

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO**

BESTWAY MASONRY CO.,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	CASE NO. 2010-L-036
- vs -	:	
JEFF GERSON, et al.,	:	
Defendants-Appellants.	:	

Civil Appeal from the Painesville Municipal Court, Case No. 08 CVI 02548.

Judgment: Appeal dismissed.

Neil R. Wilson, Neil R. Wilson Co., L.P.A., FirstMerit Bank Building, 56 Liberty Street, Suite 205, Painesville, OH 44077 (For Plaintiff-Appellee).

Elliott I. Resnick, Elliott I. Resnick & Co., L.P.A., LaPlace Mall, 2nd Floor, 2101 Richmond Road, Beachwood, OH 44122 (For Defendants-Appellants).

TIMOTHY P. CANNON, P.J.

{¶1} Appellee, Bestway Masonry Co., has now moved this court to dismiss this appeal on the basis that the merits of the trial court's final judgment have become moot. Appellee contends that this matter should not go forward because the sole order set forth in the final judgment has already been fully satisfied. No response to the motion to dismiss has been filed in behalf of appellants, Jeff and Kathy Gerson.

{¶2} The instant appeal was taken from the March 18, 2010 final judgment of the Painesville Municipal Court. At the outset of this judgment, the trial court overruled

the objections of both sides to the prior magistrate's decision, and entered judgment in favor of appellee as to all pending claims. In light of this, the court held that appellants were jointly and severally liable to appellee for the amount of \$3,703, plus interest.

{¶3} In now moving to dismiss, appellee maintains that, during the pendency of this appeal, it received a check from the trial court clerk which covered the total amount owed under the judgment. In support of its position, appellee has submitted the affidavit of the attorney who has represented its interest at the trial and appellate levels. As part of this document, the attorney has asserted that the funds for the check were obtained through a garnishment of appellants' bank account.

{¶4} As a general proposition, the full satisfaction of a money judgment does have the effect of rendering an appeal regarding that judgment moot. *JPMorgan Chase Bank v. Ritchey*, 11th Dist. Nos. 2007-L-017 & 2007-L-018, 2007-Ohio-5193, at ¶5. In reviewing the underlying logic for this proposition, this court has noted:

{¶5} "If a 'judgment is voluntarily paid and satisfied, such payment puts an end to the controversy, and takes away *** the right to appeal or prosecute error or even to move for vacation of judgment.' *Lynch v. Board of Education* (1927), 116 Ohio St. 361, ***, paragraph three of the syllabus. *** Thus, 'if an appellant neglects to obtain a stay of the judgment, the nonappealing party has the right to attempt to obtain satisfaction of the judgment even though the appeal is pending.' *Atl. Mortg. & Inv. Corp. v. Sayers*, 11th Dist. No. 2000-A-0081, 2002-Ohio-844, ¶6, ***. Consequently, when the 'nonappealing party is successful in obtaining satisfaction of the judgment, the appeal must be dismissed because the issues raised in the appeal have become moot.' *Hagood v. Gail* (1995), 105 Ohio App.3d 780, 785, ***." *Marotta Bldg. Co. v. Lesinski*,

11th Dist. No. 2004-G-2562, 2005-Ohio-558, at ¶18.

{¶6} In regard to the question of whether the satisfaction of the judgment has occurred voluntarily, this court has further indicated that a finding of voluntariness can still be made even though the payment of the debt was not due to any affirmative act by the judgment debtor. For example, in *Marotta Bldg. Co.*, the judgment debt was paid from the proceeds which had been obtained in a collateral foreclosure action. Despite this, we still concluded that the satisfaction of the debt was voluntary because the two appealing parties had never moved for a stay of the underlying judgment. *Id.* at ¶19.

{¶7} In the instant matter, a review of our appellate docket readily shows that appellants never moved this court to stay the enforcement of the money judgment. As a result, the use of the funds from the garnishment proceedings to satisfy the judgment debt still constituted a “voluntary” payment. Furthermore, since the undisputed affidavit of counsel demonstrates that the entire debt referenced in the appealed judgment has been paid, the substance of the trial court’s underlying determination is now moot.

{¶8} Consistent with the foregoing discussion, appellee’s motion to dismiss this appeal is granted. It is the order of this court that the instant appeal is hereby dismissed as moot.

MARY JANE TRAPP, J.,

THOMAS R. WRIGHT, J.,

concur.