

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

William R. Sims et al., :
 :
 Plaintiffs-Appellants, : No. 14AP-975
 : (C.P.C. No. 14JG-33502)
 v. :
 : (REGULAR CALENDAR)
 Nissan North America, Inc., :
 :
 Defendant-Appellee. :

D E C I S I O N

Rendered on December 24, 2015

*Morganstern, MacAdams & DeVito Co., L.P.A., and
Christopher M. DeVito, for appellants.*

*Taft Stettinius & Hollister LLP, Joseph C. Pickens and
Stephen C. Fitch; Korsej & Whitney LLP, and Steven J. Wells,
for appellee.*

APPEAL from the Franklin County Court of Common Pleas

DORRIAN, J.

{¶ 1} This appeal arises from proceedings in which plaintiffs-appellants, William R. Sims and Sims Buick-GMC Truck, Inc., dba Sims Buick-GMC-Nissan (collectively, "Sims"), sought to collect on an award of attorney fees, expert fees, and costs issued by the Ohio Motor Vehicle Dealers Board ("Board") as part of Sims's successful administrative protest against defendant-appellee, Nissan North America, Inc. ("Nissan"). For the following reasons, we dismiss the appeal as moot.

{¶ 2} The facts and procedural history of the underlying administrative protest are more fully set forth in this court's prior decision, *Sims v. Nissan North America, Inc.*, 10th Dist. No. 12AP-833, 2013-Ohio-2662. As relevant here, the Board sustained Sims's protest and granted in part his request for attorney fees and costs for the period prior to June 1, 2011, but did not award expert witness fees. *Sims* at ¶ 5. On appeal, the Franklin

County Court of Common Pleas ("common pleas court") affirmed the Board's order sustaining the protest, affirmed the order not to award expert witness fees, affirmed the award of costs, and remanded the matter for an evidentiary hearing to support and justify Sims's attorney fees. *Id.* at ¶ 2. Both Sims and Nissan appealed to this court, which overruled the challenges to the underlying decision granting Sims's protest. *Id.* at ¶ 21. This court sustained in part and overruled in part the challenges to the Board's decision on fees and costs. This court remanded the matter to the Board for a determination of the reasonableness of expert fees and other costs denied by the Board. *Id.* at ¶ 40. This court also ordered the Board to reinstate the uncontroverted amount of attorney fees requested, minus any fees not associated with the protest. *Id.* at ¶ 52.

{¶ 3} On remand from this court's order, a Board hearing examiner ultimately issued a decision awarding Sims attorney fees of \$202,478.33, expert witness fees of \$57,700.03, and costs of \$13,982.94 for the period through May 31, 2011. The hearing examiner further concluded that, for the period June 1, 2011 through January 31, 2014, Sims was entitled to attorney fees of \$94,785.00, expert fees of \$8,660.00, and costs of \$7,808.36. The total award for attorney fees, expert fees, and costs during all times covered by the decision was \$385,414.66. Sims filed objections to the hearing examiner's decision with the Board. On September 5, 2014, the Board notified Sims that it had declined to take further action on his objections within 30 days and that, by operation of law under R.C. 4517.58, the hearing examiner's decision was considered to be approved by the Board.

{¶ 4} On September 9, 2014, Sims filed an appeal of the Board's decision with the common pleas court in a matter captioned *William R. Sims et al. v. Nissan North America, Inc.*, Franklin C.P. No. 14CV-9324 ("case No. 9324"). Then, on September 18, 2014, Sims filed a praecipe requesting that the Franklin County Clerk of Courts issue a certificate of judgment lien in his favor against Nissan in the amount of \$385,414.66, which initiated the collection proceedings giving rise to the present appeal. Pursuant to the praecipe, the common pleas court issued a notice of garnishment to Nissan. Nissan responded by filing a motion to vacate the order of garnishment and to dismiss the case. On November 2, 2014, the common pleas court issued a judgment granting the motion to vacate and dismiss.

{¶ 5} Sims appeals from the common pleas court's judgment vacating the order of garnishment and dismissing the case, assigning one error for this court's review:

The trial court committed reversible error of law by narrowly interpreting R.C. 2329.02, regarding transfer of judgments from "courts of record," to not include a final monetary award from an administrative tribunal.

(Emphasis sic.)

{¶ 6} While the collection proceedings were underway, the parties were also contesting case No. 9324. On December 18, 2014, the common pleas court issued a judgment in case No. 9324 affirming the Board's decision awarding limited attorney fees, expert fees, and costs to Sims. That decision is the subject of another appeal in this court captioned *Sims v. Nissan North America, Inc.*, 10th Dist. No. 15AP-19, 2015-Ohio-5367 ("*Sims II*"). In *Sims II*, we affirmed the judgment of the common pleas court.

{¶ 7} Prior to the release of our decision in *Sims II*, but after the common pleas court issued its decision in case No. 9324, Nissan filed a motion to dismiss the present appeal, arguing that it was moot. We begin by addressing Nissan's motion to dismiss.

{¶ 8} Generally, courts will not resolve issues that are moot. *Nextel West Corp. v. Franklin Cty. Bd. of Zoning Appeals*, 10th Dist. No. 03AP-625, 2004-Ohio-2943, ¶ 10. The mootness doctrine is based in both the "case" or "controversy" language of the United States Constitution and the general idea of judicial restraint. *Id.* An issue is moot when it does not involve an " 'actual genuine, live controversy, the decision of which can definitely affect existing legal relations.' " *Grove City v. Clark*, 10th Dist. No. 01AP-1369, 2002-Ohio-4549, ¶ 11, quoting *Culver v. Warren*, 84 Ohio App. 373, 393 (7th Dist.1948).

{¶ 9} Nissan argues that this appeal is moot as a result of the judgment in case No. 9324 affirming the Board's decision. Nissan asserts that, if Sims seeks to pursue an action for enforcement and collection, the common pleas court's judgment, rather than the Board's decision, would form the basis for such action. Nissan also argues that the appeal is moot because it has twice submitted payment to Sims, and both times Sims has refused to accept payment. Sims asserts that he refused Nissan's proffered payments to avoid mootness arguments in this appeal and in the appeal of the common pleas court's decision in case No. 9324. Sims further argues that, even if accepted, Nissan's voluntary payment would not moot the legal issues between the parties presented in this appeal.

{¶ 10} We need not reach the question of whether Nissan's proffered payment rendered the appeal moot because we conclude that the common pleas court's judgment in case No. 9324, now affirmed by this court, had the effect of mooting the present appeal. In this case, Sims sought to enforce the Board's decision pursuant to R.C. 2329.02, which provides that "[a]ny judgment or decree rendered by any court of general jurisdiction * * * shall be a lien upon lands and tenements of each judgment debtor within any county of this state from the time there is filed in the office of the clerk of the court of common pleas of such county a certificate of such judgment." The statute sets forth a procedure for obtaining a certificate of judgment. The statute also provides that "any judgment issued in a court of record may be transferred to any other court of record." R.C. 2329.02. The common pleas court dismissed the action based on its conclusion that the Board was not a court of general jurisdiction and, therefore, the Board's decision could not form the basis for a certificate of judgment pursuant to R.C. 2329.02. As Nissan notes, the common pleas court subsequently issued a judgment affirming the Board's decision in case No. 9324. In *Sims II*, we affirmed that judgment. Because the common pleas court is both a "court of general jurisdiction" and a "court of record," there would be no question as to the applicability of R.C. 2329.02 to the common pleas court's judgment. *See State v. Harding*, 10th Dist. No. 13AP-362, 2014-Ohio-1187, ¶ 19 ("A court of common pleas is a court of general jurisdiction and, as such, possesses the authority to initially determine its own jurisdiction over both the person and subject matter in an action before it."); *Ludlow's Heirs v. Johnston*, 3 Ohio 553, 557 (1828) ("The court of common pleas, whether acting as a court possessing common law jurisdiction, or as a court of probate, is a court of record."). Thus, to the extent Sims sought a judgment on which he could collect, pursuant to R.C. 2329.02, he obtained one when the common pleas court issued its decision in case No. 9324, and the question of whether the Board's order constituted such a judgment was rendered moot.

{¶ 11} In the alternative, Sims argues that, to the extent this appeal could be considered moot, it fits within an exception to the mootness doctrine providing that courts may rule on issues that are "capable of repetition, yet evading review." "A claim is not moot if it is capable of repetition, yet evading review." *State ex rel. Dispatch Printing Co. v. Geer*, 114 Ohio St.3d 511, 2007-Ohio-4643, ¶ 10. "This exception applies only in

exceptional circumstances in which the following two factors are both present: (1) the challenged action is too short in its duration to be fully litigated before its cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again." *State ex rel. Calvary v. Upper Arlington*, 89 Ohio St.3d 229, 231 (2000). Sims claims that the second factor is present in this case because he has incurred additional attorney fees and costs subsequent to January 31, 2014, which are not covered under the Board's order. Sims asserts that a future Board order awarding fees and costs for the period after January 31, 2014, would be subject to the same legal issue regarding whether it could be enforced and collected pursuant to R.C. 2329.02.

{¶ 12} Assuming without deciding that the second factor is present, Sims has failed to demonstrate that the first factor is present—i.e., that the challenged action is too short in its duration to be fully litigated before its cessation or expiration. In this appeal, Sims challenges the order granting Nissan's motion to dismiss. As explained above, we conclude that the question subsequently became moot when the court of common pleas issued its judgment in case No. 9324. However, that decision, and the subsequent effect of mooting the present appeal, would not have occurred if Sims had not appealed the merits of the Board's decision. Although Sims argues that this same scenario is likely to recur if it obtains an award for attorney fees and/or costs incurred after January 31, 2014, that would not necessarily present an action too short to be fully litigated before its cessation or expiration. *See Lund v. Portsmouth Local Air Agency*, 10th Dist. No. 14AP-60, 2014-Ohio-2741, ¶ 9 ("There is nothing to suggest that these types of actions are necessarily and by their nature too short in duration to be fully litigated before their cessation."). Therefore, being unable to satisfy both factors, Sims has failed to establish that this case presents exceptional circumstances under which this court should apply the "capable of repetition, yet evading review" exception to the mootness doctrine.

{¶ 13} Sims also argues that the court may consider this appeal under another exception to the mootness doctrine. The Supreme Court of Ohio has held that, "[a]lthough a case may be moot with respect to one of the litigants, this court may hear the appeal where there remains a debatable constitutional question to resolve, or where the matter appealed is one of great public or general interest." *Franchise Developers, Inc. v Cincinnati*, 30 Ohio St.3d 28 (1987), paragraph one of the syllabus. Sims asserts that,

even if this court finds the matter to be moot, we should still consider the appeal because the applicability of R.C. 2329.02 for enforcement and collection of rulings by administrative tribunals constitutes a matter of great public or general interest. However, in several decisions, this court has narrowly construed the "great public or general interest" exception to the mootness doctrine. *See Harshaw v. Farrell*, 55 Ohio App.2d 246, 251 (10th Dist.1977) ("On rare occasions, the court may retain an otherwise moot action for determination when it involves an issue of great public importance so that the question can be properly determined on its merits. Ordinarily, however, it is only the highest court of the state that adopts this procedure rather than a court whose decision does not have binding effect over the entire state as would be true if a Common Pleas Court rules upon a case which is otherwise moot."). (Internal citation omitted.) *See also Nextel West Corp.* at ¶ 15; *Robinson v. Indus. Comm.*, 10th Dist. No. 04AP-1010, 2005-Ohio-2290, ¶ 10.

{¶ 14} Sims argues that his appeal involves a matter of great public or general interest because many administrative agencies in addition to the Board have the authority to award monetary relief to a prevailing party. Sims claims that the effect of the common pleas court's judgment is to prohibit any prevailing parties awarded relief by an administrative agency from beginning collection proceedings until after an administrative appeal to a common pleas court has confirmed the monetary judgment. However, Sims also asserts that this is a question of first impression regarding the interpretation of R.C. 2329.02. The fact that no Ohio court has previously addressed this question is inconsistent with Sims's claim that it constitutes a matter of great public or general interest. Sims has failed to establish that this case presents one of the rare occasions on which this court should rule on an otherwise moot issue that would constitute a matter of great public or general interest.

{¶ 15} For the foregoing reasons, we conclude that Sims's appeal is moot, and we grant Nissan's motion to dismiss the appeal.

Motion to dismiss granted; appeal dismissed.

SADLER and BRUNNER, JJ., concur.
