

### **Moot Appeals**

An appeal is moot if all of the issues on appeal have become moot by subsequent acts or events. If the decision of the reviewing court can have no practical impact or provide the parties effectual relief, the appeal is moot. Because courts decide actual controversies and not abstract propositions, appellate proceedings will ordinarily be dismissed if an appeal becomes moot. The exceptions to this rule are (1) when the case presents an issue of broad public interest that is likely to recur; (2) when there may be a recurrence of the controversy between the parties; and (3) when a material question remains for the court's determination. *Malatka v. Helm*, 188 Cal. App. 4<sup>th</sup> 1074, 1088 (2010). In those instances, the court has discretion to hear the appeal even though it has been rendered moot.

Although moot appeals are usually dismissed, moot appeals can present complex issues regarding the proper disposition of the appeal. A recent decision illustrates this and demonstrates that dismissal is not always the correct disposition for a moot appeal.

In *Coalition for a Sustainable Future in Yucaipa v. City of Yucaipa*, 2011 Cal. App. LEXIS 1117 (August 25, 2011), the Fourth Appellate District, Division Two, utilized the procedure of a qualified reversal to address the procedural issues raised by an appeal that had become moot. In *Coalition*, the plaintiff-appellant was a citizen group that challenged the approval of the building of a shopping center. Respondents, the City of Yucaipa and its city council, approved the shopping center which had been proposed by respondent and real party in interest Target Stores, Inc. In the trial court, the plaintiff-appellant filed a petition for writ of mandate challenging the project on the ground that it conflicted with affordable housing requirements and failed to properly consider greenhouse gas emissions. The trial court denied the petition for writ of mandate.

While the appeal was pending Target abandoned the project due to a contract dispute. The city then rescinded the resolutions approving the project, a general plan amendment necessary for the project, and the certification of the environmental impact report for the project. In light of these subsequent events, respondents moved to dismiss the appeal on the ground of mootness.

The Fourth District ultimately determined that the appeal was moot. In a published decision, the appellate court reversed the judgment as moot and stated that "this reversal does not imply that the judgment was erroneous on the merits, but is solely for the purpose of returning jurisdiction over the case to the superior court by vacating the otherwise final judgment solely on the ground of mootness. The superior court is directed to dismiss the underlying action as moot."

Respondents objected to the qualified reversal. The appellate court reasoned that the qualified reversal was necessary. Relying upon the California Supreme Court's decision in *Paul v. Milk Depots, Inc.*, 62 Cal. 2d 129 (1964), the *Coalition* court discussed why a simple dismissal of the appeal would be inappropriate. The opinion points out that one problem with a dismissal of an appeal is that it is in effect an affirmance of the judgment. An affirmance is improper because the basis for the judgment, i.e. the project, had disappeared and the judgment's merits had not been fully and finally litigated and never would be because the judgment was moot. Since the judgment's merits had not been fully litigated, the affirmance implied by a dismissal of the appeal was unjustified. In addition, since the case itself, not just the appeal, had been rendered moot by the disappearance of the basis for the judgment, a mere dismissal of the appeal failed to address the mootness of the case underlying the appeal. Relying on *Paul*, the *Coalition* court identified three advantages of a qualified reversal over a dismissal: (1) a reversal could include directions to dismiss the underlying case; (2) a reversal vacated the judgment so the trial court had jurisdiction to follow the directions and dismiss the case; and (3) a reversal insures that the judgment can have no issue preclusive effect.

In *Coalition*, the court further explained that the reversal could be qualified so as not to imply that the judgment was in error, only moot. In this manner, a qualified reversal removes any implication that the less than fully litigated judgment had any continuing validity or effect and creates a vehicle for directing the trial court to dismiss the underlying action. The appellate court concluded that because the propriety of the project was never fully litigated, the judgment should not stand.

The *Coalition* decision demonstrates that some moot appeals should be reversed by a qualified reversal whereas others may simply be dismissed. For example, "reversal is an available alternative when an appellate court does not want to send a signal that it implicitly approves a questionable trial court judgment." *Malatka*, 188 Cal. App. 4<sup>th</sup> at 1088 n. 7. In making a motion to dismiss on the grounds of mootness, counsel carefully should consider the appropriate disposition of the case and specifically articulate whether a qualified reversal or dismissal is the relief sought by the motion. In some instances, the entire case may have been rendered moot by subsequent events or the risk of issue preclusion may be significant and thus, the qualified reversal procedure may be appropriate. In other instances, such as a settlement while the appeal is pending, perhaps only the appeal is moot and a dismissal is more appropriate.

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