[Cite as *Harvest Land Co-Op, Inc. v. Hora*, 2022-Ohio-2375.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

HARVEST LAND CO-OP, INC.	:	
	:	
Plaintiff-Appellee	:	Appellate Case Nos. 26218 and 26227
	:	
v.	:	Trial Court Case No. 2010-CV-2284
	:	
FRANKIE J. HORA, et al.	:	(Civil Appeal from
	:	Common Pleas Court)
Defendants-Appellants	:	
	:	

. . . . . .

O P I N I O N

Rendered on the 8th day of July, 2022.

. . . . . .

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FRANKIE J. HORA, 15725 Eaton Pike, West Alexandria, Ohio 45381
Defendant-Appellant, Pro Se

. . . . . .

TUCKER, P.J.

{¶ 1} Defendant-appellant Frankie J. Hora appeals from a judgment of the trial court finding him liable in the amount of $89,307.15 on a promissory note. He also appeals the trial court's denial of his Civ.R. 60(B) motion to vacate judgment. However, for the reasons set forth below, we conclude this appeal has been rendered moot by a discharge in bankruptcy which settled all issues regarding the debt underlying this case. Accordingly, this appeal is dismissed.

I. Facts and Procedural History

{¶ 2} The facts relevant to this matter were previously set forth by this court in *Harvest Land Co-Op, Inc. v. Hora*, 2d Dist. Montgomery No. 25068, 2012-Ohio-5915 (*Hora I),* wherein we stated:

> Plaintiff Harvest Land Co–Op, Inc. ("Harvest Land") is an agricultural cooperative.[1] Defendant Frankie J. Hora is a farmer and has been a member of the Harvest Land cooperative since 2006. Hora purchased agricultural products and services from Harvest Land during that time, and he maintained an account with Harvest Land for that purpose. Sometime in 2009, Hora fell into arrears in paying the account. In March of 2009, Frankie Hora paid Harvest Land $21,089.91 on the account. Hora and his wife, Mary D. Hora, also gave Harvest Land a promissory note for $100,000.00.
>
> On March 16, 2010, Plaintiff Harvest Land filed a complaint alleging

[1] Following a January 2021 merger, Co-Alliance Cooperative, Inc. became the succeeding legal entity of Harvest Land Co-Op, Inc. For the sake of clarity, we will continue to refer to the plaintiff-appellee as "Harvest Land."

that the Horas had defaulted on the promissory note in the amount of $100,000.00 made payable to Harvest Land, and that the sum of $100,787.26, plus interest, was due, owing, and unpaid. Harvest Land also alleged that the promissory note “memorialized” a delinquent debt on an account the Horas previously owed.

A copy of the alleged promissory note was attached to Harvest Land's complaint. The note requires the Horas to pay the face amount of $100,000.00, plus interest at the rate of eight percent per annum, in monthly payments of $3,133.64, beginning May 1, 2009. The note further provides that interest charges at the rate of 21 percent per annum will accrue after the date of maturity until the amounts due and owing are paid in full, plus attorney's fees and costs of collection.

After obtaining leave of court, the Horas filed an amended answer and counterclaim. After denying certain allegations on Harvest Land's complaint, the Horas admitted Harvest Land's allegation that their promissory note memorialized a delinquent debt and that they failed to make all payments due on the note, alleging that their failure was due to Harvest Land's wrongful conduct. The Horas also admitted that Harvest Land expected to be paid for agricultural products it sold to the Horas that were not defective. The Horas also admitted that they failed to pay for certain agricultural products which failed to perform as represented by Harvest Land, but denied that they owed $100,000.00 plus interest on the

note.

The Horas' counterclaim alleged breaches of their contracts by Harvest Land in five separate causes of action and claims for unjust enrichment in two causes of action. The Horas also asked for an accounting of payments they made and services they provided Harvest Land.

The matter was referred to a magistrate. Following hearings, the magistrate filed a decision on November 15, 2010, granting Harvest Land summary judgment on its claim for relief on the promissory note. The magistrate rejected the Horas' claim that their promissory note is unenforceable for lack of consideration. The magistrate held that the promissory note is an instrument for value, and therefore does not lack consideration, because it was issued by the Horas as payment of, or as security for, an antecedent claim against Frank Hora for the balance due on his account with Harvest Land. R.C. 1303.33(A)(3). The magistrate further found that the Horas failed to bear their burden to rebut the presumption of the existence of consideration for a promissory note. Accordingly, the magistrate granted judgment for Harvest Land in the amount of $106,876.15, plus per diem interest. The magistrate further held that the summary judgment for Harvest Land rendered moot the Horas' claims for unjust enrichment and breach of contract.

The Horas filed objections to the magistrate's decision. Before those objections were ruled upon by the trial court, the magistrate filed a second

decision on January 14, 2011, granting summary judgment for Harvest Land on the Horas' counterclaims for breach of contract and unjust enrichment. No objections were filed to that decision, which on July 7, 2011 was adopted by the trial court as its own order.

On August 1, 2011, the magistrate filed a third decision, awarding Harvest Land a judgment for $25,062.50 on its claim for attorney's fees. Objections to that decision were filed by both Harvest Land and the Horas.

On February 6, 2012, the trial court overruled the objections the Horas filed to the summary judgment for Harvest Land in the amount of $106,876.15, plus interest, and the court adopted the magistrate's decision on that matter as the court's order. The court also overruled the objections the parties filed to the magistrate's decision with respect to attorneys' fees for lack of a transcript.[2]

On March 9, 2012, the Horas filed a notice of appeal from the trial court's final order of February 6, 2012. Harvest Land filed a notice of cross-appeal from that same final order.

(Footnotes added.) *Id.* at ¶ 2-11.

{¶ 3} On December 14, 2012, we reversed the trial court's decision denying the Horas' counterclaim for an accounting. The matter was remanded solely for further proceedings on the claim for an accounting. The trial court's decision was affirmed in all

[2] Of relevance hereto, but not mentioned in *Hora I*, following the filing of the judgment in its favor, Harvest Land caused an R.C. 2329.02 certificate of judgment lien to be filed with the Clerk of Courts of Montgomery County, Ohio. *See* 2012 CJ 183311.

other respects. *Id*. at ¶ 96.

{¶ 4} On remand, the Horas filed a motion for leave to amend their counterclaim to assert a claim for fraud. The motion was overruled on August 20, 2013. A trial on the accounting was conducted in September 2013. On December 2, 2013, the magistrate entered a decision in which it reduced the amount due on the promissory note to $89,307.15 due to a mistake in the account charges as well as an error related to the interest charged on the account. The magistrate also noted that the Horas were entitled to a credit of $3,433.64 for payments made on the promissory note.

{¶ 5} Hora filed objections to the magistrate's decision. They also filed a Civ.R. 60(B) motion for relief from the magistrate's original 2010 decision. On April 11, 2014, the trial court overruled the objections to the magistrate's decision. On April 15, 2014, the trial court overruled the motion for Civ.R. 60(B) relief from judgment. Thereafter, the previously filed certificate of judgment was amended to reflect the reduction in the judgment amount.

{¶ 6} Hora filed separate, timely notices of appeal from each decision. The appeals were consolidated in July 2014. In August 2014, Hora, acting pro se, filed his appellate brief. Harvest Land then filed its brief. Thereafter, Hora retained counsel who filed a motion seeking to amend Hora's previously-filed brief. In the motion, counsel indicated it was necessary to properly format the brief and that the arguments required clarification and consolidation. The motion was granted, and an amended brief was filed on December 17, 2014.

{¶ 7} In March 2015, Hora and his wife filed for bankruptcy protection. Thereafter,

this court filed an order staying the appeal pending the completion of the bankruptcy action. The stay was lifted on September 8, 2021, following notification that the bankruptcy action had been resolved. On October 14, 2021, we ordered the parties to file supplemental briefing regarding the sole issue of whether the discharge in the bankruptcy case rendered this appeal moot.

{¶ 8} On November 15, 2021, Hora filed a document entitled "Amended Brief of Appellant Frankie J. Hora." At the beginning of the document, Hora set forth a one-page statement of his basis for claiming this appeal is not moot. However, the remaining 34 pages of the document appear to be a restatement of the appellate brief filed by Hora in August 2014 prior to retaining counsel.

{¶ 9} On February 24, 2022, this court entered an order requiring Harvest Land to file its supplemental brief addressing the issue of mootness. Hora filed an objection to that order which was subsequently overruled. In the interim, it was discovered that counsel for Harvest Land had passed away during the bankruptcy stay, but all post-bankruptcy filings had continued to be mailed to counsel. It was further discovered that Harvest Land had merged with another company. Notice was provided to the new corporate entity. On March 10, 2022, Harvest Land, through new counsel, filed a motion for enlargement of time in which to file its supplemental brief. The motion was granted, and Harvest Land filed a supplemental brief on April 5, 2022. Hora filed a motion to strike the brief. The motion was overruled, but Hora was permitted to file a responsive brief, which he filed on April 20, 2022. This matter is now ripe for review.

II. Discharge in Bankruptcy Renders Appeal Moot

{¶ 10} Before we address the merits of the arguments raised in Hora's appellate brief, we must determine whether this matter has been rendered moot by the discharge in the bankruptcy action.

{¶ 11} The doctrine of mootness is founded upon the "long and well established [premise] that it is the duty of every judicial tribunal to decide actual controversies between parties legitimately affected by specific facts and to render judgments which can be carried into effect." *State v. Muwwakkil*, 2d Dist. Clark No. 2018-CA-37, 2018-Ohio-4443, ¶ 6, quoting *Fortner v. Thomas*, 22 Ohio St.2d 13, 14, 257 N.E.2d 371 (1970). Courts have no duty "to decide purely academic or abstract questions." *James A. Keller, Inc. v. Flaherty*, 74 Ohio App.3d 788, 791, 600 N.E.2d 736 (10th Dist.1991), citing *Miner v. Witt*, 82 Ohio St. 237, 92 N.E. 21 (1910). Thus, a court "will not decide * * * cases in which there is no longer any actual controversy." *Heartland of Urbana, OH, L.L.C. v. McHugh Fuller Law Group, P.L.L.C.*, 2016-Ohio-6959, 72 N.E.3d 23, ¶ 36, citing *In re A.G.*, 139 Ohio St.3d 572, 2014-Ohio-2597, 13 N.E.3d 1146, ¶ 37, quoting *Black's Law Dictionary* 1100 (9th Ed.2009).

{¶ 12} Hora filed for bankruptcy protection under the auspices of Chapter 12 of the United States Bankruptcy Code, which "was enacted in November 26, 1986 to provide family farmers with regular annual income to stay in possession of the farm while obtaining court approval of a debt readjustment plan. Chapter 12 combines elements of Chapter 11 reorganizations and Chapter 13 Wage Earner Plans with a number of provisions unique to farm bankruptcies." *Mercer Sav. Bank v. Fullenkamp*, 116 Ohio

App.3d 647, 649, 688 N.E.2d 1111, fn. 6 (3d Dist.1996). There is no dispute that Harvest Land filed a timely proof of claim in which it asserted that it held secured creditor status based upon the lien created by the certificate of judgment filed with the Montgomery County Clerk of Court. In its filings with the bankruptcy court, Harvest Land claimed it was owed $146,759.02. However, only $50,000, plus interest, was allowed under the bankruptcy plan. Ultimately, the bankruptcy trustee paid Harvest Land $59,126. An order of discharge was granted to the Horas and filed of record on May 13, 2021. Harvest Land asserts that the order of discharge specifically states that the certificate of judgment, recorded at 2012 CJ 183311, "shall be deemed satisfied and released of record."

{¶ 13} Hora does not dispute that the debt and certificate of judgment were discharged in the bankruptcy action, and he does not dispute that he no longer owes any monies to Harvest Land. Instead, he claims that this appeal is not moot and should be decided under the exceptions to the mootness doctrine.

{¶ 14} We recognize that the mootness doctrine does have limited exceptions that, when present, allow review. One such exception involves issues that are "capable of repetition, yet evading review." *State ex rel. Plain Dealer Pub. Co. v. Barnes*, 38 Ohio St.3d 165, 527 N.E.2d 807 (1988), paragraph one of the syllabus. "This exception applies only in exceptional circumstances in which the following two factors are both present: (1) the challenged action is too short in its duration to be fully litigated before its cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again." *Lund v. Portsmouth Local*

Air Agency, 10th Dist. Franklin No. 14AP-60, 2014-Ohio-2741, ¶ 8, quoting *State ex rel. Calvary v. Upper Arlington*, 89 Ohio St.3d 229, 231, 729 N.E.2d 1182 (2000). "[T]here must be more than a theoretical possibility that the action will arise again." *Id.*, citing *Robinson v. Indus. Comm.*, 10th Dist. Franklin No. 04AP-1010, 2005-Ohio-2290, ¶ 8, quoting *James A. Keller, Inc.*, 74 Ohio App.3d 788, 792, 600 N.E.2d 736. "An injury is not deemed capable of repetition merely because someone, at sometime [sic], might suffer the same harm; there must be a reasonable chance that it will happen again to the complaining party." *Heartland of Urbana OH, L.L.C.*, 2016-Ohio-6959, 72 N.E.3d 23, ¶ 39, quoting *Village of W. Unity ex rel. Beltz v. Merillat*, 6th Dist. Williams No. WM-03-016, 2004-Ohio-2682, ¶ 16, citing *Weinstein v. Bradford*, 423 U.S. 147, 149, 96 S.Ct. 347, 46 L.Ed.2d 350 (1975).

{¶ 15} Hora does not suggest that this type of action -- a complaint to enforce a promissory note -- is by its nature too short in duration to be fully litigated before its cessation. Indeed, notwithstanding the time on appeal and the bankruptcy stay, this action was pending in the trial court for over four years. Thus, we cannot conclude this debt collection action has been of too short a duration to fully litigate the issues raised therein. Also, there is no evidence, and Hora has not demonstrated, that there is any reasonable expectation that he will be subject to the same action again. There is no evidence that Hora remains a member or utilizes the services of Harvest Land. And there is no evidence that Harvest Land maintains the same business practices it had before it merged with another company. Thus, we cannot say there is a reasonable chance that the same sequence of events that occurred in this case will occur again.

Therefore, we find no merit in Hora's claim that the "capable of repetition yet evading review" exception is applicable.

{¶ 16} In reference to other exceptions to the mootness doctrine, we note that "[an appellate] court may hear the appeal where there remains a debatable constitutional question to resolve, or where the matter appealed is one of great public or general interest." *State ex rel. White v. Kilbane Koch*, 96 Ohio St.3d 395, 2002-Ohio-4848, 775 N.E.2d 508, ¶ 16, quoting from *Franchise Developers, Inc. v. Cincinnati*, 30 Ohio St.3d 28, 505 N.E.2d 966 (1987). However, this record is devoid of anything to suggest either of these exceptions are applicable to this case.

{¶ 17} Finally, Hora argues that the appeal is not moot because the failure to determine the merits of the case will result in secondary legal consequences. In support, he claims that Harvest Land will continue to make fraudulent charges and impose improper interest rates if this appeal is not decided on the merits.

{¶ 18} We presume that Hora refers to the "collateral consequences" exception, which the Supreme Court of Ohio has recognized as existing in civil and criminal cases where "the collateral consequence is imposed as a matter of law." *Cyran v. Cyran*, 152 Ohio St.3d 484, 2018-Ohio-24, 97 N.E.3d 487, ¶ 9. However, the court also stated in *Cyran* that "[s]peculation is insufficient to establish a legally cognizable interest for which a court can order relief using the collateral-consequences exception to the mootness doctrine." *Id.* at ¶ 11. Likewise, this court has stated, "[a] collateral disability must be a substantial, individualized impairment, and a purely hypothetical statement, about what might occur in the future is not sufficient to give viability to an otherwise moot appeal."

Cyran v. Cyran, 2016-Ohio-7323, 63 N.E.3d 187, ¶ 7-8 (2d Dist.), *aff'd,* 152 Ohio St.3d 484, 2018-Ohio-24, 97 N.E.3d 487, ¶ 7-8. Hora fails to identify any collateral consequences which will occur by operation of law. Further, the claims that the company will make future fraudulent charges and/or impose improper interest charges are purely speculative, and thus insufficient to overcome the mootness doctrine.

{¶ 19} Finally, although not raised in the context of collateral legal consequences, Hora claims he was denied a loan due to the existence of the certificate of judgment lien. However, he has submitted no evidence to support a finding that the lien was the basis for the denial of the loan. It is just as likely the loan was denied due to the bankruptcy filing or to a lack of sufficient collateral. In any event, we will not speculate as to the possibility that the certificate of judgment may result in the denial of future loan requests. Further, given the resolution of the bankruptcy case, Hora has the ability to petition the trial court for a notice of satisfaction and release regarding the certificate of judgment. In other words, any claim that the certificate of judgment will cause collateral consequences is without merit as Hora has a mechanism for voiding the lien.

{¶ 20} We conclude that any issues of whether the trial court properly denied Hora's motion for Civ.R. 60(B) relief and whether it correctly determined the issue of the accounting on the subject promissory note have been rendered moot because Hora's debt, memorialized by the promissory note, was discharged in the federal bankruptcy court proceedings. Hora has failed to dispute that discharge and has failed to demonstrate the applicability of any of the exceptions to the mootness doctrine. Therefore, we need not address the issues raised in his appellate brief.

III. Conclusion

{¶ 21} Because Hora's claims on appeal are moot, this appeal is dismissed.

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EPLEY, J. and LEWIS, J., concur.

Copies sent to:

Maura J. Hoff
Frankie J. Hora
Hon. Dennis J. Adkins

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
SCIOTO COUNTY

CARL PERTUSET, ET AL.,	:	
	:	
Plaintiffs-Appellants,	:	Case No. 21CA3959
	:	
v.	:	
	:	DECISION AND JUDGMENT
BRANDON HULL, ET AL.,	:	ENTRY
	:	
Defendants-Appellees.	:	
	:	

APPEARANCES:

Tyler E. Cantrell, Office of Young & Caldwell, LLC, West Union, Ohio, for Appellants.

Randall L. Lambert and Cassaundra Sark, Lambert Law Office, Ironton, Ohio, for Appellees.

Smith, P.J.

{¶1} On September 20, 2018, the trial court granted judgment in favor of Brandon and Jeana Hull, defendants/appellees, against Carl and Vera Pertuset, plaintiffs/appellants, on all counts of plaintiffs/appellants' amended complaint for conversion, replevin, and associated damages. The Pertusets alleged that the Hulls damaged or destroyed personal property located on a farm formerly owned by the Pertusets and purchased by the Hulls at a sheriff's sale in 2012. Upon review of the record, we find no merit to the

arguments raised in the Pertusets' sole assignment of error. Accordingly, it is hereby overruled and the judgment of the trial court is affirmed.

FACTUAL AND PROCEDURAL BACKGROUND

{¶2} Carl and Vera Pertuset ("Appellants") once owned a large family farm in the northwest area of Scioto County.[1] The property, designated parcel number 23-0528 on the Scioto County Auditor's records, consists of a 181.458 acre tract of land. During Appellants' ownership of the farm, they entered into a mortgage loan agreement with American Savings Bank ("American"), and unfortunately later defaulted on their mortgage payments. In 2009, a complaint in foreclosure, Scioto County Common Pleas Court Case No. 09CIE140, was commenced by Farm Credit of America, PCA ("Farm Credit") against Appellants and various named defendants including American. American filed a timely answer and also asserted a cross-claim in foreclosure against Appellants. Over the years, Appellants have vigorously challenged the foreclosure in associated proceedings. *See Am. Savs. Bank v. Pertuset,* 4th Dist. Scioto No. 11CA3442, 2013-Ohio-566, ("*Pertuset I*"); *Am. Savs. Bank v. Pertuset,* 4th Dist. Scioto No. 13CA3564, 2014-Ohio-1290 ("*Pertuset II*"); and *Scioto Cty. Bd. Of Commrs./Revolving Loan Fund Bd. v. McDermott Industries, L.L.C.*, 4th Dist. Scioto No.

[1] Where necessary for clarity, we will reference Appellants individually as "Carl" or "Vera."

12CA3504, 2014-Ohio-240. In *Pertuset II,* this Court found that the original 2011 grant of summary judgment and decree in foreclosure to American as holding the first lien on the real property, "stands valid as the law of the case, as affirmed once by this Court." *Id*. at ¶ 22.

{¶3} Appellants' current appeal relates to the sale of Appellants' farm to Brandon and Jeanna Hull ("Appellees") at the Scioto County Sheriff's sale on November 14, 2012. On September 8, 2014, the trial court filed a judgment entry confirming the sale. On October 27, 2014, the trial court filed another judgment entry ordering deed and distribution to Appellees. In November 2014, Appellees filed a writ of possession. On January 15, 2015, the Sheriff executed the writ and Appellants were forcibly removed from the farm.

{¶4} On October 26, 2015, Appellants filed a complaint for conversion and sought compensatory and punitive damages against the Appellees in the Scioto County Common Pleas Court. The action was assigned Case Number 2015CIH163. Appellants also joined with additional plaintiffs: Jake Pertuset; Donald Osborne; Steve Armstrong; and Rob Parsley. John and Jane Doe, Unknown Occupants, and Farm Credit were also named as defendants.

{¶5} Appellants alleged ownership of personal property, family heirlooms, and livestock located at the farm when Appellees took possession. Donald Osborne alleged he kept several horses on the Pertuset farm. Jake Pertuset alleged he kept livestock, stored corn and hay, and kept numerous pieces of farming equipment and a Frick circle sawmill at the farm. Rob Parsley alleged he kept cattle, hogs, chickens and an all-terrain vehicle at the farm. Steve Armstrong alleged he kept several cows at the farm.

{¶6} The complaint further alleged that on January 15, 2015, after Appellants were removed from the farm, Appellees allegedly caused the Appellants' personal property and livestock to be removed and/or destroyed. It was alleged that Farm Credit took possession of the Frick sawmill. Appellants alleged injury and damage as a result of Appellees' wrongful conduct. Appellants demanded judgment in their favor on the basis of wrongful conversion, compensatory and punitive damages, costs and attorney fees.

{¶7} Appellees filed a timely answer and counterclaim against Appellants. Farm Credit filed a timely answer and counterclaim against Jake Pertuset. Written discovery ensued. The matter was eventually scheduled for jury trial and was continued and rescheduled several times.

{¶8} In December 2015, Appellees filed a "Motion to Deposit Money into Court Registry." In the motion, Appellees stated that at the time they took possession of the property livestock remained on the premises. Appellees were unfamiliar with and unequipped to care for livestock. Therefore, Appellees sold the livestock at auction and as a result were in possession of the sum of $19,723.51 in proceeds. Appellees requested permission to deposit the proceeds from the sale of the livestock with the court. In the motion, Appellees also expressed their willingness to deliver the proceeds "to whatever party may be entitled to the same." The trial court subsequently granted Appellees' motion.

{¶9} On June 3, 2016, Appellants filed an amended complaint asserting an additional claim for replevin. Farm Credit again filed a timely answer and counterclaim. Appellees, however, filed a motion to strike and request for hearing. Appellees argued that Appellants' amended complaint was not properly before the court and was required to be stricken from the record pursuant to Civ.R. 12(F). Appellees pointed out that they had filed their responsive pleading to the original complaint and argued that Appellants failed to follow proper procedure by failing to seek leave of court pursuant to Civ.R. 15(A) before filing the amended complaint.

{¶10} Appellants filed a memorandum in opposition to the motion to strike the amended complaint. Appellants asserted that during a May 5, 2016 hearing in chambers, their attorney requested leave to file the amended complaint to assert the cause of action for replevin and that the trial court had granted the oral motion for leave. Appellants requested the trial court deny the motion to strike. Appellants further requested that the trial court note for the record that the oral motion for leave to amend the complaint had been granted on May 5, 2016. The trial court neither ruled on the motion to strike nor filed the requested entry clarifying the matter.[2]

{¶11} In August 2016, Farm Credit filed a motion for summary judgment. Generally, Farm Credit moved the court to dismiss Appellants' amended complaint as to Farm Credit because Farm Credit was the legal owner of the Frick sawmill as adjudicated in the foreclosure case. As such, Farm Credit concluded that Jake Pertuset's claims were barred by the doctrine of res judicata.

{¶12} Also in August 2016, Appellants' counsel, Attorney Bruce Broyles, filed a motion for leave to withdraw as counsel for Appellants. In

[2]When leave is required to file an amended complaint, and a party files or serves the amended complaint without leave of court, the amended complaint is without legal effect and may be treated as a nullity. *See Hunter v. Shield,* 10th Dist. Franklin No. 18AP-244, 2019-Ohio-1422, at ¶ 17 (citations omitted.) *See also, Caterpillar v. Financial Services Corporation v. Tatman,* 2019-Ohio-2110, 137 N.E.3d 512 (4th Dist.) at ¶ 58 (citations omitted.)

September 2016, the trial court granted Attorney Broyles' motion. Appellants obtained new trial counsel, Attorney Cantrell, in November 2016. The matter proceeded with written discovery and depositions. A jury trial was scheduled for July 23, 2018.

{¶13} In May 2017, Appellees' counsel was permitted to withdraw and Attorney Rodeheffer undertook representation of Appellees. Attorney Rodeheffer deposed all Appellants. Carl and Vera Pertuset's depositions were quite lengthy. Generally, Mr. and Mrs. Pertuset testified as to their acquisition of the farm; Carl's poor health; the foreclosure action; the livestock and personal property located on the farm in late 2014 - early 2015; and their forcible removal from the property by the Scioto County Sheriff.

{¶14} Specifically, Carl Pertuset testified he and his wife had lived on the property for 26 years. He last earned income in 2006, prior to being hospitalized for three years. According to Carl's testimony, when he was discharged from the hospital, "we were exhausted on everything." Appellants stopped making mortgage payments because: (1) they did not have the money, and (2) the bank did not have the original note attached to the mortgage.

{¶15} When Farm Credit began the foreclosure action in 2009, Appellants retained Attorney Broyles. The property went to sheriff's sale in 2012. Carl Pertuset attended the sale. Carl testified he did not think they would have to move because "some wrong things had occurred."

{¶16} On cross-examination, Carl acknowledged that believing his attorney right up to the end that he wasn't going to lose the property seemed a "little naïve." Carl testified he was "kidnapped" from his property on January 15, 2015 when the Scioto County sheriff's deputies showed up. Carl stayed at the sheriff's department 2-3 hours. When Carl left the sheriff's department he and his wife went to a local church. Carl and Vera stayed in the church's fellowship hall until April of 2015. Vera Pertuset's deposition testimony mirrored her husband's in substance and sentiment.

{¶17} Jake Pertuset testified he set up a GoFundMe page to raise money to save his parents' farm. He also called the Glenn Beck show before his parents were removed, trying to raise awareness of "what the banks were doing by unlawfully trying to take their home." Jake Pertuset testified as to miscellaneous items of personal property and livestock he owned that were located at the farm at the time Appellees took possession.[3] On July 10,

[3]Specifically, Jake Pertuset testified he had three cows, a bull, a pig, several older Farmall tractors, a John Deere disc, a bush hog, a grinder/mixer, an equipment trailer, a golf cart, a 1964 green Ford pickup truck, log bolsters, a dump truck bed, old horse-drawn farm equipment, saddles, 750 bales of hay, a complete set of Snapon tools, car and truck parts, and a wood stove. The other plaintiffs testified as to their personal

2017, the parties entered a stipulation of dismissal with prejudice which dismissed the Appellants' and Jake Pertuset's claims against Farm Credit and Farm Credit's counterclaims against Jake Pertuset.

{¶18} On May 31, 2018, Appellees filed a motion for summary judgment. Appellants filed a memorandum contra to the motion for summary judgment. On September 20, 2018, the trial court granted judgment in favor of Appellees "against all plaintiffs on all counts of plaintiffs' amended complaint." On October 3, 2018, Appellees voluntarily dismissed their counterclaims against Appellants.

{¶19} On October 11, 2018, Appellants timely appealed the trial court's decision granting summary judgment. On December 22, 2020, this Court found that the trial court's September 20, 2018 Decision and Order was not final and appealable because the trial court's decision made no ruling relative to the distribution of the $19,723.51 in funds deposited with the court in June 2016. *See Pertuset v. Hull*, 4th Dist. Scioto No. 18CA3852,

property located on the Pertuset farm and their understanding, or lack thereof, as to whether or not they should retrieve their property prior to the sheriff's sale. Donald Osborne, Carl's lifelong friend, testified he had five horses and a few personal items, including a fan and a hand cart located at the farm. Stephen Armstrong, Jake Pertuset's friend, testified he had six cattle and 800 bales of hay on the Pertuset farm. Robert Parsley, the Pertusets' son-in-law, testified he had five cows, eight or nine hogs, 50 chickens, and hay on the farm on the pertinent date. Parsley also stored at the farm a six to seven-year-old Brute Force Kawasaki four wheeler he used for checking livestock.

2020-Ohio-6942, at ¶ 17 ("*Hull 1*").[4] Consequently, we found we had no jurisdiction to consider the appeal and it was dismissed.

{¶20} Another judge was assigned to the underlying action, Scioto County Common Pleas Court Case No. 15CIH00163, in March of 2021.[5] On March 19, 2021, the trial court noted this court's decision finding no appealable order and ordered the parties to submit brief summaries of the status of the case. Thereafter on June 24, 2021, the trial court entered judgment as follows:

> (1) The amount received by [the Hulls] for the sale of livestock of approximately $19,000.00 that is held in escrow shall be paid to [the Pertusets' attorney] to be deposited in his trust account;
> (2) The motion to amend the complaint is granted;
> (3) The motion to strike and all other pending motions are overruled.

The trial court also designated the entry as a final appealable order. Thereafter, Appellants timely appealed.

{¶21} On January 21, 2022, Appellants filed, in this court, a "Motion to Allow Judgment Entry to be Filed" in trial court case number 2015CIH163, the underlying matter. The motion explained that the previous judgment entry needed to be amended to reflect the correct amount of

[4]Given the Pertusets other lawsuits and appeals involving other persons or entities, we will reference the underlying trial court proceedings in this case as *Hull 1*.
[5]In the underlying proceedings and on appeal, Appellants have had two attorneys. Appellees have had three attorneys. Three trial court judges have been assigned to handle the trial court proceedings.

monies deposited with the Scioto County Clerk of Court, and "to address the Court costs." On February 9, 2022, this court granted the motion.

JURISDICTION OF THIS COURT

{¶22} Once again, we must address a preliminary jurisdictional question. As we explained in *Hull I* at Paragraph 15:

> Appellate courts "have such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district[.]" Ohio Constitution, Art. IV, Section 3 (B)(2); *see also* R.C. 2505.03(A). If a court's order is not final and appealable, we have no jurisdiction to review the matter and must dismiss the appeal. *Eddie v. Saunders,* 4th Dist. Gallia No. 07CA7, 2008-Ohio-4755, at ¶ 11. If the parties do not raise the jurisdictional issue, we must raise it sua sponte. *Ray v. Walmart Stores, Inc.,* 4th Dist. Washington No. 10CA27, 2011-Ohio-5142, at ¶ 8, citing *Sexton v. Conley,* 4th Dist. Scioto No. 99CA2655, 2000 WL 1137463, (Aug.7, 2000), at *2.

See also, Stepp v. Starrett, 4th Dist. Vinton No. 18CA714, 2019-Ohio-4707, at ¶ 3.

{¶23} The appellate rules provide that a party who wishes to appeal from an order that is final upon its entry shall file the notice of appeal required by App.R. 3 within 30 days of that entry. App.R. 4(A). App.R. 3(D) requires that a notice of appeal "designate the judgment, order or part thereof appealed from." In this case, Appellants' Notice of Appeal and

docketing statement reference the trial court's June 24, 2021 Judgment Entry, not the September 20, 2018 order which granted summary judgment in favor of Appellees. And neither document is attached to the Notice of Appeal or the docketing statement.

{¶24} Appellants' assignment of error in the current appeal, however, asserts that the trial court erred by granting the motion for summary judgment and does not contest the matters addressed in the June 24, 2021 Judgment Entry. Appellants have referenced the court's most recent entry as the order or judgment appealed from, but in actuality, based on the assignment of error set forth in their appellate brief, they are appealing the September 20, 2018 order which granted summary judgment in favor of Appellees. We have previously encountered such deficiencies in notices of appeal.

{¶25} In *Jenkins v. Hill,* 4th Dist. Meigs No. 4CA4, 2015-Ohio-118, Appellant Jenkins designated the trial court's February 27, 2014 judgment denying his motion for new trial in his notice of appeal, but his assignment of error and related argument contested the trial court's February 10, 2014 judgment entered on the jury verdict in favor of the opposing parties. Jenkins did not request a new trial but instead requested a reversal of the judgment entered by the trial court on the jury verdict. This court was

guided by the decision in *Transamerica Inc. Co. v. Nolan,* 72 Ohio St.3d 320, 649 N.E.2d 1229 (1995), syllabus, wherein the Supreme Court of Ohio expressly recognized that " '[p]ursuant to App.R. 3(A), the only jurisdictional requirement for a valid appeal is the timely filing of a notice of appeal.' " *Jenkins*, *supra,* at ¶ 9. Therefore, in *Jenkins* we held, consistent with *Transamerica,* that a failure to comply with App.R. 3(D) is not a jurisdictional defect. *Id. See also Smith v. Smith,* 4th Dist. Hocking No. 18CA11, 2019-Ohio-899, at ¶¶ 12-13.

{¶26} The *Transamerica* decision further provided at ¶ 10: "When presented with other [i.e. nonjurisdictional] defects in the notice of appeal, a court of appeals is vested with discretion to determine whether sanctions, including dismissal, are warranted, and its decision will not be overturned absent an abuse of discretion." *Id*. at syllabus. In *Jenkins*, we noted that there was in fact a final appealable order, and the appellees had not established any prejudice from the App.R. 3(D) defect. In the briefing, the appellees had addressed the merits of Jenkins' claims. Under these circumstances, we exercised our discretion to address the merits of Jenkins' appeal.[6]

[6]Similarly, in *Smith v. Smith, supra,* Appellant's notice of appeal specified that she was appealing a Judgment Entry filed May 21, 2018, however she should have attached the Judgment Entry-Final Decree of Divorce filed June 11, 2018. We reasoned, however, that the May 21, 2018 journal entry was merged into the final divorce decree of June 2018, and that Appellant could not have appealed the May entry until the

{¶27} In this case, Appellants did not attach the September 20, 2018 order granting summary judgment in favor of Appellees. However, the trial court's June 24, 2021 order distributing funds and ruling on additional matters effectively resolved all issues and no additional issues remain pending. *See, e.g. Smith, supra*, at ¶ 17. Further, both parties have briefed the issues arising from the trial court's original 2018 order granting summary judgment, demonstrating that Appellees have not been prejudiced by the Appellants' failure to attach the 2018 order. Thus, we are not prevented from exercising our discretion to consider the current appeal. Therefore, in the interest of justice, we proceed to consider Appellants' sole assignment of error.

ASSIGNMENT OF ERROR

"I. THE TRIAL COURT ERRED BY GRANTING THE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AGAINST THE PLAINTIFFS."

A. STANDARD OF REVIEW

{¶28} Appellate review of summary judgment decisions is de novo,

final decree of divorce was entered on the record. Once the final decree was entered, Appellant timely filed her notice of appeal. As in *Jenkins, supra*, given that Appellee received adequate notice of the issues raised and had responded to them, we found no harm. Therefore, we did not find the non-jurisdictional defect prevented our consideration of the appeal. *Id*. at ¶ 14-15.

governed by the standards of Civ.R. 56. *Vacha v. N. Ridgeville*, 136 Ohio St.3d 199, 2013-Ohio-3020, 992 N.E.2d 1126, ¶ 19; *Citibank v. Hine*, at ¶ 27. Summary judgment is appropriate if the party moving for summary judgment establishes that (1) there is no genuine issue of material fact, (2) reasonable minds can come to but one conclusion, which is adverse to the party against whom the motion is made and (3) the moving party is entitled to judgment as a matter of law. *Capital One Bank (USA) N.A. v. Rose*, 4th Dist. Ross No. 18CA3628, 2018-Ohio-2209, at ¶ 23; Civ.R. 56; *New Destiny Treatment Ctr., Inc. v. Wheeler*, 129 Ohio St.3d 39, 2011-Ohio-2266, 950 N.E.2d 157, ¶ 24; *Chase Home Finance, LLC v. Dunlap*, 4th Dist. Ross No. 13CA3409, 2014-Ohio-3484, ¶ 26.

B. LEGAL ANALYSIS

{¶29} Appellants' original and amended complaints asserted claims for conversion, bailment, replevin, consequential damages, and punitive damages.[7] On appeal, Appellants contend that summary judgment to

[7]During the briefing stage in *Hull I*, this court ordered the parties to address the issue of whether or not the amended complaint was properly before the trial court. Thereafter, without ruling on the issue, we dismissed the appeal for lack of a final appealable order. As indicated above, after the appeal was dismissed in *Hull 1*, the trial court judge ordered the parties to provide a status summary of the case. Neither party argued that the amended complaint was not properly before the court. Appellees pointed out that the same arguments made in the summary judgment applied to the original complaint. Thereafter the trial court issued its June 24, 2021 judgment entry allowing the amended complaint to be filed. The amended complaint remained unanswered and Appellants did not request default judgment. There is some authority, at least outside this state, to suggest that a party may waive his right to default judgment. *See Complete Lawn Services v. Chimney Hill, LLC*, 12th Dist. Butler No. CA2015-08-149, 2016-Ohio-997, at ¶¶ 31-34. Based on the circumstances of this case and despite the procedural irregularities, we have exercised our discretion to consider the merits of this appeal.

Appellees was improper, given that issues of material fact do exist in the matter. Appellants assert Appellees are liable for their acts of possessing and willfully damaging Appellants' personal property. Likening Appellants' predicament to an eviction case, Appellants argue that the Appellees sold the livestock and retained the proceeds thereby evincing an "intent to possess." Furthermore, the possessory acts created a duty to not willfully damage Appellants' property. As such, Appellants contend that Appellees are not entitled to judgment as a matter of law.

{¶30} Appellees' response has been that the record simply does not reveal an intent to possess on the part of Appellees. Rather, Appellees contend the evidence demonstrates that Appellees did the best they could to deal with a situation created by Appellants, i.e., "the abandonment of an entire farm full of personal property of every kind and description." Appellees assert that rather than an intent to possess, their actions demonstrated an intent to preserve the value of the property. Appellees point to the fact they filed a motion to deposit the proceeds from the sale of the livestock with the clerk of courts until the matter was decided.

{¶31} In this case, the trial court's ruling also found the matter similar to eviction proceedings but found that Appellees had no duty to protect the property of Appellants. The trial court further found that any injury or

damage to the personal property was a result of Appellants' own inaction. While we agree with the trial court's ruling and disposition of the case, for the reasons which follow in addition to the trial court's analysis, we affirm the trial court's judgment. *See Buskirk v. Harrell*, 4th Dist. Pickaway No. 99CA31, 2000 WL 943782, (June 28, 2000), at 7; *Jackson v. Ohio Bur. of Workers' Comp.*, 98 Ohio App.3d 579, 585, 649 N.E.2d 30, 34 (4th Dist. 1994).

1. Conversion

{¶32} " ' The tort of conversion has also been defined as "the wrongful exercise of dominion over property to the exclusion of the rights of the owner or withholding it from his possession under a claim inconsistent with his rights." ' " *Monea v. Lanci*, 5th Dist. Stark No. 2011 CA00050, 2011-Ohio-6377, at ¶ 70, quoting *Heflin v. Ossman*, 5th Dist. Fairfield No. 05CA17, 2005-Ohio-6876, ¶ 20, quoting *Joyce v. General Motors Corp*., 49 Ohio St.3d 93, 96, 551 N.E.2d 172 (1990).

{¶33} The elements of a conversion claim are: (1) a plaintiff's ownership or right to possession in property at the time of conversion; (2) defendant's conversion by a wrongful act or disposition of the plaintiff's property rights; and (3) damages. *See Mitchell v. Thompson*, 4th Dist. Gallia No. 06CA8, 2007-Ohio-5362, at ¶ 37. *See also Bender v. Logan*, 2016-

Ohio-5317, 76 N.E.3d 336, ¶ 74 (4th Dist.); *Brand v. Ogle,* 2020-Ohio-3219, 155 N.E. 3d 37 (4th Dist.), at ¶ 10.

{¶34} In this case, there are no genuine issues of material fact. There is no evidence that Appellees engaged in any wrongful act or disposition of Appellant's property. According to Carl Pertuset's deposition testimony, he made no effort to remove property between September 8, 2014 and January 15, 2015. In her deposition, Vera Pertuset answered "yes" to questions when she was confronted with the statements that: (1) she chose not to move the personal property, and (2) she chose to ignore the trial judge's orders. Vera also testified she never advised the others to remove their personal property because she did not think they needed to remove it.

{¶35} By contrast, Appellees' evidence included the affidavit of Brandon Hull. Attached to Hull's affidavit were, among other exhibits, a DVD containing 72 photographs of the various items of personal property remaining on the property when Appellees took possession on January 15, 2015. Hull's affidavit described the status of the property, which our review of the DVD photographs has confirmed, as follows:

> 6. A writ of restitution directing the Sheriff to evict the Pertusets was eventually issued and on January 15, 2015, the Affiant took possession of the real property pursuant to the writ.
> 7. Upon arrival the Affiant immediately observed that the entire farm was cluttered with personal property of every

kind, nature, and description. All of the out- buildings on the property were full of used, and in some instances, dilapidated personalty including tools, appliances, cookware, children's things, building materials, produce, jars of food, containers with office materials, and much more. The open fields had rusted vehicles and dilapidated farming equipment.

8. Attached hereto is a DVD containing photos (Affidavit Exhibits 1-72), taken on June 27, 2017, which accurately depict the personal property that the Pertusets left behind and the condition that it was in.

9. Shortly after going on to the property Affiant was contacted by Scioto County Sheriff Marty Donini and was asked if Affiant would voluntarily take some of the personal property in the house at 82 Jacquays Road to Bethany Baptist Church. Affiant agreed and rented at his own expense a U Haul truck and together with the help of six other people took two U Haul truck loads and four pickup truck loads of personal property from the residence and delivered it to the church. On the instruction of a deacon of the church who met us there, the items were left in buildings located on the church property. Affiant estimates that it took eight hours to complete this work.

10. The majority of the balance of the personal property was left in the building where Affiant had found it. The personal property not left in buildings where it was found was moved to other storage locations, some under cover and some out in the open.

11. Most of the heavy farm and other equipment was moved to locations next to Jacquays Road out in the open. The balance was left in various locations on the farm where the Pertusets had left it.

12. Neither Affiant nor his wife have conducted any activity relative to the personal property that could be construed as evidencing an intent to possess or own the Plaintiffs' personal property.

13. In addition to the personal property left by the Pertusets there was some livestock including pigs, horses, chickens, and cows. The livestock presented a difficult dilemma to the Affiant inasmuch as he was inexperienced

> in caring for animals of this type, did not have the food that the animals needed, did not want to assume liability for the animals even if he had known what to buy. Affiant also knew that given the apparent financial distress that the Pertusets were experiencing that he would never be reimbursed for whatever expense he incurred caring for the animals.
> 14. Affiant had the cows and pigs taken to Producers auction in Hillsboro, Ohio where they were sold at auction.
> 15. The horses were taken to an auction house in northeast Ohio and sold.
> 16. The chickens were turned over to Affiant's eventual tenant of the property, Joe Crabtree.
> 17. The Plaintiffs' personal property remained stored as described in Paragraphs 10 and 11 of this Affidavit until they were removed by them pursuant to an agreement on October 21 and 22, 2017.

{¶36} Brandon Hull's affidavit demonstrates that his wife and he took possession of the farm legally and the Scioto County Clerk of Court's docket in the foreclosure case, which we hereby take judicial notice of, supports this conclusion. Appellees inherited a dearth of personal property they did not want. They also inherited livestock which presented a difficult dilemma, considering Appellees had no experience with caring for horses, cows, goats, pigs, and chickens. Appellees' act of legally possessing the premises in no way demonstrates an intent to possess the personal property or the livestock. The evidence in this case does not demonstrate any wrongful act on the part of the Appellees.

{¶37} Appellants make much of the fact that Appellees sold the livestock at auction and retained the proceeds. However, that is not a precise representation of the disposition of the proceeds. The record demonstrates that Appellees filed a "Motion to Deposit Money into the Court Registry" in December 2015. The Motion informed the court that Appellees had in their possession $19,723.51 as a result of the sale of the livestock and that they were "willing to deliver to whatever party may be entitled to the same." The trial court granted the motion and the money was deposited with the Scioto County Clerk of Court. Appellees' actions in this regard further belie any intent to convert Appellants' property. In fact, Appellees appear to have acted in a good faith effort to preserve the value of the property and to await the court's decision as to which party or parties were entitled to the proceeds.

{¶38} In *Matthews v. Cooper*, 8th Dist. Cuyahoga No. 109974, 2021-Ohio-2768, another case involving issues of claimed conversion of personal property pursuant to an eviction proceeding, the 8th District Court noted that based on the court's restitution order, Appellee had the legal right to possession of the premises. "Appellants had every 'opportunity to protect their interests' in their personal property by removing that property from the premises within the grace period prior to the move out date." *Id.* at ¶ 49.

"Appellants dispossessed themselves of their own personal belongings when they failed to remove their personal belongings from the property within the grace period provided…" *Id*. at ¶ 47.

{¶39} Similarly, Appellants dispossessed themselves of their livestock and personal property by their inaction during the foreclosure proceedings. We find no genuine issues of material fact exist and reasonable minds can reach but one conclusion, which is that Appellants did not intend to possess or to convert Appellants' livestock and other personal property. Appellants' claim for conversion is without merit and Appellees are entitled to judgment as a matter of law.

2. Bailment

{¶40} The trial court's September 20, 2018 Decision and Order likened the situation involving these parties similar to those faced in eviction proceedings. The trial court found:

> [T]he defendants did not have a duty to protect the property of plaintiffs. In fact, defendants cooperated with plaintiffs on two occasions to assist them in retrieving the personal property. Plaintiffs had ample opportunity to remove the property prior to the writ of restitution but chose not to help themselves. Any injury or damage to the personal property was the result of plaintiffs' own inaction.

{¶41} A bailment occurs when a person transfers possession, but not

ownership, to another. *See Bobb Chevrolet, Inc. v. Dobbins*, 4th Dist. Ross No. 01CA2621, 2002-Ohio-4256, at ¶ 13; *Thomas v. Nationwide Mut. Ins. Co.*, 79 Ohio App.3d 624, 629, 607 N.E.2d 944 (10th Dist. 1992). To establish a cause of action under a bailment theory, the bailor must show: (1) that a contract of bailment, express or implied, exists; (2) that the bailee possessed the bailed property; and (3) that the bailee failed to return the property to the bailor undamaged. *See VanDeventer v. VanDeventer,* 132 Ohio App.3d 762, 726 N.E.2d 534 (12th Dist. 1999). *See also Mitchell v. Thompson,* 4th Dist. Gallia No. 06CA8, 2007-Ohio-5362, at ¶ 42.

{¶42} A contract of bailment is formed like any other contract and its essential elements include delivery of the personal property to the bailee and acceptance by the bailee, with the intended return to the bailor. *See George v. Whitmer*, 5th Dist. Fairfield No. 05CA70,2006-Ohio-436, at ¶ 16; *Bess v. Trader's World, Inc.*, 12th Dist. Warren No. 2001-06-063, 2001-Ohio-8636, at *4. "As in the creation of all contracts, 'there must be a meeting of the minds as to the terms and conditions.' " *George, supra* at ¶ 17, quoting *Edwards v. Crestmont Cadillac*, 64 Ohio Misc. 1, 8 (1979). In *Ringler v. Sias*, 68 Ohio App. 2d 230, 231-232, 428 N.E.2d 869 (10th Dist.1980), an eviction case, the court observed:

> The first consideration is what duty or status does a landlord have toward a tenant's property which has legally

> been removed from the landlord's premises and which has been set out by a deputy sheriff upon the landlord's property. Does the setting of the personal property by a deputy sheriff upon the landlord's property create an involuntary constructive bailment, making the landlord responsible in some affirmative way for caring for the property? We believe not. *Unless the landlord takes some act consistent with an intent to possess the former tenant's property, the landlord does not become a gratuitous bailee of the property.* (Emphasis added.) To become a bailee, the property must come into possession of the bailee. The placing of personal property upon the open land of another does not constitute even a constructive delivery of possession to the landowner.

{¶43} Based upon our de novo review of the record, we find no evidence to suggest that a bailment relationship existed between Appellants and Appellees. Appellees did not expressly or impliedly agree to possess Appellants' property. The evidence in this case demonstrates anything but a meeting of the minds.

{¶44} As in *Ringler,* we find no constructive delivery of possession to Appellees. Instead, Appellants were forcibly removed from the property and Appellees inherited a huge mess. We agree with the trial court's finding that any injuries or damages suffered by Appellants was the result of their own inaction. Appellants' claim that a bailment relationship has no merit and Appellees are entitled to judgment as a matter of law.

3. Replevin

{¶45} Appellants' amended complaint asserted a claim of replevin. As the 5th District explained in *Carlton v. Johnson,* 5th Dist. Stark No. 2016CA00006, 2016-Ohio-7313 ¶ 28-29:

> In Ohio, replevin is solely a statutory remedy. *Gregory v. Martin,* 7th Dist. Jefferson No. 15 JE 17, 2016-Ohio-650, 2016 WL 698619, ¶ 20, citing *America Rents v. Crawley,* 77 Ohio App.3d 801, 804, 603 N.E.2d 1079 (10th Dist.1991).

See Doff v. Lipford, 5th Dist. Stark No. 2019CA00017, 2019-Ohio-2318, at ¶ 43.

> A replevin suit simply seeks to recover goods from one who wrongfully retains them at the time the suit is filed. Replevin does not even require an 'unlawful taking.' The plaintiff in replevin need only prove that he is entitled to certain property and that the property is in the defendant's possession. *Gregory* at ¶ 20, quoting *Wysocki v. Oberlin Police Dept.,* 9th Dist. Lorain No. 13CA010437, 2014-Ohio-2869, ¶ 7, quoting *Wilson v. Jo-Ann Stores, Inc.,* 9th Dist. Summit No. 26154, 2012-Ohio-2748, ¶ 11.

See Doff, supra.

{¶46} As stated above, replevin is a statutory remedy that must be sought in accordance with specific procedures. *See Paolucci v. Morgan,* 11th Dist. Portage No. 2017-P-0020, 2018-Ohio-793, at ¶ 34; *Bond v. Bond,* 11th Dist. Geauga No. 2001-G-2382, 2002-Ohio-3843, at ¶ 17. The dictates of R.C. 2737.03 must be followed. *Crawley,* 603 N.E.2d 1079 (10th Dist. 1991).

{¶47} The 11th District in *Morgan, supra,* pointed out that the appellant there never filed the required motion in the case. The appellate court found that since appellant did not comply with R.C. 2737.03, the trial court did not err in granting summary judgment. Similarly, there is no evidence in this case that the Appellants complied with the dictates of R.C. 2737.03 by properly commencing a replevin action. For this reason, Appellants' claim for replevin has no merit and Appellees are entitled to judgment as a matter of law.

4. Damages

{¶48} Appellants also argue on appeal that they are entitled to consequential and punitive damages. However, as discussed above, Appellants have not demonstrated that genuine issues of material fact remain as to Appellees' alleged intent to possess, an essential element of proving a claim of conversion. Appellants have not demonstrated that any bailment relationship existed between the parties. And, Appellants did not follow the statutory procedures in order to commence a proper claim for replevin. Given these findings, Appellants' claims for consequential and punitive

damages are therefore moot issues. *See Bender v. Logan,* 2016-Ohio-5317, 76 N.E.3d 336, at ¶64.[8]

{¶49} Based on the foregoing, we find no merit to Appellants' sole assignment of error. The trial court did not err in finding no genuine issues of material fact and that Appellees are entitled to judgment as a matter of law. As such, the sole assignment of error is hereby overruled.

JUDGMENT AFFIRMED.

[8]*See State ex rel. Cincinnati Enquirer v. Hunter,* 141 Ohio St.3d 419, 2014-Ohio-5457, 24 N.E.3d 1170, ¶ 4 (internal quotations omitted) (explaining that issues are moot "when they are or have become fictitious, colorable, hypothetical, academic or dead"); *State v. Hudnall,* 4th Dist. Lawrence No. 15CA8, 2015-Ohio-3939, 2015 WL 5676859, ¶ 7 ("A[n issue] is moot when a court's determination on a particular subject matter will have no practical effect on an existing controversy.").

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED. Appellant shall pay costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Scioto County Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Abele, J., and Wilkin, J., concur in Judgment and Opinion.

For the Court,

_____

Jason P. Smith
Presiding Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.