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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

JOHN MCDONNELL, JR., as Trustee,
etc.,

Petitioner and Respondent,

v.

TODD JARVIS,

Objector and Appellant.

H035553

(Monterey County
Super. Ct. No. P31598)

I. INTRODUCTION

The Jarvis Ranch, which includes more than 300 acres of agricultural land in Monterey County, is an asset of the Jarvis Replacement Administrative Trust (the Trust). Appellant Todd Jarvis and his brother James Jarvis¹ are beneficiaries of the Trust. Respondent John McDonnell, Jr. is the court-appointed trustee.

In his capacity as trustee, McDonnell filed in the probate court on December 23, 2009, a petition for authority to execute and perform right of way contracts with the State of California Department of Transportation (CalTrans). The right of way contracts included the settlement of three eminent domain actions brought by CalTrans to acquire

¹ For ease of reference and meaning no disrespect, we will refer to Todd Jarvis and James Jarvis by their first names.

portions of the Jarvis Ranch. The terms of the Trust required McDonnell to petition the court for authority to execute and perform the right of way contracts, because James had consented to the CalTrans contracts while Todd had objected. The probate court granted the petition on February 9, 2010.

On appeal, Todd argues that the order should be reversed because the probate court lacked jurisdiction and made several procedural and evidentiary errors. McDonnell has filed a motion to dismiss the appeal on the ground that an event occurring during the pendency of the appeal has rendered the appeal moot; specifically, the probate court's subsequent order of April 26, 2010, finding that that Todd has a right to appear as a defendant in the eminent domain actions and granting his motion for joinder.

As we will further discuss, we agree with McDonnell that the appeal is moot as a result of Todd's joinder as a party defendant in the underlying eminent domain actions. We also agree that the appropriate disposition under the circumstances of this case is to reverse the order with directions to the superior court to dismiss the petition for authority to execute and perform right of way contracts with CalTrans as moot. (*Paul v. Milk Depots, Inc.* (1964) 62 Cal.2d 129, 134 (*Paul*); *Coalition for a Sustainable Future in Yucaipa v. City of Yucaipa* (2011) 198 Cal.App.4th 939, 944-945 (*Coalition for a Sustainable Future*).)

II. FACTUAL AND PROCEDURAL BACKGROUND

Todd and James executed the Trust in 2004 and are both beneficiaries of the Trust. The Trust assets include the Jarvis Ranch, which is located near Salinas and consists of 333.5 acres on the west side of Highway 101 and two parcels on the east side of Highway 101. CalTrans filed three eminent domain actions to acquire portions of the Jarvis Ranch for traffic and highway improvements. (*People v. McDonnell* (Super. Ct. Monterey County, No. M98919); *People v. Jarvis Properties, et al.* (Super. Ct. Monterey County, No. M98920); *People v. McDonnell* (Super. Ct. Monterey County, No. M98921).) Todd was not a party to the eminent domain actions prior to April 26, 2010.

McDonnell retained counsel for the three eminent domain actions, who recommended settlement of the actions as negotiated with CalTrans and incorporated in two right of way contracts. Pursuant to the terms of the Trust, in November 2009 McDonnell served a notice of proposed action regarding the right of way contracts on the Trust beneficiaries. Todd filed an objection to the notice of proposed action, while James consented. The Trust provides that where only one beneficiary has consented to this type of proposed action, the trustee must seek and obtain court approval to proceed.

In December 2009 McDonnell filed in the probate court a petition for authority to execute and perform right of way contracts with CalTrans. Among other things, the petition stated, “[t]he bottom line recommendation of eminent domain counsel is that all three actions should be settled, so long as they contain the clear non-waiver language relating to future drainage and hydrology impacts and so long as Petitioner is given some discretion to finalize other details.”

On February 9, 2010, the probate court issued its order granting McDonnell’s petition for authority to execute and perform right of way contracts with CalTrans. Todd filed a notice of appeal from the order on April 9, 2010.

Subsequently, on April 23, 2010, a hearing was held on Todd’s motion for joinder as a party defendant in the eminent domain actions. On April 26, 2010, the trial court issued its order granting the motion for joinder and finding that “he has an equitable interest in the properties and the right to appear as a defendant in these three actions under [Code of Civil Procedure] section 1250.230.”

III. DISCUSSION

On appeal, Todd contends that the probate court erred in granting McDonnell’s petition for authority to execute and perform right of way contracts with CalTrans because the court lacked jurisdiction and made several procedural and evidentiary errors. As we will discuss, we will not consider the merits of the appeal because we agree with

McDonnell that the appeal is moot due to an event that occurred while the appeal was pending.

A. The Motion to Dismiss the Appeal

On August 3, 2011, McDonnell filed a motion to dismiss the appeal. In his motion, McDonnell argues that the trial court's April 26, 2010 order granting Todd's motion for joinder and finding that he had the right to appear as a defendant in the three eminent domain actions has rendered the appeal moot.

McDonnell explains that "[t]he effect of the joinder orders is to render the settlements in the eminent domain actions between the Trustee and CalTrans incapable of fully resolving the eminent domain actions without first considering the interest of [Todd] in the settlements or other outcome of the eminent domain actions. Thus, the authorization granted by the probate court to execute the settlement agreements (by Right of Way contracts) cannot be effectively exercised. ¶ . . . [T]he joinder orders in the eminent domain actions also make the order on appeal here erroneous, as the probate court likewise did not consider the interest of [Todd] in the settlements or other resolution of the eminent domain proceedings as a defendant therein."

Todd filed opposition to the motion to dismiss. He argues that the appeal is not moot because "material questions" remain regarding the "clarification of [his] rights during the trial or his rights to object to a deprivation of his rights to due process and just compensation under the guise of trust law and a trust agreement in which he reserved significant rights."

We will begin our analysis of the merits of McDonnell's motion to dismiss with an overview of the rules governing the appellate court's determination of mootness.

B. Mootness

The rules governing the determination of whether an appeal is moot are well established. "It is settled that 'the duty of this court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to

give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it. It necessarily follows that when, pending an appeal from the judgment of a lower court, and without any fault of the defendant, an event occurs which renders it impossible for this court, if it should decide the case in favor of plaintiff, to grant him [or her] any effectual relief whatever, the court will not proceed to a formal judgment, but will dismiss the appeal. [Citations.]’ [Citations.]’ (*Paul, supra*, 62 Cal.2d at p. 132; see also *MHC Operating Limited Partnership v. City of San Jose* (2003) 106 Cal.App.4th 204, 214 [case is moot when reviewing court’s decision can have no practical impact or provide parties with effectual relief].)

In the present case, Todd seeks reversal of the probate court’s order granting McDonnell, as trustee, the authority to execute and perform right of way contracts with CalTrans that include settlement of three eminent domain actions involving a trust asset, portions of the Jarvis Ranch property. We understand McDonnell to contend that that the right of way contracts and settlements cannot be completed because Todd was not a party defendant to the eminent domain actions at the time the right of way contracts and settlement agreements were negotiated, and therefore Todd’s interests were not taken into consideration. Consequently, the probate court’s February 2010 order authorizing McDonnell to execute and perform the right of way contracts became moot when Todd’s motion for joinder as a party defendant in the eminent domain actions was granted in April 2010, and reversal of the order on appeal would not afford the parties any effectual relief. (*Paul, supra*, 62 Cal.2d at p. 132.)

Todd argues that the appeal is not moot because “material questions” remain regarding his “rights to due process” and “just compensation.” We understand this argument to implicitly request this court to provide an advisory opinion regarding Todd’s rights with respect to the trustee’s authority to execute right of way contracts that include settlement of the eminent domain actions. However, we must decline Todd’s request,

since “ ‘[t]he rendering of advisory opinions falls within neither the functions nor the jurisdiction of this court.’ [Citation.]” (*Salazar v. Eastin* (1995) 9 Cal.4th 836, 860; *Ebensteiner Co., Inc. v. Chadmar Group* (2006) 143 Cal.App.4th 1174, 1178-1179.)

Moreover, the decision relied upon by Todd for the proposition that an appeal is not moot if “material questions” remain, *Hartke v. Abbott* (1930) 106 Cal.App. 388 (*Hartke*), does not alter our determination that Todd is seeking an advisory opinion in a moot appeal. In *Hartke*, as later noted by the California Supreme Court, the court determined that “when there has been a payment of the judgment by the appellant, he [or she] does not lose his [or her] right to appeal if it is compulsory, such as under execution or other coercion. [Citations.]” (*Reitano v. Yankwich* (1951) 38 Cal.2d 1, 3.) Here, there is no money judgment at issue, and Todd has failed to adequately identify any specific “material questions” that appropriately remain for determination by this court.

Having determined that the appeal is moot, and also having declined to issue an advisory opinion, we turn to consideration of the appropriate disposition.

C. The Appropriate Disposition

The general rule is that “when a case becomes moot pending an appellate decision, ‘the court will not proceed to a formal judgment, but will dismiss the appeal.’ [Citations.]” (*Paul, supra*, 62 Cal.2d at p. 134.) It is also the general rule that “the involuntary dismissal of an appeal leaves the judgment intact.” (*In re Jasmon O.* (1994) 8 Cal.4th 398, 413.) McDonnell has requested that in the event this court determines that the appeal is moot, our disposition not leave the judgment intact, but instead reverse the judgment with directions to the probate court to dismiss the action in accordance with the dispositions in *Paul, supra*, 62 Cal.2d 129 and *In re Marriage of McFarlane & Lang* (1992) 8 Cal.App.4th 247.

In *Paul*, the California Supreme Court noted that former Code of Civil Procedure section 955 provided that “ ‘[t]he dismissal of an appeal is in effect an affirmance of the judgment or order appealed from. . . .’ ” (*Paul, supra*, 62 Cal.2d at p. 134.) Determining

that the basis for the judgment in the case before it “had disappeared,” the *Paul* court further determined that “we should ‘dispose of the case, not merely of the appellate proceeding which brought it here.’ [Citations.] That result can be achieved by reversing the judgment solely for the purpose of restoring the matter to the jurisdiction of the superior court, with directions to the court to dismiss the proceeding. [Citations.] Such a reversal, of course, does not imply approval of a contrary judgment, but is merely a procedural step necessary to a proper disposition of this case.” (*Id.* at pp. 134-135.)

In 1968, Code of Civil Procedure section 955 was repealed and replaced with Code of Civil Procedure section 913, which provides that “[t]he dismissal of an appeal shall be with prejudice to the right to file another appeal within the time permitted, unless the dismissal is expressly made without prejudice to another appeal.” (Stats. 1968, ch. 385, §§ 1, 2, pp. 811, 816.) Although the statutory language regarding the effect of the dismissal of an appeal has changed, courts have continued to follow the ruling in *Paul* that dismissal of an appeal as moot constitutes an affirmance of the judgment. (See *In re Jasmon O., supra*, 8 Cal.4th at p. 413.)

Courts have also continued to apply the rule set forth in *Paul* that “ ‘ “[w]here an appeal is disposed of upon the ground of mootness and without reaching the merits, in order to avoid ambiguity, the preferable procedure is to reverse the judgment with directions to the trial court to dismiss the action for having become moot prior to its final determination on appeal. [Citations.]’ [Citations.]’ [Citation].” (*Giles v. Horn* (2002) 100 Cal.App.4th 206, 229; see also *Coalition for a Sustainable Future, supra*, 198 Cal.App.4th at p. 944-945; *Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1585-1586; *Malatka v. Helm* (2010) 188 Cal.App.4th 1074, 1088, fn. 7; *In re Marriage of McFarlane & Lang, supra*, 8 Cal.App.4th at p. 258; *City of Los Angeles v. County of Los Angeles* (1983) 147 Cal.App.3d 952, 960 [facts on which judgment was rendered no longer operative; reversal with directions to dismiss matter as moot].)

We determine that a disposition under the rule of *Paul* and its progeny, rather than a simple dismissal of the appeal, is appropriate in the present case. “Reversal with directions to the trial court to dismiss is the equivalent of dismissal of the appeal, but avoids the ambiguity of the latter procedure which does not dispose of a subsisting trial court judgment in a case wherein the issues are moot.” (*Bell v. Board of Supervisors* (1976) 55 Cal.App.3d 629, 637.) Having concluded that the appeal is moot, and also having declined to reach the merits, we will appropriately avoid impliedly affirming the order by reversing it and directing the superior court to dismiss the petition for authority to execute and perform right of way contracts with CalTrans as moot.

IV. DISPOSITION

The February 9, 2010 order granting the petition for authority to execute and perform right of way contracts with the State of California Department of Transportation is reversed and the matter is remanded with directions to the superior court to dismiss the petition as moot. The parties shall bear their own costs on appeal.

BAMATTRE-MANOUKIAN, J.

WE CONCUR:

PREMO, ACTING P.J.

ELIA, J.