

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-17-00200-CV

Carlton E. Newman, DPM, Appellant

v.

Bailey Square Surgical Center, Ltd., a Texas Limited Partnership, Austin, Texas, Appellee

**FROM THE DISTRICT COURT OF TRAVIS COUNTY, 98TH JUDICIAL DISTRICT
NO. D-1-GN-15-002041, HONORABLE STEPHEN YELENOSKY, JUDGE PRESIDING**

MEMORANDUM OPINION

Carlton E. Newman appeals from the trial court's summary judgment dismissing his claims against Bailey Square Surgical Center, Ltd. (the Partnership). Because we conclude that this appeal is moot, we will dismiss the appeal for want of jurisdiction.

Newman joined the Partnership in 1992 as a limited partner. As a limited partner, Newman received periodic financial distributions from the Partnership. The Second Amendment to the Partnership Agreement imposed eligibility requirements and provided that the Partnership could choose to purchase a limited partner's interest in the Partnership if the limited partner failed to meet the eligibility requirements.

According to the Partnership, Newman failed to meet the eligibility requirements for the years 2012 and 2013. On January 10, 2014, the Partnership sent Newman a letter informing him that it was exercising its option to purchase his interest in the Partnership. The Partnership later

mailed a check to Newman for \$315,680. Newman rejected the payment and sued the Partnership, asserting causes of action for breach of contract, breach of fiduciary duty, fraudulent inducement, and declaratory judgment. In his lawsuit, Newman sought to maintain his partnership interest and to recover allegedly unpaid distributions. The Partnership brought counterclaims for breach of contract and declaratory judgment. The parties filed competing motions for partial summary judgment. The trial court denied Newman's motion. The court granted the Partnership's motion and dismissed Newman's claims with prejudice.

On January 4, 2017, the Partnership filed a notice of nonsuit with the trial court, and, on January 23, the trial court granted the Partnership's nonsuit. On January 30, 2017, Newman sold his interest in the Partnership to the general partner.¹ The document of sale that Newman signed states, "The effective date of this transfer shall be January 1, 2014."

On February 27, 2017, Newman filed a pro se notice of appeal. The Partnership filed a motion to dismiss the appeal, arguing that Newman's notice of appeal was untimely and that the case became moot when Newman voluntarily sold his partnership interest. We agree that this appeal is moot. Because Newman sold his partnership interest, he may not now seek to maintain that interest. Moreover, the Partnership Agreement provides, "Distributions shall be made to the holder of record of the [partnership interest] on the date of distribution." Because the document Newman signed selling his partnership interest specified that its effective date was January 1, 2014, the Partnership was entitled to receive any distributions made on or after that date. It is undisputed

¹ In his appellate brief, Newman asserts, "I signed the initial release on January 30, 2017 under protest and fear of additional retaliation." However, Newman does not provide further details or point to any evidence in the record to support his assertion.

that Newman received all the distributions to which he was entitled that were paid before January 1, 2014, so his claims for unpaid distributions are also moot.

“[I]f a justiciable controversy ceases while a case is on appeal, the case is moot and the appellate court lacks subject-matter jurisdiction to act on the merits.” *Texas Quarter Horse Ass’n v. American Legion Dep’t of Tex.*, 496 S.W.3d 175, 180–81 (Tex. App.—Austin 2016, no pet.); see *Williams v. Lara*, 52 S.W.3d 171, 184 (Tex. 2001) (“For a plaintiff to have standing, a controversy must exist between the parties at every stage of the legal proceedings, including the appeal.”). Because the justiciable controversy in this case ceased when Newman sold his partnership interest, we lack subject-matter jurisdiction and must dismiss this appeal as moot.²

CONCLUSION

We grant the Partnership’s motion to dismiss and dismiss this appeal for want of jurisdiction.

Scott K. Field, Justice

Before Justices Puryear, Field, and Bourland

Dismissed for Want of Jurisdiction

Filed: August 22, 2017

² Because the case is moot, we need not reach the Partnership’s argument that Newman’s notice of appeal was untimely.