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**IN THE
COURT OF APPEALS OF INDIANA**

MARSHA BLAUGH,)
)
 and)
)
KENNETH R. MYERS and)
SHARON E. MEYERS,)
)
 Appellants-Defendants,)
)
 vs.) No. 02A03-0508-CV-383
)
WARD W. MILLER, Successor Personal)
Representative of the Estate of)
John Joseph Powner, Deceased,)
)
 Appellee-Plaintiff.)

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Frederick A. Schurger, Special Judge
Cause No. 02D01-0302-PL-76

November 30, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Marsha Blaugh, individually and as trustee for the Gaynelle Stier Testamentary Trust, appeals the trial court's judgment in favor of Ward Miller, personal representative of the estate of John Joseph Powner. Blaugh raises three issues;¹ however, we dismiss her appeal because the judgment against her has been satisfied.

FACTS AND PROCEDURAL HISTORY

John Joseph Powner died on October 5, 1999. Kenneth Myers was appointed personal representative of the Powner Estate and, under Powner's will, Kenneth and his wife Sharon received all the assets in equal shares. After a will contest "effectively resolved in favor of" the Myerses, (Appellee's App. at 1), Ward Miller was appointed successor personal representative of the Powner Estate. In February 2003, Miller filed a complaint against the Myerses, alleging they had embezzled or converted over \$100,000 of the Estate's assets while Kenneth was serving as personal representative. A default judgment was entered against the Myerses in January 2004 for approximately \$305,000.² In March 2004, pursuant to Ind. Code § 29-1-13-10(b), the trial court ordered Kenneth "incarcerated until such time as he shall repay to the [Powner Estate] the missing sum." (Appellee's App. at 3.)

Gaynelle J. Stier died on June 7, 2003. Stier bequeathed half of the residue of her estate to Blaugh individually, and half to Blaugh as trustee of a restricted testamentary

¹ Blaugh argues the trial court erred in entering judgment against her as garnishee-defendant, both individually and as trustee for the Stier Trust; in concluding the assets of the Stier Trust are not protected from the creditors of the trust beneficiary despite language in the trust to that effect; and in attaching the judgment to both Blaugh's individual interest and the Trust's interest in a condominium.

² Miller sought and received treble damages.

trust to benefit Sharon Myers, who is Blaugh's sister. Cash and Stier's condominium make up the bulk of the estate.

After Kenneth was incarcerated in March 2004, Blaugh paid a portion of the \$51,000 "purge" amount required for his release.³ In November 2004, Miller filed a verified motion for proceedings supplemental, naming Blaugh, both personally and as trustee of the Stier Trust, as the garnishee-defendant.

On April 4, 2005, the trial court entered judgment against Blaugh for \$29,995.87 plus eight percent interest, costs, and attorney fees.⁴ Attorney fees were determined to be \$7,548, bringing the judgment total to \$37,543.87 plus interest and costs. The trial court denied Blaugh's motion to correct error. Blaugh filed a notice of appeal in August 2005. She requested a stay pending appeal in October 2005, which request was denied.⁵ Blaugh then filed a verified motion for extension of time to file an appellant's brief with this Court, which motion was granted.

The updated Chronological Case Summary⁶ indicates a \$33,777.66 payment was made on November 14, 2005. The clerk issued a check to Miller's attorneys in that

³ The Myerses' son paid the remainder.

⁴ The trial court adopted Miller's proposed findings, conclusions, and judgment verbatim. Although our Indiana Supreme Court does not prohibit this practice, "when this occurs, there is an inevitable erosion of confidence of an appellate court that the findings reflect the considered judgment of the trial court." *Prowell v. State*, 741 N.E.2d 704, 709 (Ind. 2001).

⁵ The trial court denied the stay pursuant to Ind. Code § 34-55-2-10(a), which provides: "A stay of execution is not allowed upon any judgment recovered against any . . . person . . . for money received in a fiduciary capacity[.]"

⁶ This updated copy of the CCS was filed with this court on February 13, 2006.

amount on November 18, 2005. On November 21, 2005, Miller signed a release of judgment that provided as follows:

RELEASE OF JUDGMENT AGAINST
MARSHA A. BLAUGH ONLY

Plaintiff hereby releases the April 4, 2005, judgment for \$29,995.87 plus interest against Garnishee Defendant Marsha A. Blaugh only, as having been satisfied. This release does not extend to the joint and several judgment earlier entered against Kenneth R. Myers and Sharon E. Myers. (dated) November 21, 2005
(signed) Ward W. Miller, Successor Personal Representative of the Estate of John Joseph Powner, deceased

(*Id.* at 37.) Thereafter Blaugh filed her appellant’s brief.

DISCUSSION

Miller argues this appeal should be dismissed as moot because Blaugh paid the judgment, and he filed a notice of satisfaction and release of the judgment with respect to Blaugh. He cites *Montgomery v. Trisler*, 771 N.E.2d 1234, 1239 (Ind. Ct. App. 2002), *trans. denied sub nom. Executive Builders, Inc. v. Trisler*, 783 N.E.2d 701 (Ind. 2002), *cert. denied* 538 U.S. 946 (2003), where we found an issue was moot, in part because Trisler had filed a notice of satisfaction of judgment. In our subsequent opinion in the Montgomery-Trisler saga, we noted the parties had “agreed to a compromise on the collection amount” but Montgomery had nonetheless appealed. *Montgomery v. Trisler*, 814 N.E.2d 682, 684 (Ind. Ct. App. 2004).

Blaugh asserts Miller “moved aggressively to force a sale of the condominium,” (Reply Br. at 4), and she “had no choice but to pay the judgment” in order to “avoid a Sheriff’s Sale.” (*Id.* at 5.) She alleges the “judgment was paid under protest to avoid a Sheriff’s Sale which would have caused irreparable harm” to her, individually and as

trustee of the Stier Trust. (*Id.* at 6.)⁷ Therefore, she argues, the payment “of the judgment does not make the issues mute [sic].” (*Id.*)

However, the order of sale was cancelled on November 2, 2005 and the judgment partially paid on November 14, 2005.⁸ Blaugh paid less than the court had ordered, but Miller accepted the lesser amount and filed a satisfaction and release of judgment with the court. We conclude the filing of satisfaction and release is sufficient to bar Blaugh’s appeal.

Dismissed.

SULLIVAN, J., and BAKER, J., concur.

⁷ The record does not support Blaugh’s allegations the judgment was paid “under protest” or that a sheriff’s sale was imminent. The updated CCS indicates a sheriff’s sale had been ordered in this case but was later cancelled. Two orders of sale against the Myerses appear in the CCS, dated September 14, 2005, and October 21, 2005. The order of sale was cancelled on November 2, 2005, before payment was made. Nothing in the record indicates the payment was made under protest.

⁸ The difference of approximately \$3,700 does not take into account accrued interest or costs. Nor does this amount appear to represent the interest that accrued from April to November, on either the judgment or judgment and attorney fees.