

STATE OF OHIO)
)ss:
COUNTY OF LORAIN)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

MATTHEW J. BONEWITZ

C.A. No. 14CA010557

Appellee

v.

JONATHAN L. DONNELL, et al.

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF LORAIN, OHIO
CASE No. 09CV161588

Defendants

and

MICHAEL DUFF

Appellant

DECISION AND JOURNAL ENTRY

Dated: June 8, 2015

CARR, Judge.

{¶1} Appellant, Michael J. Duff, appeals the judgment of the Lorain County Court of Common Pleas. This Court affirms.

I.

{¶2} On April 11, 2008, Matthew J. Bonewitz, Jr., was involved in a violent altercation with Jonathon L. Donnell, Brian E. Pierce, and Cameron M. Taylor on West Fourth Street in the City of Lorain. Bonewitz suffered serious injuries during the course of the attack.

{¶3} Bonewitz filed a complaint in the Lorain County Court of Common Pleas against the three men, alleging counts of assault and battery, as well as negligence. Attorney Michael J. Duff, on behalf of Donnell, filed an answer to the complaint. Bonewitz subsequently filed a

motion for summary judgment against Donnell and a motion for default judgment against the two other defendants. More than a year later, after all three defendants had failed to respond, the trial court issued a journal entry granting judgment in favor of Bonewitz. After a damages hearing, the trial court issued a journal entry on March 25, 2011, finding the three defendants jointly and severally liable for compensatory damages in the amount of \$100,000 and punitive damages in the amount of \$500,000.

{¶4} On September 27, 2012, Bonewitz filed a motion for examination of judgment debtor, requesting that the trial court order Donnell to personally appear and answer under oath regarding his property and assets. The following day, the trial court issued an order finding that the judgment remained unpaid and directing Donnell to appear and answer all question pertaining to his status as a judgment debtor. Donnell retained a new attorney who filed a notice of appearance. On January 3, 2013, Donnell filed a motion for relief from judgment pursuant to Civ.R. 60(B). Bonewitz promptly filed a brief in opposition to the motion. On May 17, 2013, the trial court issued an order denying the motion for relief from judgment. Donnell did not appeal.

{¶5} Bonewitz continued the process of attempting to collect on the judgment. On September 19, 2013, Attorney Duff filed a motion to intervene, noting that his former client Donnell was still contesting collection of the judgment, and also that Donnell had sued Duff for professional negligence. That same day, Duff and Donnell filed a joint motion for relief from judgment pursuant to Civ.R. 60(B). Bonewitz filed a motion to strike Duff's motion, as well as a responsive brief, and Duff replied thereto. Bonewitz and Donnell subsequently reached a settlement agreement with respect to the payment of the judgment, and Donnell withdrew his participation in the motion to vacate. Thereafter, the trial judge transferred the case to a

different judge due to a potential conflict. On February 10, 2014, the trial court issued a journal entry denying Duff's motion for relief from judgment.

{¶6} On appeal, Duff raises four assignments of error.

II.

ASSIGNMENT OF ERROR I

THE TRIAL COURT ERRED IN HOLDING THAT THE QUESTION OF WHETHER THE BONEWITZ JUDGMENT WAS VOID COULD ONLY BE ADDRESSED ON DIRECT APPEAL AND WAS TIME-BARRED.

ASSIGNMENT OF ERROR II

THE TRIAL COURT ERRED IN RULING THAT THE QUESTION OF WHETHER THE CLERK OF COURTS HAD ISSUED A CIV.R. 58(B) NOTICE OF FINAL JUDGMENT WAS BARRED BY RES JUDICATA, WHEN THAT ISSUE HAD NOT BEEN PREVIOUSLY RAISED.

ASSIGNMENT OF ERROR III

THE TRIAL COURT ERRED IN RULING THAT THE 1-YEAR LIMIT IN CIV.R. 60(B)(3) PRECLUDED REVIEW OF WHETHER THE BONEWITZ JUDGMENT WAS THE RESULT OF PREJUDICIAL MISCONDUCT BY COUNSEL.

ASSIGNMENT OF ERROR IV

THE TRIAL COURT ERRED IN DENYING THE JOINT MOTION WITHOUT AN EVIDENTIARY HEARING, WHERE THE MOTION, AFFIDAVITS AND RECORD ALLEGED OPERATIVE FACTS AND CONTAINED INDEPENDENT EVIDENCE REFLECTING THAT THE CLERK OF COURTS DID NOT ISSUE THE CIVIL RULE 58(B) NOTICE OF FINAL JUDGMENT, AND THAT THE BONEWITZ JUDGMENT WAS THE RESULT OF PREJUDICIAL MISCONDUCT BY COUNSEL.

{¶7} Duff raises four assignments of error challenging the trial court's order denying his motion for relief from judgment. We decline to address the assignments of error as the appeal is moot.

{¶8} It is well-settled that "[a]ppellate courts will not review questions that do not involve live controversies." *Ohio Metal Servs., L.L.C. v. All-In Metals*, 9th Dist. Summit Nos.

26240, 26625, 2013-Ohio-2174, ¶ 42, quoting *Aurora Loan Servs. v. Kahook*, 9th Dist. Summit No. 24415, 2009-Ohio-2997, ¶ 6. “Thus, an action must be dismissed as moot unless it appears that a live controversy exists.” *Kahook* at ¶ 6, citing *Lorain Cty Bd. of Commrs. v. U.S. Fire Ins. Co.*, 81 Ohio App.3d 263, 266-267 (9th Dist.1992). “After the rights and obligations of the parties have been extinguished through satisfaction of the judgment, a judgment on appeal becomes moot because it ‘cannot have any practical effect upon the issues raised by the pleadings.’” *Kahook* at ¶ 6, quoting *Sedlak v. Solon*, 104 Ohio App.3d 170, 178 (8th Dist.1995).

{¶9} Bonewitz argues that Attorney Duff has no standing to assert an appeal in this matter because the parties settled the underlying action. Even assuming arguendo that Duff has standing, the underlying judgment cannot be vacated because the settlement renders the matter moot. Duff acknowledges in his merit brief that “[b]efore the trial court ruled on the Joint Motion [to Vacate], Donnell reached an agreement with Bonewitz regarding collection of the Bonewitz Judgment and agreed to withdraw his participation in the Joint Motion.” While Donnell initially filed a motion asking the court to consolidate this matter with the collection action captioned *Matthew J. Bonewitz v. Symetra Financial Corp, et al.*, Case No. 13CV181114, Donnell subsequently withdrew his motion to consolidate and his participation in the motion to vacate. The trial court issued a judgment entry on December 20, 2013, indicating that Bonewitz and Donnell had reached a settlement with respect to the judgment. The attorneys for both Bonewitz and Donnell approved the entry. Pursuant to the parties’ agreement, Case No. 13CV181114 was dismissed. At the time the parties settled the underlying judgment, it was no longer possible for Duff to intervene and vacate that judgment, and there was no longer a live controversy before the court. As the parties’ settlement resolved all issues raised by the parties in the pleadings, we decline to address any issues on appeal arising out of the order permitting

Duff to intervene and denying his motion to vacate because the matter is moot. *Kahook* at ¶ 6. Because this Court concludes that the issues raised in this appeal are moot, the appeal is dismissed. *Schuster v. Avon Lake*, 9th Dist. Lorain No. 03CA008271, 2003-Ohio-6587, ¶ 9.

III.

{¶10} This Court declines to address Attorney Duff's assignments of error as the appeal is moot. The appeal is dismissed.

Appeal dismissed.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

DONNA J. CARR
FOR THE COURT

HENSAL, P. J.
MOORE, J.
CONCUR.

APPEARANCES:

KURT D. ANDERSON, Attorney at Law, for Appellant.

ANTHONY DELAYANIS, Attorney at Law, for Appellee.