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APPROVAL OF THE APPELLATE DIVISION**

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Although it is posted on the internet, this opinion is only binding on the
parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4198-14T1

MARJORIE FISTER,

Plaintiff-Respondent,

v.

KEVIN EDWARD FISTER,

Defendant-Appellant,

and

ADELE FISTER, THOR EDWARD
FISTER, ASHLEY RUTH FISTER,
KEVIN JED FISTER and
KILLIAN FISTER,

Defendants.

Argued September 19, 2016 – Decided September 29, 2016

Before Judges Haas and Currier.

On appeal from Superior Court of New Jersey,
Law Division, Monmouth County, Docket No. L-
1464-13.

Timothy C. Moriarty argued the cause for
appellant (Moriarty Law Firm, attorneys; Mr.
Moriarty, on the brief).

Afiyfa H. Ellington argued the cause for
respondent (Giordano, Halleran & Ciesla,

attorneys; Donald F. Campbell, Jr., of counsel; Ms. Ellington, on the brief).

PER CURIAM

In this ejectment action, defendant Kevin Fister appeals from an April 15, 2015 Law Division order granting plaintiff Marjorie Fister's motion for summary judgment and finding that plaintiff was entitled to possession of the home she owned in Oceanport, New Jersey. The trial judge also executed a writ of possession requiring defendant and his family to leave the home. Subsequent to the judge's order, plaintiff's guardian obtained an order permitting him to sell plaintiff's home. At oral argument, the parties advised us that the Monmouth County sheriff thereafter served the writ of possession and defendant and his family left plaintiff's home. We therefore dismiss the appeal as moot.

In order to provide context, we briefly recite the most pertinent portions of the procedural history and facts of this case. Plaintiff is defendant's mother. In 2010, defendant, his wife, and his four adult children moved into plaintiff's Oceanport home and lived with her.

Plaintiff's health began to decline. In late 2012, plaintiff's daughter, Ellen Oxman, picked up plaintiff and took her to New York to live with her. Thereafter, plaintiff told defendant, through counsel, that she wanted him to leave her home

so that she could sell it, move into an assisted living facility, and pay for her health care expenses. Defendant refused.

Plaintiff then filed a complaint for a writ of possession against defendant and his family. Defendant filed a separate action in the Chancery Division, alleging plaintiff was incompetent to manage her affairs, and seeking the appointment of a guardian. On April 29, 2013, the trial court determined that plaintiff was competent and dismissed defendant's complaint.

In February 2014, plaintiff filed a motion for summary judgment seeking to eject defendant and his family from her property. This motion would remain pending until March 20, 2015.

In the interim, defendant filed an action in New York, where plaintiff continued to live, again seeking to have his mother declared incompetent. On December 9, 2014, the New York court entered an order declaring plaintiff incompetent to handle her own affairs, and appointing Paul Mederos, Esq., as plaintiff's guardian of her person and property.

On March 20, 2015, the trial judge conducted oral argument on plaintiff's long-pending motion for summary judgment. Plaintiff was represented by the same attorney who had worked with her throughout this litigation, and Mederos also appeared by telephone in support of plaintiff's application for a writ of possession.

During the argument, defendant's attorney conceded defendant was not listed on the deed for plaintiff's home and that he had nothing to document that he had any ownership interest in the property. The attorney also acknowledged that Mederos had been appointed as plaintiff's guardian in the action defendant instituted in New York.

Mederos told the judge he had already applied to the New York court for an order permitting him to sell plaintiff's home to obtain funds to pay for her care. In light of this, defendant's attorney stated, "[A]ll I'm submitting to the [c]ourt is at this point we should await what's happening in New York. If the [New York court] says look, sell it and [defendant and his family] should leave so we can sell the house, that's fine." The attorney continued, "I submit that we should await that and abide by whatever that [c]ourt does."

At the conclusion of oral argument, the trial judge granted plaintiff's motion for summary judgment.¹ The judge found defendant had no ownership interest in plaintiff's home and no right to continue to live there rent-free after being advised by plaintiff and, subsequently, her guardian that she wanted him to leave so the property could be sold. Although the judge signed

¹ The judge entered a conforming order on April 15, 2015.

the writ of possession, he directed Mederos to give defendant thirty days notice before executing the writ.

On April 16, 2015, the New York court granted Mederos permission to sell plaintiff's home. At oral argument on defendant's appeal, defendant's attorney advised us that defendant and his family had left the home in response to the writ of possession and the New York court's order permitting Mederos to sell the property. Consistent with his earlier representation to the trial judge that defendant would abide by the New York court's order concerning the sale of the home, defendant's attorney stated that defendant's appeal was now moot. Plaintiff's attorney agreed, as do we.


"A case is moot if the disputed issue has been resolved, at least with respect to the parties who instituted the litigation." Caput Mortuum, L.L.C. v. S&S Crown Servs., Ltd., 366 N.J. Super. 323, 330 (App. Div. 2004). "[C]ontroversies which have become moot or academic prior to judicial resolution ordinarily will be dismissed." Cinque v. N.J. Dep't of Corr., 261 N.J. Super. 242, 243 (App. Div. 1993). Dismissal for mootness is appropriate where "a judgment cannot grant effective relief, or there is no concrete adversity of interest between the parties." Caput Mortuum, supra, 366 N.J. Super. At 330. A court may consider events that occur subsequent to the filing of appeal in determining that an appeal

is moot. Ibid. (holding that the appeal was moot after the court was advised at oral argument that the controversy had been resolved subsequent to the filing of the appeal).

Because defendant's concern about the guardian's authority to sell the property has been resolved by the New York court's order permitting the sale, and defendant and his family have now left plaintiff's home, this appeal is now moot.

Dismissed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION