

VIRGINIA: In the Court of Appeals of Virginia on Friday the 28th day of April, 2023.

Oksana Marinaro,

Appellant,

against

Record No. 1667-22-1

Circuit Court Nos. CL21005450-00 and CL21005619-00

Cheryl Eddy Benn, P.C.,

Appellee.

From the Circuit Court of the City of Virginia Beach

Oksana Marinaro appeals the circuit court's order granting judgment to Cheryl Eddy Benn, P.C. (Benn), in the amount of \$4,992.77, with interest. For the reasons that follow, we dismiss the appeal as moot.

In May 2019, Marinaro retained Benn to represent her in a divorce action. The parties entered into a written retainer agreement that governed the terms of Benn's representation. The agreement set forth the hourly billing rates, terms, and condition of the representation, as well as cost reimbursement. Benn's attorney-client relationship with Marinaro ended months later. Benn sent Marinaro invoices for work performed.

After Marinaro failed to remit payment, Benn filed a warrant in debt in the Virginia Beach General District Court (GDC) for the amount of \$6,786.70, plus 6%

interest, as well as cost and attorney fees, for “non-payment for services rendered.” While the matter was pending in the GDC, Marinaro filed a complaint challenging Benn’s final invoice for services provided.

On November 18, 2021, the GDC entered judgment against Marinaro, and awarded Benn \$6,512.72, with 6% interest until the debt is paid, plus costs and attorney fees. Marinaro appealed to the circuit court and submitted an appeal bond in the amount of \$8,840.95. The circuit court consolidated Marinaro’s appeal with her complaint that was pending in the circuit court.

Benn filed an answer in the circuit court, and asked the circuit court to dismiss the action. Marinaro moved for default judgment, arguing that Benn failed to file the answer within 21 day of service of Marinaro’s complaint. The circuit court conducted a hearing on July 15, 2022, after which it entered an order granting Benn leave of court to file late responsive pleadings, and considered the answer as timely filed.

Marinaro also filed a “notice and motion for penalty or damages” alleging breach of contract due to Benn’s failure to “fulfill her obligations” in representing Marinaro in her divorce action. Marinaro further alleged that the written retainer violated the Virginia Consumer Protection Act (VCPA). Marinaro asked for judgment in the amount of \$32,403.00. The circuit court retitled Marinaro’s filing as a counterclaim.

The parties appeared before the circuit court, for a hearing on the parties' "respective claims." The circuit court granted judgment in Benn's favor, and awarded her \$4,992.77, with 6% interest. The circuit court dismissed Marinaro's counterclaim, and found that the VCPA did "not apply to the matter." In accordance with the parties' agreement, the circuit court applied Marinaro's appeal bond to cover Benn's award, and order the remainder of the bond be returned to Marinaro. Marinaro appeals.

We hold that Marinaro's appeal is moot. "Generally, a case is moot and must be dismissed when the controversy that existed between litigants has ceased to exist." *Va. Mfrs. Ass'n v. Northam*, 74 Va. App. 1, 18 (2021) (quoting *Daily Press, Inc. v. Commonwealth*, 285 Va. 447, 452 (2013)). "The issues presented must be 'live' at all stages of review." *Palmer v. Commonwealth*, 74 Va. App. 336, 338 (2022) (quoting *Bristol Dep't of Soc. Servs. v. Welch*, 64 Va. App. 34, 42 (2014)). "No matter how vehemently the parties continue to dispute the lawfulness of the conduct that precipitated the lawsuit, the case is moot if the dispute 'is no longer embedded in any actual controversy about [appellant's] particular legal rights.'" *Va. Mfrs. Ass'n*, 74 Va. App. at 19 (quoting *Ingram v. Commonwealth*, 62 Va. App. 14, 21-22 (2013)).

The controversy that existed over the circuit court's order granting judgment in Benn's favor and awarding her \$4,992.77 ceased to exist when Marinaro paid the judgment in full. *Id.* at 18. "Voluntary payment of a judgment deprives the payor of the right of appeal." *Sheehy v. Williams*, 299 Va. 274, 279 (2020) (quoting *Citizens*

Bank & Tr. Co. v. Crewe Factory Sales Corp., 254 Va. 355, 355 (1997)). “In the appellate context, the voluntary-payment doctrine recognizes that at some point, reviewing courts should declare litigation to be at an end when the litigants themselves—by their own voluntary actions—have effectively ended it.” Id.

Though Marinaro continues to dispute the lawfulness of that judgment, there no longer is “any actual controversy about [her] particular legal rights.” Va. Mfrs. Ass’n, 74 Va. App. at 19 (quoting Ingram, 62 Va. App. 14). Marinaro’s payment was “voluntary” and has been recorded as “satisfied.” Therefore, the appeal is moot because the controversy “has ceased to exist.” Id. at 18. Accordingly, the appeal hereby is dismissed as moot.

A Copy,

Teste:

A. John Vollino, Clerk

By: s/ _____

Deputy Clerk

VIRGINIA: In the Court of Appeals of Virginia on Thursday the 11th day of May, 2023.

Oksana Marinaro, Appellant,

against Record No. 1667-22-1

Circuit Court Nos. CL21005450-00 and CL21005619-00

Cheryl Eddy Benn, P.C., Appellee.

Upon a Petition for Rehearing

On consideration of the petition of the appellant to set aside the judgment rendered herein on the 28th day of April, 2023 and grant a rehearing thereof, the said petition is denied.

A Copy,

Teste:

A. John Vollino, Clerk

By: s/_____

Deputy Clerk

VIRGINIA: In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Tuesday the 31st day of October, 2023.

Oksana Marinaro, Appellant,

against Record No. 230389

Court of Appeals No. 1667-22-1

Cheryl Eddy Benn, PC, Appellee.

From the Court of Appeals of Virginia

Upon review of the record in this case and consideration of the arguments submitted in support of the granting of an appeal, the Court is of the opinion there is no reversible error in the judgment complained of. Accordingly, the Court refuses the petition for appeal.

A Copy,

Teste:

Muriel-Theresa Pitney, Clerk

By: s/ _____

Deputy Clerk

VIRGINIA: In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday the 31st day of January, 2024.

OKSANA MARINARO,

APPELLANT,

against

Record No. 230389

Court of Appeals No. 1667-22-1

CHERYL EDDY BENN, PC,

APPELLEE.

UPON A PETITION FOR REHEARING

On November 13, 2023, came the appellant, who is self-represented and filed a motion to take judicial notice in this case. Upon consideration whereof, appellant's motion is granted. On consideration of the petition of the appellant to set aside the judgment rendered herein on October 31, 2023, and grant a rehearing thereof, the prayer of the said petition is denied.

A Copy,

Teste:

Muriel-Theresa Pitney, Clerk

By: s/_____

Deputy Clerk

**Additional material
from this filing is
available in the
Clerk's Office.**