

NOTICE
Decision filed 03/15/24. 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.

2024 IL App (5th) 230395-U

NO. 5-23-0395

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

FARMERS MUTUAL HAIL INSURANCE)	Appeal from the
COMPANY OF IOWA, a Mutual Company,)	Circuit Court of
)	Clay County.
Plaintiff-Appellee,)	
)	
v.)	No. 19-MR-5
)	
CHANDLER DURBIN, CHRISTIAN COX, and)	
BLAKE C. STUCKEY,)	
)	
Defendants)	
)	Honorable
(Chandler Durbin and Christian Cox, Defendants-)	Joel J.C. Powless,
Appellants).)	Judge, presiding.

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

ORDER

¶ 1 *Held:* Appeal from order granting summary judgment in a declaratory judgment action is moot where the underlying complaint did not allege a cause of action against the individuals seeking a defense from their insurance policy.

¶ 2 The defendants, Chandler Durbin and Christian Cox, appeal the May 10, 2023, order of the circuit court of Clay County that granted summary judgment in favor of the plaintiff, Farmers Mutual Hail Insurance Company, a mutual company (Farmers), as to its complaint seeking a declaration of insurance coverage under a farm personal liability policy of insurance issued by Farmers to the parents of Durbin and Cox. For the following reasons, we dismiss the appeal.

¶ 3

I. BACKGROUND

¶ 4 On February 14, 2019, the underlying lawsuit was filed by Blake Stuckey in the circuit court of Clay County, case No. 19-L-3, against Chandler Durbin, Jordan Wilson, John Flowers, and Christian Cox. The complaint consisted of 17 counts that alleged causes of action against each defendant for injuries sustained by Stuckey on April 7, 2018, as a result of battery, assault, civil conspiracy to commit battery, intentional infliction of emotional distress, and false imprisonment allegedly committed by the defendants.

¶ 5 Counts I (battery), V (assault), IX (civil conspiracy to commit battery), X (intentional infliction of emotional distress), and XIV (false imprisonment) allege causes of action against Durbin. Counts IV (battery), VIII (assault), IX (civil conspiracy to commit batter), XIII (intentional infliction of emotional distress), and XVII (false imprisonment) allege causes of action against Cox. Each of the aforementioned counts are based on the following allegations:

“3. At the aforesaid time and place [April 7, 2018] Defendant committed the following intentional and willful acts:

- a. Repeatedly punched Plaintiff in his head, abdomen, and extremities;
- b. Strangled Plaintiff;
- c. Repeatedly pushed and shoved Plaintiff until he fell to the ground; and
- d. Repeatedly kicked Plaintiff in his head, abdomen, and extremities once

he fell to the ground.”

¶ 6 Durbin and Cox tendered the defense of the underlying lawsuit to Farmers. Farmers had issued a farm personal liability coverage policy to Troy Fruitiger covering the period of March 13, 2018, through March 13, 2019. Troy Fruitiger is married to Sara Fruitiger. Cox is the adopted child

of Troy and Sara Fruitiger. Durbin is Sara Fruitiger's biological child. Durbin and Cox lived with the Fruitigers at the time of the incident on April 7, 2018.

¶ 7 On April 1, 2019, Farmers filed a complaint, Clay County case No. 19-MR-5, for a declaratory judgment asking the court for a determination that it did not owe Durbin and Cox a duty to defend the underlying lawsuit. Durbin and Cox were named as defendants as well as Stuckey, as an interested party. After Durbin, Cox, and Stuckey filed answers to the complaint for declaratory judgment, Farmers filed a motion for judgment on the pleadings and a memorandum of law in support of the motion on February 28, 2020.

¶ 8 On April 3, 2019, Stuckey filed an amendment to complaint adding Ronda Hance and Kyle Hance as defendants in case No. 19-L-3.¹ On May 14, 2020, Stuckey filed a second amended complaint adding additional counts against Durbin, Wilson, Flowers, and Cox, that alleged both negligence and willful and wanton conduct. On December 2, 2020, Farmers filed an amended complaint for declaratory judgment.

¶ 9 On July 28, 2021, Stuckey filed an amended complaint in 19-L-3. On December 20, 2021, Farmers filed a motion for summary judgment, and a memorandum of law in support of its motion on February 25, 2022.

¶ 10 On May 20, 2022, Stuckey filed a second amendment to the complaint. On June 6, 2022, Stuckey filed a second amended complaint in 19-L-3. The second amended complaint filed on June 6, 2022, in 19-L-3, consists of three counts alleging negligence against Bryce Hance, Kelly Hance, and Amy Hance. The second amended complaint did not assert any claims against Durbin or Cox, nor did it refer to or adopt the earlier filed complaints.

¹While not all of the pleadings from Clay County case No. 19-L-3 are contained in the record on appeal in this matter, we have obtained additional information about the pleadings in 19-L-3 from the circuit court's docket entries. Appellate courts can take judicial notice of computer docket sheets. *People v. Johnson*, 2020 IL App (1st) 171638, ¶ 29.

¶ 11 On November 7, 2022, a hearing was held on Farmers’ motion for summary judgment. On May 10, 2023, the circuit court entered an order granting Farmers’ motion for summary judgment. Durbin and Cox filed a timely notice of appeal on June 7, 2023. Stuckey did not file a notice of appeal and has not entered an appearance in the appeal.

¶ 12 II. ANALYSIS

¶ 13 This appeal comes to us from the grant of summary judgment in a declaratory judgment action, which we review *de novo*. *Progressive Universal Insurance Co. of Illinois v. Liberty Mutual Fire Insurance Co.*, 215 Ill. 2d 121, 128 (2005). “*De novo* review means that we examine the evidence unconstrained by the reasoning of the trial court.” *Zameer v. City of Chicago*, 2013 IL App (1st) 120198, ¶ 12. In reviewing the evidence in the present matter, including the controlling complaint in the underlying litigation, we have determined that the issue presented on appeal is moot.

¶ 14 At the time the circuit court considered Farmers’ motion for summary judgment, the controlling complaint in 19-L-3 was the second amended complaint filed on June 6, 2022. “Where an amendment is complete in itself and does not refer to or adopt the prior pleading, the earlier pleading ceases to be a part of the record for most purposes, being in effect abandoned and withdrawn.” *Bowman v. Lake County*, 29 Ill. 2d 268, 272 (1963). The second amended complaint does not allege any cause of action against either Durbin or Cox; accordingly, Stuckey’s second amended complaint abandoned and withdrew those claims.

¶ 15 When reviewing the controlling complaint for purposes of a declaratory judgment action, “the complaint must show that the underlying facts and issues of the case are not moot or premature.” *Stokes v. Pekin Insurance Co.*, 298 Ill. App. 3d 278, 281 (1998). “It is a basic tenet of justiciability that reviewing courts will not decide moot or abstract questions or render advisory

opinions.” *In re J.T.*, 221 Ill. 2d 338, 349 (2006). “An appeal is considered moot where it presents no actual controversy or where 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.* at 349-50.

¶ 16 In this case, the second amended complaint does not allege any causes of action against Durbin or Cox, as such, there is no controversy at issue to determine whether Farmers owes a duty to defend. Additionally, we find that no exception to the mootness doctrine applies here because the decision on the declaratory judgment action in this case does not present a question of public importance and is not capable of repetition due to examination of the specific facts of the underlying incident. See *id.* at 350.

¶ 17 **III. CONCLUSION**

¶ 18 For the foregoing reasons, we dismiss the appeal.

¶ 19 Appeal dismissed.