

RENDERED: AUGUST 8, 2008; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2007-CA-001331-MR

JITANDER SINGH DUDEE

APPELLANT

APPEAL FROM FAYETTE CIRCUIT COURT  
FAMILY COURT DIVISION  
v. HONORABLE TIMOTHY NEIL PHILPOT, JUDGE  
ACTION NO. 03-CI-00442

CHARLENE THERESA DUDEE AND  
JAMES W. GARDNER, ESQ., RECEIVER

APPELLEES

OPINION AND ORDER  
DISMISSING

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BEFORE: CLAYTON, MOORE, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Jitander Singh Dudee brings this appeal from a June 4, 2007, order of the Fayette Family Court defining the duties of a receiver appointed by the court to take charge of Jitander's business operations in order to pay Charlene

sums due as a result of the parties' divorce including maintenance and child support. For the reasons stated, we dismiss.

Jitander and Charlene Theresa Dudee were married in March 1995, and divorced by Decree of Dissolution entered in the Fayette Family Court on February 13, 2006. During the marriage, the parties accumulated a substantial marital estate, including Jitander's medical practice, Medical Vision Group, P.S.C., and a real estate holding company, Schatzie, LLC. Rather than award Charlene a portion of the marital business assets, the court ordered Jitander to make a property equalization payment of \$1,299,038 to Charlene. The court also awarded Charlene maintenance of \$5,600 per month and child support of \$3,600 per month.<sup>1</sup>

Charlene subsequently filed a motion to appoint a receiver to operate Medical Vision Group and Schatzie. In the motion, Charlene contended that Jitander failed to make required monthly maintenance payments, failed to pay court ordered attorney's fees and failed to pay the property equalization payment. Also, Charlene pointed out that Jitander was incarcerated for contempt of court for his failure to pay these court ordered amounts and had refused work release, thereby abandoning the medical practice.

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<sup>1</sup> Charlene Theresa Dudee appealed to this Court the judgments entered by the circuit court regarding the property division and maintenance, which were affirmed in Appeal Nos. 2005-CA-002218-MR and 2006-CA-000775-MR, by a consolidated opinion rendered July 13, 2007. A motion for discretionary review of the opinion is presently pending in the Kentucky Supreme Court.

By order entered April 3, 2007, the court granted Charlene's motion and appointed a receiver to operate Medical Vision Group and Schatzie.<sup>2</sup> In the order, the court also directed that the parties "try to reach an agreement on the parameters of the receivership." The parties were unable to reach an agreement. By order entered June 4, 2007, the court specifically set forth the duties of the receiver. Being unsatisfied with the receiver's duties as defined in the June 4, 2007, order, Jitander pursued the instant appeal to this Court. For the reasons hereinafter stated, we do not believe this Court has jurisdiction to reach the merits of this appeal as the underlying controversy is now moot.

It is well-settled that judicial power may constitutionally extend only to justiciable controversies. Thus, an appellate court is generally without jurisdiction to reach the merits of a moot appeal. *Kentucky High School Athletics Ass'n v. Runyon*, 920 S.W.2d 525 (Ky. 1996); *Associated Indus. of Kentucky v. Com.*, 912 S.W.2d 947 (Ky. 1995); *Black v. Elkhorn Coal Corp.*, 233 Ky. 588, 26 S.W.2d 481 (1930); *Kentucky High School Athletic Ass'n v. Davis*, 77 S.W.3d 596 (Ky.App. 2002). An appeal is considered moot and must be "dismissed where, due to subsequent events, the circumstances have changed so as to make the determination of the question unnecessary." *Sharp v. Robinson*, 388 S.W.2d 121 (Ky. 1965); *see also Lewis LP Gas, Inc. v. Lambert*, 113 S.W.3d 171 (Ky. 2003), *abrogated on other grounds by Hoskins v. Miracl*, 150 S.W.3d 1 (Ky. 2004).

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<sup>2</sup> The order appointing the receiver was not appealed.

In this appeal, Jitander argues that the receiver's duties as defined in the June 4, 2007, order are overbroad and violated sundry statutory provisions. Jitander specifically requested that "this Court overturn the Trial Court's Order of June 4, 2007 in which the Receiver was granted the authority over the business of Medical Vision Group, P.S.C. and Schatzie, LLC." Jitander's Brief at 10. However, Charlene urges this Court to dismiss the above-styled appeal as moot. Charlene points out that the receiver has been "dismissed" by order of the circuit court entered March 6, 2008.

A review of the March 6, 2008, order indicates that the receiver was discharged effective February 22, 2008.<sup>3</sup> As the receiver has been discharged, an opinion of this Court adjudicating the proper duties of the receiver would be merely advisory and would lack any legal import. Moreover, it seems axiomatic that the parties no longer have a legally cognizable interest in the outcome of this appeal. Thus, we concluded that this appeal has been rendered moot by entry of the March 6, 2008, order discharging the receiver. *See Lambert*, 113 S.W.3d 171; *Hoskins*, 150 S.W.3d 1.

Now, therefore, be it ORDERED that Appeal No. 2007-CA-001331-MR is DISMISSED as this Court is without jurisdiction to reach the merits thereof as the underlying controversy is moot.

ALL CONCUR.

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<sup>3</sup> An appellate court may review a subsequently entered circuit court order when determining whether an appeal is moot. *See, Lewis LP Gas, Inc. v. Lambert*, 113 S.W.3d 171 (Ky. 2003).

ENTERED: August 8, 2008

/s/ Jeff S. Taylor  
JUDGE, COURT OF APPEALS

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