

FILED United States Court of Appeals Tenth Circuit DEC 10 2003 PATRICK FISHER Clerk

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

MEDICAL SUPPLY CHAIN, INC.,

Plaintiff-Appellant,

v.

US BANCORP, NA.; US BANK PRIVATE CLIENT GROUP; CORPORATE TRUST; INSTITUTIONAL TRUST AND CUSTODY; MUTUAL FUND SERVICES, LLC.; PIPER JAFFRAY; ANDREW CESERE; SUSAN PAINE; LARS ANDERSON; BRIAN KABBES; UNKNOWN HEALTHCARE SUPPLIER,

No. 02-3443 (D.C. No. 02-CV-2539-CM) (D. Kan.)

Defendants-Appellees.

ORDER AND JUDGMENT'

Before EBEL, PORFILIO, and McCONNELL, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously to grant the parties' request for a decision on the briefs without oral argument. See Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore

EXB#1

ordered submitted without oral argument.

This appeal is taken from an order of the district court denying plaintiff's two motions for a preliminary injunction. Our jurisdiction was invoked under 28 U.S.c. § 1292(a)(I), which provides for interlocutory appeals from district court orders granting or denying injunctions.

Following the district court's denial of the injunction, and while this case was pending on appeal, the district court entered a final judgment dismissing plaintiff's action. Plaintiff then filed a combined motion for new trial/amendment of judgment and for retrial on the denial of the preliminary injunction. This timely filed motion effectively suspended the finality of the district court's judgment. The district court has recently denied plaintiff's motion, and plaintiff has filed a new notice of appeal, our No. 033342, seeking review of the district court's dismissal of its action.

"[M]ootness is a matter of jurisdiction, [and] a court may raise the issue sua sponte." *McClendon v. City of Albuquerque*, 100 F.3d 863, 867 (10th Cir. 1996). Because the district court has now dismissed the action, this interlocutory appeal is moot. *See Sac & Fox Nation v. Cuomo*, 193 F.3d 1162, 1168 (10th Cir. 1999) (dismissing interlocutory appeal from denial of preliminary injunction where district court subsequently dismissed complaint); *see also Atomic Oil Co. of Okla. v. Bardahl Oil Co.*, 419 F.2d 1097, 1102 n.9 (10th Cir. 1969) (noting order granting or denying preliminary injunction merges into decree granting or denying permanent injunction, and where both orders are appealed, former will be dismissed).

Accordingly, we DISMISS the appeal as moot.

Entered for the Court

Michael W. McConnell

Circuit Judge

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