

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1199

September Term, 2015

HEARTWOOD 91-4, LLC

v.

PATRICK B. McATEER, ET AL.

Eyler, Deborah S.
Berger,
Arthur,

JJ.

Opinion by Berger, J.

Filed: April 20, 2016

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of *stare decisis* or as persuasive authority. Md. Rule 1-104.

This appeal arises out of an order of the Circuit Court for Anne Arundel County denying a request for entry of judgment filed by the appellant, Heartwood 91-4, LLC (“Heartwood”). Appellees Patrick McAteer (“McAteer”) and Wilmington Savings Fund Society, FSB (“WSFS”) have moved to dismiss this appeal as moot. As we shall explain, we agree that the issues raised in the present appeal are moot, and accordingly, we shall grant WSFS’s motion to dismiss.

FACTS AND PROCEEDINGS

On May 4, 2011, a stipulated deficiency judgment was entered in Florida in favor of Heartwood and against McAteer, among other parties, for \$4,291,265.88. Heartwood filed the stipulated deficiency judgment in the Circuit Court for Anne Arundel County on June 13, 2011 and the judgment was recorded on June 17, 2011.¹

On September 4, 2014, Heartwood served a writ of property garnishment upon garnishee WSFS for any assets owned by McAteer. WSFS filed a confession of assets indicating that it held \$45,391.27 in an account owned by McAteer. In response to interrogatories propounded by Heartwood upon WSFS, WSFS indicated that an additional \$18,470 of McAteer’s assets had come into WSFS’s possession after the filing of the confession of assets. Thereafter, Heartwood filed a request for entry of judgment on the garnishment against WSFS in the amount of \$63,861.27. WSFS initially had no objection to the request for entry of judgment and filed a line of no objection. On January 14, 2015, however, WSFS withdrew its non-objection.

¹ The recorded judgment totaled \$4,347,841.58 This figure included pre-judgment and post-judgment interest as well as attorney’s fees.

McAteer filed an opposition to Heartwood's request for entry of judgment, in which McAteer argued, *inter alia*, that the court had no general or specific personal jurisdiction over WSFS and that there was no basis to assert *in rem* jurisdiction over the funds held within McAteer's bank account.² Following a hearing, the circuit court issued a memorandum opinion and order on July 10, 2015, denying Heartwood's request for entry of judgment. The circuit court concluded that it lacked personal jurisdiction over WSFS. The circuit court further determined that it lacked *in rem* jurisdiction over the funds contained in McAteer's accounts with WSFS.

On July 24, 2015, two weeks following the circuit court's ruling, McAteer made demand upon WSFS and withdrew all of the funds held within his WSFS accounts. McAteer subsequently closed his accounts. On August 5, 2015, Heartwood filed a notice of appeal. On August 6, 2015 -- nearly two weeks after McAteer had withdrawn all of his funds from WSFS -- Heartwood filed a motion to stay the circuit court's order denying its request for entry of judgment and asking the court to set a supersedeas bond amount to be posted by Heartwood during the pendency of the appeal.

The appeal proceeded before this Court in its ordinary course. On January 27, 2016, McAteer filed a motion to dismiss Heartwood's appeal as moot. WSFS filed a similar motion on January 28, 2016, arguing that Heartwood's appeal was moot because the accounts Heartwood sought to garnish no longer held any funds and had been closed. Heartwood filed

² McAteer further raised additional arguments that were abandoned on appeal.

an opposition to the motions to dismiss filed by McAteer and WSFS on February 8, 2016. On February 23, 2016, WSFS filed a reply memorandum in further support of the motion to dismiss.³ By letter dated March 7, 2016, the Clerk of the Court of Special Appeals advised all parties that the panel of judges assigned to consider the appeal would rule on the motion to dismiss.

MOTION TO DISMISS

We first address the threshold question of whether this case is moot. A case is moot when there is no longer an existing controversy when the case comes before the Court or when there is no longer an effective remedy the Court could grant. *Suter v. Stuckey*, 402 Md. 211, 219 (2007). In the present case, there is no longer any remedy that could be granted. Even if we were to hold that the circuit court erred by denying Heartwood's request for entry of judgment, and remand the case for entry of judgment on the garnishment against WSFS,⁴ such a ruling would have no actual effect. WSFS no longer holds any funds belonging to McAteer. Accordingly, there is no remedy within the power of the Court to grant.

Only in rare instances will the reviewing court address the merits of a moot case. The Court of Appeals has articulated those instances as follows:

Under certain circumstances, however, this Court has found it appropriate to address the merits of a moot case. *Human*

³ In addition to the filings relating to the alleged mootness of this appeal, the parties filed briefs addressing the issues raised before the trial court.

⁴ We expressly take no position with respect to whether the circuit court's substantive determinations were correct.

Resources, v. Roth, 398 Md. 137, 143, 919 A.2d 1217, 1221 (2007). If a case implicates a matter of important public policy and is likely to recur but evade review, this court may consider the merits of a moot case. *Coburn v. Coburn*, 342 Md. 244, 250, 674 A.2d 951, 954 (1996) (“This Court in rare instances, however, may address the merits of a moot case if we are convinced that the case presents unresolved issues in matters of important public concern that, if decided, will establish a rule for future conduct.”); *Lloyd v. Supervisors of Elections*, 206 Md. 36, 43, 111 A.2d 379, 382 (1954) (“[I]f the public interest clearly will be hurt if the question is not immediately decided, if the matter involved is likely to recur frequently, and its recurrence will involve a relationship between government and its citizens, or a duty of government, and upon any recurrence, the same difficulty which prevented the appeal at hand from being heard in time is likely again to prevent a decision, then the Court may find justification for deciding the issues raised by a question which has become moot, particularly if all these factors concur with sufficient weight.”).

Suter, 402 Md. at 220. This case does not implicate an important matter of public policy, nor are any of the issues raised by Heartwood likely to recur but evade review. Indeed, the mootness issue could have been avoided altogether had Heartwood moved for a stay or provided a supersedeas bond in a more timely manner. Accordingly, we find no reason to address the merits of Heartwood’s appeal.

In their filings, the parties address the issue of whether the circuit court’s order denying judgment on a writ of garnishment dissolves the lien of garnishment and relieves the garnishee of the obligation to hold property of the principal defendant. Heartwood asserts that the circuit court’s order denying the request for judgment was “not final for the purposes of effect” and that a creditor is not obligated to obtain a stay of a judgment pending appeal. Heartwood further asserts that the issues raised in this appeal are not moot because, if

Heartwood were to succeed on appeal, it would be “entitled to the benefit of its attachment lien, at least as against the defendant and judgment [could] be entered against [WSFS].”

Whether it was proper or improper for WSFS to release the relevant funds to McAteer following the circuit court’s July 10, 2015 order is not an issue that was raised or decided before the trial court. Accordingly, it is not an issue that is properly before us on appeal.⁵ *See* Maryland Rule 8-131(a) (“Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court”). Furthermore, the propriety of WSFS’s release of funds is irrelevant to our determination that there is no remedy within the power of this Court to grant because the accounts at issue in this case have been closed. Accordingly, we shall grant the appellees’ motions to dismiss.

**APPEAL DISMISSED AS MOOT. COSTS
TO BE PAID BY APPELLANT.**

⁵ Heartwood could conceivably raise this issue before the trial court, although we note that pursuant to Maryland Rule 2-115, “[i]f judgment is entered for the defendant, the court shall dissolve the attachment.”