

NOTICE
Decision filed 07/25/17. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2017 IL App (5th) 150438-U

NO. 5-15-0438

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

CHARLES C. CASHNER,)	Appeal from the
)	Circuit Court of
Plaintiff,)	Bond County.
)	
v.)	No. 11-L-13
)	Consolidated with
SPEED LUBE, LLC, a Limited Liability)	No.13-MR-32
Company, DOUGLAS DRAPER, STEVEN)	
DUGAN, and ROBERT M. HARBISON,)	
)	
Defendants-Appellees,)	
)	
(Anderson & Gilbert, L.C., Appellant).)	
-----)	
CHARLES C. CASHNER,)	
)	
Plaintiff,)	
)	
v.)	
)	
PLANT MAINTENANCE SERVICES, LLC,)	
a Limited Liability Company, and Its Member/)	
Managers, HAROLD R. DUGAN, STEVEN)	
C. DUGAN, ROBERT M. HARBISON, and)	
ROBERT D. HALLER, and SPEED LUBE LLC,)	
a Limited Liability Company, and Its Member/)	
Managers, DOUGLAS G. DRAPER, STEVEN C.))	
DUGAN, and ROBERT M. HARBISON, and)	
CARLYLE INVESTMENT GROUP LLC,)	
a Limited Liability Company,)	Honorable
)	John Knight,
Defendants.)	Judge, presiding.

PRESIDING JUSTICE MOORE delivered the judgment of the court.
Justices Welch and Overstreet concurred in the judgment.

ORDER

¶ 1 *Held:* Appeal dismissed where subsequent order in a separate underlying action superseded the order on appeal and rendered it moot.

¶ 2 Anderson & Gilbert, L.C. (law firm), which represents the plaintiff, Charles C. Cashner, in several underlying actions, appeals the September 19, 2013, order of the circuit court of Bond County, which denied its petition to enforce an attorney's lien, finding that a writ of attachment in favor of Douglas Draper and Steven Dugan, had priority over the law firm's attorney's lien. During the course of this appeal, on August 25, 2016, Draper and Dugan filed a motion to supplement the record and a motion to dismiss the appeal, which we took with the case. For the following reasons, we grant the motion to supplement—for the sole purpose of analyzing the motion to dismiss—and grant the motion to dismiss because the order on appeal was superseded by a subsequent order in a separate underlying action, thereby rendering the order on appeal moot.

¶ 3 **FACTS**

¶ 4 The law firm represents Cashner as the plaintiff in several underlying actions, which comprise a lengthy and complex procedural history leading up to this appeal. In the case on appeal—11-L-13—Cashner was awarded a money judgment against Speed Lube, LLC, following arbitration, in the amount of \$136,302.27. The arbitration award was confirmed by the circuit court in a judgment entered on March 22, 2013. The crux of this appeal involves a competition between the law firm and defendants Draper and Dugan against the proceeds of the Speed Lube judgment. On January 7, 2013, before the

Speed Lube judgment was entered, Dugan filed a counterclaim against Cashner in a collateral underlying action—12-MR-27—to recover damages in excess of \$300,000. Also on January 7, 2013, in 12-MR-27, Draper and Dugan filed a motion for attachment of the proceeds of the Speed Lube judgment. The motion cited Dugan's counterclaim against Cashner in 12-MR-27, as well as Draper's claim against Cashner in a pending action in the circuit court of Jefferson County, Missouri (Missouri litigation).

¶ 5 On March 26, 2013, four days after the Speed Lube judgment was entered in the instant case, the circuit court entered an order in 12-MR-27, granting Dugan and Draper's motion for attachment. Two days later, on March 28, 2013, in 12-MR-27, the law firm filed an attorney's lien in an effort to obtain the contingency fee due from its representation of Cashner in the Speed Lube litigation. Meanwhile, on April 1, 2013, Draper was awarded a money judgment in the Missouri litigation against Cashner in the amount of \$2,512,143.55¹ (Missouri judgment). On April 11, 2013, the law firm filed in the instant case a petition to enforce its attorney's lien. On May 22, 2013, the law firm filed in 12-MR-27 a motion to set aside the March 26, 2013, order that granted Dugan and Draper's motion for attachment. On July 17, 2013, the law firm filed in the instant case another petition to enforce its attorney's lien. On August 15, 2013, the Missouri judgment was entered in the circuit court as a foreign judgment in 12-MR-27.

¹The judgment in the Missouri litigation was signed by the judge on April 1, 2013. However, the notice of filing of foreign judgment in the circuit court states that the judgment in the Missouri litigation was entered on April 4, 2013. The actual file-stamped date on the copy of the judgment in the record is illegible.

¶ 6 On September 19, 2013, the circuit court entered an order in the instant case (which, as reflected in the caption, was consolidated with 13-MR-32), in which it referenced the March 26, 2013, order in 12-MR-27 that granted Dugan and Draper's motion for attachment. The circuit court acknowledged that "[t]he [March 26, 2013] Order was not carefully drafted and did not use appropriate terminology." The circuit court clarified that its intent "was to recognize the legal right to the attachment ***[,] *** to establish its priority[,] *** to give the movants immediate protection[,] [and] to protect competing interests by requiring additional surety to secure the obligations of the bond." The circuit court explained that "[a]dding conditions to the surety for the bond was intended to create a separate requirement, above and beyond posting of a simple bond." In conclusion, the circuit court denied the law firm's petition to enforce its attorney's lien and found that the writ of attachment in favor of Draper and Dugan had priority over the law firm's lien. As a final note, the circuit court made clear that "[t]o the extent that the language of this Court's Order of March 26, 2013, is inconsistent with this Order, the prior Order is corrected and amended nunc pro tunc [*sic*] to March 26, 2013."

¶ 7 On October 10, 2013, the law firm appealed the September 19, 2013, order. Dugan and Draper filed a motion to dismiss. The appeal was dismissed by this court in a summary order entered on August 18, 2014, in which we held that the order on appeal was not final and appealable. Subsequently, on December 9, 2014, in response to a motion for a turnover order that was filed by Draper, the circuit court entered an order in 12-MR-27 (turnover order), in which it referenced the Speed Lube judgment Cashner had obtained and the Missouri judgment Draper subsequently obtained against Cashner. The

circuit court noted that the Missouri judgment remained unsatisfied. Accordingly, the circuit court granted Draper's motion for a turnover order, ordered Speed Lube to execute to Draper a promissory note, ordered Draper to execute and deliver to Speed Lube a full satisfaction and release of the Speed Lube judgment upon receipt of the promissory note, and held that the proceeds from the Speed Lube judgment were to be applied as partial satisfaction of the amount due to Draper from Cashner pursuant to the Missouri judgment. On December 18, 2014, Cashner filed a motion to reconsider the turnover order, which the circuit court denied in an order entered in 12-MR-27 on February 18, 2015. The turnover order has not been appealed to date nor has any other order entered in 12-MR-27.

¶ 8 On January 8, 2016, this court granted the law firm's motion for leave to file late notice of appeal of the September 19, 2013, order. On April 29, 2016, the law firm filed with this court, *inter alia*, a motion to supplement the record with 12-MR-27, which was denied because the law firm failed to reference 12-MR-27 in the late notice of appeal. On August 25, 2016, Draper and Dugan filed a motion to supplement the record with the relevant pleadings and order from the same underlying case, 12-MR-27, along with a motion to dismiss the appeal, both of which we now address. We grant the motion to supplement for the sole purpose of ruling on the motion to dismiss, because although 12-MR-27 is a separate and distinct case, the issues therein are fundamentally intertwined with the case on appeal and reviewing portions of 12-MR-27 is integral to ruling on the motion to dismiss the appeal in this case.

¶ 9

ANALYSIS

¶ 10 In the motion to dismiss, Draper and Dugan allege that the September 19, 2013, order on appeal is moot. They argue that the asset to which the attorney's lien attempted to attach, namely the Speed Lube judgment, no longer exists because it was extinguished per the turnover order that was entered in 12-MR-27. We agree. "The existence of an actual controversy is an essential requisite to appellate jurisdiction, and courts of review will generally not decide *** moot questions." *In re Andrea F.*, 208 Ill. 2d 148, 156 (2003). "An appeal is considered moot where it presents no actual controversy or where the issues have ceased to exist." *Id.* "The test for mootness is whether the issues involved in the trial court no longer exist because intervening events have rendered it impossible for the reviewing court to grant effectual relief to the complaining party." *Id.* That is precisely what happened in this case.

¶ 11 The turnover order, which has not been appealed to date, was an intervening event that made it impossible for this court to grant the requested relief because it was entered subsequent to the order on appeal and prior to the law firm's filing its late notice of appeal. See *id.* The turnover order disposed of the Speed Lube judgment, thereby yielding no asset to which the attorney's lien could attach. No order that this court enters in this case can impact the turnover order, which was issued in a case that is not the subject of this appeal and over which we have no jurisdiction at this time. Accordingly, it is impossible for this court to grant effectual relief to the law firm and we grant Draper and Dugan's motion to dismiss. See *id.*

¶ 12

CONCLUSION

¶ 13 For the foregoing reasons, we grant the motion to dismiss this appeal because the order on appeal was superseded by the turnover order, which rendered the order on appeal moot.

¶ 14 Appeal dismissed.