

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

GALLOWAY ASSET MANAGEMENT LLC, *Plaintiff/Appellee*,

v.

TAMARA JAMISON, *Defendant/Appellant*.

No. 1 CA-CV 17-0001
FILED 2-27-2018

Appeal from the Superior Court in Maricopa County
No. CV2016-012001
The Honorable Karen A. Mullins, Judge

APPEAL DISMISSED

COUNSEL

Tiffany & Bosco, P.A., Phoenix
By Robert D. Mitchell, Amy D. Sells, Sarah K. Deutsch
Counsel for Plaintiff/Appellee

Farhang & Medcoff, PLLC, Tucson
By Timothy M. Medcoff, Robert Fischer, Robert A. Bernheim
Counsel for Defendant/Appellant

MEMORANDUM DECISION

Judge Paul J. McMurdie delivered the decision of the Court, in which Presiding Judge Lawrence F. Winthrop and Judge Jennifer B. Campbell joined.

M c M U R D I E, Judge:

¶1 Tamara Jamison appeals from a preliminary injunction order. For the following reasons, we dismiss the appeal.

FACTS AND PROCEDURAL HISTORY

¶2 Plaintiff Galloway Asset Management, LLC (“GAM”) is an investment advisory firm that specializes in asset management for the public safety community, i.e., police officers, firefighters, and other public safety professionals. Jamison worked for GAM as an independent contractor. Prior to terminating her employment, Jamison signed an independent contractor agreement, which contained a (1) confidential/proprietary information and trade secrets covenant; (2) a covenant not to solicit GAM clients for a period of 18 months from her termination date; and (3) a covenant not to compete within a 15-mile radius of GAM or GAM contractors for 18 months from her termination date. The independent contractor agreement contained step-down provisions for the covenants not to solicit and compete.

¶3 On Friday, July 29, 2016, Jamison resigned from GAM “effective immediately.” That night, she threw a “going away” party that GAM clients attended. At the party, she distributed flyers to her guests announcing her new employment with NOVA Financial & Insurances Services (“NOVA”) and made packets available to guests to sign and transfer their accounts from GAM to NOVA. The next day, NOVA sent an email to recipients that included GAM clients regarding Jamison’s transition to NOVA as the Vice President of their new Public Safety Department. The email indicated Jamison would continue to work as the recipient’s investment advisor. Additionally, Jamison’s picture, biography, and email address were posted on NOVA’s website, identifying her as the Vice President of NOVA’s new Public Safety Department.

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¶4 The next week, GAM filed an ex parte motion for a temporary restraining order and preliminary injunction. The superior court issued a temporary restraining order enjoining Jamison from soliciting GAM clients, using GAM client information to solicit GAM clients, and competing with GAM in a 15-mile radius of GAM or its contractors until an evidentiary hearing on GAM’s request is held, and requiring Jamison to immediately return GAM records.

¶5 After an evidentiary hearing, the superior court entered a preliminary injunction in GAM’s favor that included (1) a confidential information covenant; (2) a covenant not to solicit for 12 months after Jamison’s termination date; and (3) a covenant not to compete within 10 miles of GAM or any GAM contractor for 12 months from Jamison’s termination date. The court ordered the preliminary injunction “is effective immediately and shall remain in full force and effect until July 29, 2017.”

¶6 Jamison timely appealed the injunction. We have jurisdiction pursuant to Arizona Revised Statutes (“A.R.S.”) section 12-2101(A)(5)(b).

DISCUSSION

¶7 The issue properly presented on appeal is whether the superior court abused its discretion by entering the preliminary injunction.¹ However, issues surrounding the preliminary injunction are moot because the injunction expired on July 29, 2017. *See Arpaio v. Maricopa County Bd. of Supervisors*, 225 Ariz. 358, 361, ¶ 7 (App. 2010) (“A case becomes moot when an event occurs which would cause the outcome of the appeal to have no practical effect on the parties.”) (quoting *Sedona Private Prop. Owners Ass’n v. City of Sedona*, 192 Ariz. 126, 127, ¶ 5 (App. 1998)); *Hall v. World Sav. & Loan Ass’n*, 189 Ariz. 495, 504 (App. 1997) (a case becomes moot if, “as a result of a change of circumstances before the appellate decision, action by the reviewing court would have no effect on the parties”) (quotation omitted).

¶8 As a matter of judicial restraint, we generally do not address moot issues or issue advisory opinions. *Dunwell v. Univ. of Ariz.*, 134 Ariz. 504, 507 (App. 1982) (absent the presence of a discretionary exception, “[i]t

¹ Jamison also argues the restrictive covenants, as originally written, are overbroad, unreasonable, and unenforceable as a matter of law. Because Jamison appealed the preliminary injunction, we decline to address matters beyond that ruling.

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has long been the rule of this state that the appellate court is not empowered to decide moot questions or abstract propositions, or declare, for the sake of future cases, principles or rules of law which cannot affect the result of the instant issue"). An appellate court should not give advisory opinions or decide issues unless its decision disposes of the appeal under consideration. *Progressive Specialty Ins. Co. v. Farmers Ins. Co. of Ariz.*, 143 Ariz. 547, 548 (App. 1985). Because the preliminary injunction has expired, affirmance or reversal of the court's preliminary injunction ruling would constitute an advisory opinion on a moot issue. Therefore, we decline to apply a discretionary exception and dismiss the appeal as moot.

ATTORNEY'S FEES

¶9 Both parties request their attorney's fees and costs on appeal pursuant to Arizona Rule of Civil Appellate Procedure 21 and A.R.S. §§ 12-341 and -341.01. In our discretion, we decline to award either party its attorney's fees or taxable costs.

CONCLUSION

¶10 For these reasons, we dismiss the appeal.



AMY M. WOOD • Clerk of the Court
FILED: AA