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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

MICHAEL GOMEZ DALY et al.,
Plaintiffs and Respondents,

v.

SAN BERNARDINO COUNTY BOARD
OF SUPERVISORS et al.,
Defendants and Appellants;

DAWN ROWE,
Real Party in Interest and
Appellant.

E073730

(Super.Ct.No. CIVDS1833846)

OPINION

APPEAL from the Superior Court of San Bernardino County. Janet M. Frangie,
Judge. Reversed as moot.

Meyers Nave, Deborah J. Fox, Matthew B. Nazareth; McDermott Will & Emery,
William P. Donovan, Jr., Jason D. Strabo; Thomas Bunton, County Counsel, and Cynthia
O'Neill, Assistant County Counsel, for Appellants/Real Party in Interest.

Altshuler Berzon and Stacy Leyton, Rothner, Segall & Greenstone and Glenn
Rothner, for Respondents and Petitioners.

PROCEDURAL HISTORY AND FACTS

This appeal is brought by the Board of Supervisors of San Bernardino County and named Supervisors (Board) and real party in interest Dawn Rowe (Rowe) from a judgment on a petition for a writ of mandate entered on November 8, 2019. The superior court found that the process by which the Board appointed Rowe to fill a vacancy in the office of Supervisor for the Third District of San Bernardino County violated the Ralph M. Brown Act (the Brown Act). The superior court directed the Board to rescind the appointment of Rowe as Third District Supervisor; prohibited the Board from allowing Rowe to participate in an official capacity in any meetings or Board actions, and from registering or otherwise giving effect to any further votes cast by Rowe; prohibited the Board from making any appointment to the position of Third District Supervisor of the San Bernardino Board of Supervisors; and directed the Board to immediately seat any person duly appointed to the position of San Bernardino County Third District Supervisor by the Governor. The superior court further held that petitioners Michael Gomez Daly and Inland Empire United (collectively I.E. United) were the prevailing parties and entitled to recover fees and costs.

The Board appealed and sought a writ of supersedeas, which this court ultimately denied. Because this appeal was filed, the parties stipulated to extend the time for I.E. United to file any motion for attorneys' fees to 40 days after remittitur from this Court. Appellants then petitioned for relief from the California Supreme Court, which granted a temporary stay and granted review. (*Daly v. San Bernardino County Bd. of Supervisors*

(2021) 11 Cal.5th 1030.) The Supreme Court “concluded that under the settled law of California, the order in this case was automatically stayed as a mandatory injunction.” (*Id.* at p. 1052.) Thus, Rowe remained in office as Third District Supervisor through the end of her appointed term on December 7, 2020, despite the superior court’s judgment. Rowe was then elected county supervisor in the March 3, 2020, primary election for the term of December 7, 2020, through January 6, 2025.

Thereafter, the parties entered into a written agreement to conditionally settle this litigation in its entirety. Specifically, the parties agreed to stipulate that the relief ordered in the judgment is moot; that I.E. United will neither take direct or indirect actions seeking to enforce the judgment or peremptory writ; and to vacate the judgment and obtain an order directing the superior court to dismiss the action with prejudice. The parties further agreed to resolve any remaining issues over the right or amount of attorney fees. Finally, the settlement is conditioned upon securing an order confirming that the judgment is moot and/or vacating the judgment, as well as a dismissal of the action with prejudice.

The Board then filed a motion in this court to dismiss the appeal, reverse the underlying judgment, and dismiss the underlying action as moot. Respondents filed a statement of non-opposition as long as the reversal clearly states the reversal is due to mootness. Appellants also filed a request for judicial notice in support of the motion. The request for judicial notice is granted.

DISCUSSION

The court cannot both dismiss an appeal and make an order reversing the trial court's judgment. A dismissal in any court terminates the court's jurisdiction to make any further order, and the effect of a dismissal of an appeal is to affirm the judgment or order appealed. (See *Paul v. Milk Depots, Inc.* (1964) 62 Cal.2d 129, 134-135; *Kahn v. Kahn* (1977) 68 Cal.App.3d 372, 387.) Ordinarily when a case is moot, the court will dismiss the appeal; however, the court may reverse the judgment as moot solely to return jurisdiction to the superior court with directions to dismiss the case as moot. (*Coalition for a Sustainable Future in Yucaipa v. City of Yucaipa* (2011) 198 Cal.App.4th 939, 945.)

In order to approve the parties' stipulated reversal, this court must find the following (Code Civ. Proc., § 128, subd. (a)(8)):

1. Is there a "reasonable possibility that the interests of nonparties or the public will be adversely affected by the reversal"? (Code Civ. Proc., § 128, subd. (a)(8)(A).)
2. Do the parties' reasons "for requesting reversal outweigh the erosion of public trust that may result from the nullification of [the] judgment and the risk that the availability of stipulated reversal will reduce the incentive for pretrial settlement"? (Code Civ. Proc., § 128, subd. (a)(8)(B).)

The parties assert that reversal of the judgment will not adversely affect the public interest or nonparties because Rowe's appointed term ended on December 7, 2020, and she has since been elected by voters to another term as county supervisor. Moreover, the

record establishes that the Board acted to “cure” the Brown Act violation and has amended its County Charter and County Ordinance regarding procedures for appointment to a vacant elective office.

The reasons for reversal outweigh any erosion of public trust because the judgment can no longer have any practical effect and may cause confusion among the public unless reversed. Further, the settlement resolves the issue of attorneys’ fees, avoiding any post-trial proceedings. Stipulated reversal in this case does not reduce the incentive for pretrial settlement because the settlement was induced by the issue on appeal becoming moot after the appeal was filed. (*Hardisty v. Hinton & Alfert* (2004) 124 Cal.App.4th 999, 1008.)

DISPOSITION

The judgment is reversed as moot. This reversal is solely for the purpose of returning jurisdiction of the case to the superior court by vacating the judgment solely on the grounds of mootness. The superior court is directed to dismiss the underlying case with prejudice as moot.

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RAMIREZ
P. J.

We concur:

McKINSTER
J.

MILLER
J.