

IN THE UTAH COURT OF APPEALS

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Gregory S. Coon,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellant,)	
)	Case No. 20060179-CA
v.)	
)	F I L E D
Fidelity Transfer Company;)	(October 5, 2006)
F. Lorenzo Crutchfield, Jr.;)	
Lance V. D'Ambrosio and)	2006 UT App 401
Does 1-10,)	
)	
Defendants and Appellees.)	

Third District, Salt Lake Department, 000908372
The Honorable Timothy R. Hanson

Attorneys: Gregory S. Coon, Salt Lake City, Appellant Pro Se
Kent B. Linebaugh, Andrew G. Deiss, and Billie J.
Siddoway, Salt Lake City, for Appellee Fidelity
Transfer Company

Before Judges Billings, McHugh, and Orme.

PER CURIAM:

Gregory S. Coon has filed a suggestion of mootness pursuant to rule 37(a) of the Utah Rules of Appellate Procedure. See Utah R. App. P. 37(a). Coon has also filed a motion for sanctions. Fidelity Transfer Company (Fidelity) responds with a "consent" to the suggestion of mootness, though Fidelity offers a different reason than Coon as to why this appeal is, in fact, moot. Fidelity also objects to the motion for sanctions and asks for its own attorney fees incurred on appeal. For the reasons stated herein, this court determines that the appeal is moot and therefore dismisses the appeal. The court denies the respective motions for sanctions and attorney fees.

Regarding the suggestion of mootness, the court agrees with Fidelity that this case is moot because Coon's appeal is from an attorney fees award that Coon subsequently satisfied. Utah courts have long held that "if a judgment is voluntarily paid, which is accepted, and a judgment satisfied, the controversy has become moot and the right to appeal is waived." West Valley City v. Majestic Inv. Co., 818 P.2d 1311, 1316 (Utah Ct. App. 1991)

(quotations and citation omitted); see also Jensen v. Eddy, 514 P.2d 1142, 1143 (Utah 1973).

On January 23, 2006, the trial court entered a judgment of \$25,188.98 in favor of Fidelity and against Coon for attorney fees. A satisfaction of judgment for this specific judgment was entered on March 7, 2006. In paying Fidelity's attorney fees, Coon "effectively renounced his right to subsequently appeal the trial court's award of these fees and costs." Turville v. J&J Props., L.C., 2006 UT App 305, ¶45, 556 Utah Adv. Rep. 24 (citing Majestic, 818 P.2d at 1316). Thus, Coon waived his right to appeal the trial court's award of attorney fees and costs, and the appeal is therefore dismissed on the basis of mootness.

Coon's motion for sanctions is without merit. It is similar, if not identical, to another motion recently filed by Coon and denied by this court.

Fidelity requests attorney fees incurred on appeal on two alternative bases. First, Fidelity asserts that it is entitled to attorney fees and costs due to an allegedly frivolous appeal. See Utah R. App. P. 33(a). Although the appeal is ultimately without merit due to mootness, it is not wholly frivolous. Thus, the court declines to grant attorney fees under rule 33.

Fidelity also argues that, because it was the prevailing party below, it should be deemed the "prevailing party" for purposes of attorney fees on appeal since the appeal has been voluntarily dismissed by Coon. However, Fidelity cites no controlling authority for this proposition, and rule 37 itself contains no mandatory provision for attorney fees. See Utah R. App. P. 37(b). Accordingly, without more, Fidelity has not shown that it is entitled to attorney fees, and we decline to award them for this appeal.

In sum, this appeal is dismissed as moot. Coon's motion for sanctions is denied. Fidelity's request for attorney fees is denied.

Judith M. Billings, Judge

Carolyn B. McHugh, Judge

Gregory K. Orme, Judge