

1
2
3
4
5
6
7
8
9
10

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

IN RE TIM VARELA, SR.

Case No. 2:16-cv-01035-APG

TIM VARELA, SR.,

OPINION

Appellant,

v.

WELLS FARGO BANK, N.A.,

Appellee.

11 Appellant/debtor Tim Varela, Sr. appeals the bankruptcy court's order denying his motion
12 to stay foreclosure pending resolution of his appeal in *Varela v. Wells Fargo*, 2:15-cv-02497-
13 GMN. ECF No. 1. Varela contends the bankruptcy judge, Bruce Beesley, formerly represented
14 appellee Wells Fargo Bank, N.A. in relation to the same property at dispute in this case when
15 Judge Beesely was still in private practice. Varela contends that Judge Beesley erred by denying
16 Varela's motion to stay pending appeal when he had previously granted that motion. Varela also
17 argues Judge Beesley lacked jurisdiction to enter the denial order because an appeal had been
18 filed.

19 Wells Fargo responds that because the property has been sold at a foreclosure sale, this
20 appeal is moot. Wells Fargo also argues the bankruptcy court properly denied a stay pending
21 appeal because Varela was unlikely to succeed on the merits of the appeal. Additionally, Wells
22 Fargo asserts that the bankruptcy court properly corrected a clerical error because the court
23 erroneously had entered an order granting the motion to stay when in fact that motion had been
24 denied. Wells Fargo asserts the bankruptcy court had jurisdiction to correct the error because no
25 appeal of the order denying the motion to stay had been filed. Finally, Wells Fargo argues Judge
26 Beesley was not required to recuse because he was not an attorney in the current matter in
27 controversy.
28

1 A bankruptcy appeal becomes moot when the court cannot fashion effective relief. *Focus*
2 *Media, Inc. v. Nat'l Broad. Co., Inc.*, 378 F.3d 916, 922 (9th Cir. 2004). The “classic example” of
3 constitutional mootness in a bankruptcy appeal “is a case in which the debtor has failed to seek a
4 stay of foreclosure and the debtor’s property has been sold. The transfer to a third party precludes
5 meaningful relief.” *Baker & Drake, Inc. v. Pub. Serv. Comm’n*, 35 F.3d 1348, 1351 (9th Cir.
6 1994).

7 Here, the property has been sold, so Varela’s motion to stay foreclosure is moot. I cannot
8 afford effective relief because I cannot stay a foreclosure that has already taken place.

9 IT IS THEREFORE ORDERED that this bankruptcy appeal is dismissed as moot. The
10 clerk of court shall close this case.

11 DATED this 1st day of February, 2017.

12
13 
14 _____
15 ANDREW P. GORDON
16 UNITED STATES DISTRICT JUDGE
17
18
19
20
21
22
23
24
25
26
27
28