

[Cite as *Akron v. Am. Tax Funding L.L.C.*, 2009-Ohio-3358.]

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

CITY OF AKRON

C. A. No. 24530

Appellee

v.

AMERICAN TAX FUNDING, LLC, et al.

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. 2007 CV 00152

Appellants

DECISION AND JOURNAL ENTRY

Dated: July 8, 2009

WHITMORE, Judge.

{¶1} Defendant-Appellant, American Tax Funding, L.L.C. (“American”), appeals from the judgment of the Summit County Court of Common Pleas, Probate Division. This Court dismisses the appeal as moot.

I

{¶2} American obtained a judgment of foreclosure on certain real property located at 123 E. Lods Street on December 28, 2005. After the property failed to sell at two Sheriff’s sales, American obtained an order of forfeiture. On October 2, 2007, the City of Akron (“the City”) filed an appropriation action regarding the property at 123 E. Lods Street. The action named both American and the Summit County Fiscal Officer as parties having an interest in the property. Both parties filed answers. The Summit County Fiscal Officer claimed an interest in the property for “real estate taxes, assessments, and penalties” in its answer, but American

denied that the Summit County Fiscal Officer had an interest in the property in its separate answer.

{¶3} On December 18, 2007, the trial court issued a judgment entry of settlement. The judgment entry indicated that American and the Summit County Fiscal Officer agreed to release the title to the property to the City in exchange for the City's payment of \$7,000. The entry specified the following:

“The City of Akron will deposit \$7,000.00 with the Clerk of Courts within 30 days of the filing of this Entry. The total amount will be paid to the Defendant-Owners as their interests may appear in an Order for Distribution made by this Court. Upon motion of a party, this Court will schedule a distribution hearing to determine those interests.”

On January 16, 2008, the City filed a notice of deposit, indicating that it had filed \$7,000 with the Clerk of Courts.

{¶4} On January 23, 2008, the trial court issued a letter to the parties. The letter provided as follows:

“Please be advised Summit County Probate Court now has the sum of Seven Thousand Dollars (\$7,000.00) on deposit in the above-captioned case, from which prorated taxes of \$11,685.10 are due to be paid to the Summit County Fiscal Officer. Disbursement of the remaining funds will be made in accordance with Local Rule 97.1, [] which is attached.”

American did not respond to the City's notice of deposit or to the trial court's letter. On January 31, 2008, the court transmitted the \$7,000 to the Summit County Fiscal Office. Almost ten months later, on October 18, 2008, American filed a “motion for hearing for distribution,” asking the court to hold a hearing “on the distribution of the \$7,000.00 deposited with the Clerk of Courts by the City of Akron on January 16, 2008.” The trial court denied the motion, concluding that it had already distributed the funds with prior notice to American.

{¶5} American now appeals from the trial court’s denial of its motion and raises one assignment of error for our review.

II

Assignment of Error

“THE PROBATE COURT ERRED BY DEPRIVING [AMERICAN] OF NOTICE AND HEARING IN VIOLATION OF [AMERICAN’S] RIGHT TO PROCEDURAL DUE PROCESS OF LAW.”

{¶6} In its sole assignment of error, American argues that the trial court erred in denying its motion for hearing for distribution of the \$7,000 deposited with the Clerk of Courts. Specifically, American argues that, pursuant to the trial court’s December 18, 2007 judgment entry, it had a right to a hearing before the Clerk of Courts distributed the funds in its possession.

{¶7} This Court initially must determine whether American’s appeal is properly before us. In *Boncek v. Stewart*, 9th Dist. No. 21054, 2002-Ohio-5778, at ¶10, this Court noted the following:

“As a general rule, courts will not resolve issues which are moot. The doctrine of mootness is rooted both in the case or controversy language of Section 2, Article III of the United States Constitution and in the general notion of judicial restraint. As such, a court’s duty is to decide actual controversies, not resolve moot issues or decide abstract questions. The duty of this court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not *** to declare principles or rules of law which cannot affect the matter in issue in the case before it.” (Internal citations and quotations omitted.)

“When a nonappealing party obtains satisfaction of judgment, therefore, the issues raised in the appeal are rendered moot and the appeal must be dismissed.” *Tereletsky v. Tereletsky*, 9th Dist. No. 23520, 2007-Ohio-4132, at ¶8.

{¶8} There is no dispute that the trial court distributed the \$7,000 that the City deposited with the Clerk of Courts to the Summit County Fiscal Officer on January 31, 2008. As of that date, the trial court no longer had control over the money. American argues that the trial

court deprived it of due process because it distributed the \$7,000 to the City without first holding a hearing. The issue of the hearing, however, is moot because the relief that American seeks, the distribution of the \$7,000, is no longer available. See *Lorain Cty. v. State*, 9th Dist. No. 05CA008655, 2005-Ohio-4544, at ¶11-13 (dismissing appeal as moot where funds at issue were returned and no longer outstanding). Nor does this case present an exception to the doctrine of mootness. *Bankers Trust Co. of California, N.A. v. Tutin*, 9th Dist. No. 24329, 2009-Ohio-1333, at ¶9, quoting *In re Appeal of Suspension of Huffer from Circleville High School* (1989), 47 Ohio St.3d 12, 14 (noting that mootness doctrine does not apply where “issues are capable of repetition, yet evad[e] review” or “involve[] a matter of public or great general interest”). The trial court’s judgment entry of settlement notified American that, once the City deposited the \$7,000, the court would determine the parties’ interests and distribute the money in an order of distribution. The entry specified that the trial court would schedule a distribution hearing “[u]pon motion of a party.” American never filed a motion for a hearing or sought a stay once the trial court notified it that distribution was occurring. Rather, it allowed the \$7,000 to be distributed and then filed a “motion for hearing for distribution” some ten months later. Because this matter became moot when the trial court distributed the funds, no actual controversy remains. See *Schuster v. Avon Lake*, 9th Dist. No. 03CA008271, 2003-Ohio-6587, at ¶8 (dismissing appeal as moot where appellant failed to seek stay of execution of trial court’s ruling and the construction that appellant was trying to enjoin already had commenced); *Boncek v. Stewart*, 9th Dist. No. 21054, 2002-Ohio-5778, at ¶13 (dismissing appeal as moot where property at issue was sold). As such, the appeal is moot.

III

{¶9} The present appeal is moot. Accordingly, it is dismissed.

Appeal dismissed.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

BETH WHITMORE
FOR THE COURT

DICKINSON, P. J.
BELFANCE, J.
CONCUR

APPEARANCES:

JOHN N. ZOMOIDA, JR., Attorney at Law, for Appellant.

MILTON C. RANKINS, Attorney at Law, for Appellee.