

[Cite as *Deacon v. Deacon*, 2009-Ohio-2719.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 91688

PATRICIA H. DEACON

PLAINTIFF-APPELLEE

vs.

JAMES W. DEACON, ET AL.

DEFENDANTS-APPELLEES

Appeal by:

WANTAGE PROPERTIES, LLC

DEFENDANT-APPELLANT

**JUDGMENT:
DISMISSED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas,
Domestic Relations Division
Case No. D-310265

BEFORE: Cooney, A.J., Boyle, J., and Sweeney, J.

RELEASED: June 11, 2009

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and

26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

COLLEEN CONWAY COONEY, A.J.:

{¶ 1} Third-party defendant-appellant, Wantage Properties, LLC (“Wantage”), appeals the domestic relations court’s division of marital assets between defendant-appellee, James Deacon (“Jim”), and plaintiff-appellee, Patricia Deacon (“Holly”), in which Jim’s shares in Wantage were awarded to Holly. We dismiss this appeal as moot.

{¶ 2} Jim and Holly were married in May 1985 and lived together in the marital residence until September 2006. They pursued mediation late in 2005 and early 2006 in contemplation of ending their marriage. During the time mediation was pursued, Jim was in negotiations to purchase a Mullinax Lincoln Mercury Jeep dealership (the “dealership”) and certain parcels of real estate.¹ The proposed agreement was finalized on June 1, 2006. Part of the acquisition of the dealership included a collision center. Jim and Tom created Wantage as the owner of the property upon which the collision center is located, and they each owned 250 shares of Wantage.

¹Jim’s cousin, Tom Deacon, was his 50 percent partner in this transaction.

{¶ 3} Holly filed for divorce in April 2006. Following a trial in February 2008, a judgment entry of divorce was entered in April 2008.² As part of the distribution of marital assets, the court awarded Holly Jim’s interest in Wantage. Jim transferred his shares to Holly on September 22, 2008. Wantage filed the instant appeal on June 23, 2008, and never sought a stay in the trial court or this court to prevent the transfer of shares.

{¶ 4} “It is a well-established principle of law that a satisfaction of judgment renders an appeal from that judgment moot. ‘Where the court rendering judgment has jurisdiction of the subject-matter of the action and of the parties, and fraud has not intervened, and the judgment is voluntarily paid and satisfied, such payment puts an end to the controversy, and takes away from the defendant the right to appeal or prosecute error or even to move for vacation of judgment.’” *Rauch v. Noble* (1959), 169 Ohio St. 314, 316, 159 N.E.2d 451, 453, quoting *Lynch v. Lakewood City School Dist. Bd. of Edn.* (1927), 116 Ohio St. 361, 156 N.E. 188, paragraph three of the syllabus. See, also, *Blodgett v. Blodgett* (1990), 49 Ohio St.3d 243, 551 N.E.2d 1249.

{¶ 5} Appellate courts have consistently determined that parties act voluntarily in satisfying a judgment where the party fails to seek a stay prior to the satisfaction of the judgment. See *Atlantic Veneer Corp. v. Robbins*, Pike App. No. 03CA719, 2004-

²The parties’ appeal of their divorce can be found at *Deacon v. Deacon*, Cuyahoga App. No. 91609, 2009-Ohio-2491.

Ohio-3710 (relying on *Blodgett* and holding that “satisfaction of a judgment renders an appeal moot where an appellant may preserve her appeal rights by seeking a stay of execution pending appeal”); *Hagood v. Gail* (1995), 105 Ohio App.3d 780, 790-91, 664 N.E.2d 1373 (appeal dismissed when property owner’s failure to seek a valid stay order before fully satisfying judgment rendered the appeal of a judgment ordering sale of land moot); *CommuniCare Health Servs. v. Murvine*, Summit App. No. 23557, 2007-Ohio-4651.

{¶ 6} In the instant case, Wantage never sought a stay of execution of the trial court’s order prior to the transfer of the shares. Therefore, the transfer was voluntary, rendering this appeal moot. Accordingly, we dismiss Wantage’s appeal.

It is ordered that Patricia Deacon recover of Wantage Properties, LLC costs herein taxed.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

COLLEEN CONWAY COONEY, ADMINISTRATIVE JUDGE

MARY J. BOYLE, J., CONCURS;
JAMES J. SWEENEY, J., DISSENTS