquidation of an entity, granting effective relief may become impossible when a significant portion of the entity’s assets have already been transferred. *See In re Sentinel Trust Co.*, 206 S.W.3d 501, 531 (Tenn. Ct. App. 2005) (“By the time the factual hearing occurred . . . , the ongoing liquidation of Sentinel and transfer of Sentinel’s assets made it impossible for the court to grant effectual relief.”); *see also Boyce*, 389 S.W.2d at 277-78 (the issue of whether government approval of a merger should be vacated was moot because the merger had already occurred and most of the corporation’s assets were in a foreign state).

This is a shareholder derivative action in which Plaintiff was seeking to judicially dissolve the corporation under Tenn. Code Ann. § 48-24-301(2). It is undisputed that has occurred – West Meade has been liquidated, and its assets have been sold.<sup>3</sup> Because of the liquidation of West Meade, this case no longer serves as a means to provide some sort of judicial relief that would have any practical legal effect. *See Boyce*, 389 S.W.2d at

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<sup>3</sup> It was announced during oral argument that the parties had previously agreed to the final distribution of funds pursuant to the receiver’s third report. Although counsel for Parents stated that the proceeds from the sale of West Meade’s assets were insufficient to pay the receiver’s fees, Parents have not presented any argument that this issue renders their appeal justiciable despite the fact that West Meade’s assets have been completely sold. Rather, the only issue they raised on appeal related solely to the ownership of West Meade’s stock.

277; *In re Sentinel Trust Co.*, 206 S.W.3d at 531. Therefore, the issue raised by Parents – whether they effectively reclaimed all shares owned by Plaintiff in what is now a defunct corporate entity – is moot.<sup>4</sup>

## II. FRIVOLOUS APPEAL

Plaintiff seeks to recover the attorney’s fees she incurred on appeal, contending that this appeal is frivolous.

Tenn. Code Ann. § 27-1-122 states that when it appears to a reviewing court that an appeal “was frivolous or taken solely for delay, the court may, either upon the motion of a party or of its own motion, award just damages against the appellant, which may include but need not be limited to, costs, interest on the judgment, and expenses incurred by the appellee as a result of the appeal.”

A “frivolous” appeal is one that is devoid of merit, has little prospect of success, or is lacking in justiciable issues. *See Davis v. Gulf Ins. Group*, 546 S.W.2d 583, 586 (Tenn. 1977); *In re Nathaniel C.T.*, 447 S.W.3d 244, 248 (Tenn. Ct. App. 2014). A successful litigant should not have to bear the expense of a groundless appeal, but the penalty described in Tenn. Code Ann. § 27-1-122 “is to be used only in obvious cases of frivolity and should not be asserted lightly or granted unless clearly applicable – which is rare.” *See Henderson v. SAIA, Inc.*, 318 S.W.3d 328, 342 (Tenn. 2010) (citing *Wells v. Sentry Ins. Co.*, 834 S.W.2d 935, 938-39 (Tenn. 1992)); *Davis*, 546 S.W.2d at 586. Determining whether to award damages for a frivolous appeal is discretionary decision. *GSB Contractors Inc. v. Hess*, 179 S.W.3d 535, 547 (Tenn. Ct. App. 2005); *Young v. Barrow*, 130 S.W.3d 59, 66-67 (Tenn. Ct. App. 2003).

We conclude that Parents’ appeal is frivolous because it lacked a justiciable issue when Parents entered into the agreed order to liquidate the corporation without seeking a stay or other relief.<sup>5</sup> Thus, Plaintiff is entitled to recover the reasonable attorney’s fees and expenses she incurred in this appeal pursuant to Tenn. Code Ann. § 27-1-122.

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<sup>4</sup> Although there are exceptions to the mootness doctrine, none are applicable here. *See Norma Faye Pyles Lynch Family Purpose LLC v. Putnam Cnty.*, 301 S.W.3d 196, 204-05 (Tenn. 2009).

<sup>5</sup> The only issue raised in this appeal by Parents became moot before oral argument in this court. Moreover, it was apparent that the only issue raised by Parents would become moot before this court could dispose of the case unless Parents sought to stay the trial court’s order dissolving West Meade, *see* Tenn. R. Civ. P. 62, requested an expedited briefing schedule from this court, *see* Tenn. R. App. P. 2, or sought other available relief. They did not; thus, they knew or should have known they were pursuing an appeal that had no prospect of success once the appeal lacked a justiciable issue.

**IN CONCLUSION**

The judgment of the trial court is affirmed, and we remand for the trial court to award Plaintiff the reasonable and necessary attorney's fees she incurred in this appeal. Costs of appeal are assessed against the appellants, Carl Guye, Sr. and Juanita Guye.

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FRANK G. CLEMENT, JR., JUDGE