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ARKANSAS COURT OF APPEALS

DIVISION III
No. CA11-1271

ARK-LA-TEX FINANCIAL SERVICES, INC., d/b/a BENCHMARK HOME LOANS APPELLANT V. TERRY L. WILLIS APPELLEE	**Opinion Delivered** October 3, 2012 APPEAL FROM THE GARLAND COUNTY CIRCUIT COURT, [NO. CV-09-599-1] HONORABLE JOHN HOMER WRIGHT, JUDGE DISMISSED

WAYMOND M. BROWN, Judge

Ark-La-Tex Financial Services, Inc., d/b/a Benchmark Home Loans, appeals from a judgment entered against it in favor of appellee Terry Willis. We dismiss this appeal because it is moot.

This lawsuit was the result of fraudulent actions taken by appellee's former wife, Lesley Willis. The Willises were married in 1991 and divorced in 1997. After they remarried in 2000, appellee sold his house, which was premarital property, and used the proceeds as a down payment to purchase another residence in his name. With appellee's assent, Mrs. Willis assumed control of the parties' finances, which were in bad shape. In January 2007, Mrs. Willis surreptitiously prepared a quitclaim deed that conveyed the property to appellee and herself. She used the quitclaim deed to refinance the property with Homecomings Financial, LLC, using the proceeds to pay some family debts. Wendy Strickland, who handled the closing at Lenders Title Company and notarized the quitclaim deed, testified at trial that she

did not remember whether she had seen appellee sign it.

In April 2008, Mrs. Willis forged appellee's signature on a special power of attorney she had prepared that purportedly appointed her as his attorney-in-fact. Mrs. Willis's friend, Cathy Johnson, notarized this power of attorney without seeing appellee sign it. Mrs. Willis used this power of attorney to refinance the property with appellant through Hot Springs Title Company, and used the proceeds to pay the family's credit-card debt and to make a deposit into appellee's checking account. The note and deed of trust to appellant were subsequently assigned to Countrywide Home Loans, Inc., now Bank of America.

Appellee discovered the refinancing transactions when he reviewed his credit report in October 2008. After he had sued for divorce, he filed this action against Mrs. Willis, Homecomings, Lenders, appellant, Countrywide, Hot Springs Title, and Garland County Educators Federal Credit Union. He alleged that the defendants were negligent and asked for declaratory relief stating that he was not responsible for the void notes, mortgages, or deed of trust. He asked the circuit court to set aside those instruments and the void power of attorney.[1] Appellee; Cathy Johnson; Mrs. Willis; Delania Watson, who handled the closing for Hot Springs Title; Wendy Strickland; and Steven Remmington, appellant's Executive Vice President, testified at trial.

The trial court entered judgment on May 24, 2011, in favor of appellee, finding that

[1]The circuit court granted a nonsuit on appellee's claims against Homecomings; dismissed his claims against the credit union; and dismissed Countrywide's counterclaim and cross-claim.

Mrs. Willis, who was "totally lacking in credibility," forged appellee's signature without his knowledge. The court set aside the quitclaim deed, the mortgages and notes to Homecomings (except to the extent that they extinguished the valid original debt) and the deed of trust and promissory note to appellant (except to the extent that they represented the valid original debt). The court reformed the mortgage and note to appellant to conform to the terms of appellee's original loan. It also set aside the power of attorney; found that Mrs. Willis had committed fraud; directed that appellee be placed in the position in which he would have been if the forgeries had not occurred; and found that Mrs. Willis was liable to the financial defendants in the full amounts of the debts. The court found that the financial defendants had been negligent in failing to ascertain or confirm, by any method, that appellee had executed any of the documents purporting to bear his signature. It found that appellee had been damaged as a result of their negligence in the amount of $94,695.72 (the difference between the current balance and appellee's legitimate debt), which would be satisfied by a reduction of the debt to $149,545.83. The court directed the financial defendants to take all reasonable steps to remove any negative marks on appellee's credit. It further granted him judgment for attorney's fees in the amount of $32,490 and costs of $6,345.15, for a total of $38,835.15, to be allocated equally among all of the defendants. Appellant then pursued this appeal.

On appeal, appellant challenges only the circuit court's finding that it was negligent, which was the basis for the declaratory and monetary relief the court awarded appellee. Appellee has filed a motion to dismiss this appeal on the ground that the case is moot because

appellant has voluntarily paid the judgment. We agree. Appellant concedes that it has already paid the judgment for its share of appellee's attorney's fees and costs.[2] There is, therefore, no justiciable issue between the parties. A case becomes moot when any judgment rendered would have no practical legal effect upon a then-existing legal controversy.[3] If an appellant voluntarily pays a judgment, the appeal from that judgment is moot, and we will not decide it.[4]

Appellant contends that this appeal is not moot because the trial court's finding that it was negligent could have a "strongly negative impact" on its forty offices in twenty-three states in the highly-regulated field of mortgage lending. It states: "Warehouse lenders, investors and government regulators can require a mortgage lender to disclose any claims/potential claims against it as a pre-condition to being permitted to engage in the practice of mortgage lending within the pertinent jurisdiction." Our supreme court has recognized two exceptions to the mootness doctrine, one of which involves issues that are capable of repetition, yet also of evading review.[5] The other exception concerns issues that raise considerations of substantial public interest which, if addressed, would prevent future

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[2]The satisfaction of judgment was attached to appellee's motion.

[3]*Mountain Pure, LLC v. Little Rock Wastewater Util.*, 2011 Ark. 258, 383 S.W.3d 347.

[4]*Hubbard v. HomeBank of Ark.*, 2011 Ark. App. 183, 382 S.W.3d 721; *Barringer v. Hall*, 89 Ark. App. 293, 202 S.W.3d 568 (2005); *Sherman Waterproofing, Inc. v. Darragh Co.*, 81 Ark. App. 74, 98 S.W.3d 446 (2003); *see also Pinnacle Point Props., LLC v. Metropolitan Nat'l Bank*, 2012 Ark. App. 268.

[5]*City of Clinton v. S. Paramedic Servs., Inc.*, 2012 Ark. 88, 387 S.W.3d 137.

litigation.[6] Neither exception applies to this situation, however, and appellant is asking us to issue a purely advisory opinion. Appellant could easily have avoided this situation by taking the necessary steps to suspend enforcement of the judgment during this appeal, but chose not to do so. We may not issue advisory opinions in anticipation of future litigation.[7] Courts do not sit for the purpose of laying down rules for future conduct.[8] This case, therefore, is moot and must be dismissed.

Dismissed.

ABRAMSON and HOOFMAN, JJ., agree.

James, Fink & House, P.A., by: *John W. Fink*, for appellant.

Brett D. Watson, Attorney at Law, PLLC, by: *Brett D. Watson*; *Sherry Burnett*, for appellee.

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[6]*Id.*

[7]*Entergy Ark., Inc. v. Ark. Pub. Serv. Comm'n*, 2011 Ark. App. 453, 384 S.W.3d 674.

[8]*Id.*