

IN THE COURT OF APPEALS OF IOWA

**FILED**  
AUG 26 1980 **332**  
CLERK SUPREME COURT

DON CARTER AND ROBERT ROGERS, )

Plaintiffs-Appellants, )

vs. )

Filed August 26, 1980

JOHN LORD, CHARLES KERR AND KERMIT )

LEE, TRUSTEES OF THE "FARMERS  
DRAINAGE DISTRICT" AND JOHN LORD AND )  
CHARLES KERR, INDIVIDUALLY, )

0-142

2-64210

Defendants-Appellees. )

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Appeal from Woodbury District Court - James P. Kelley, Judge.

Plaintiffs appeal from adverse judgment in their action challenging a proposal of defendant drainage district trustees to annex certain property to the district.  
VACATED AND REMANDED WITH DIRECTIONS TO DISMISS.

J. Allen Orr of Sioux City, Iowa, attorney for plaintiffs-appellants.

Lowell C. Kindig of Kindig, Beebe, Rawlings, Nieland & Killinger, Sioux City; and Stanley E. Munger of Sioux City; attorneys for defendants-appellees.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

Plaintiffs appeal from declaratory judgment for defendants in their action challenging the validity of an agreement proposing that the "Farmers Drainage District" annex a new area, engage in certain construction work, and sevey the area from the district. These proceedings were contemplated to be undertaken pursuant to the authority of chapter 455, The Code. Plaintiffs on this appeal seek to assign fifty-two separate issues for our consideration. Fortunately, it is not necessary to consider each of these contentions.

The major issue in this case other than the claim of mootness is the validity of the proposed annexation of the town of Sergeant Bluff by the Farmer's Drainage District. Contrary to what appellants argue, the issue is not whether the agreement is enforceable at this time in its present form. Rather, the writing is little more than a letter of intent to proceed with more detailed annexation and drainage construction plans if appellees' declaratory judgment action is successful. If the proposed plan is deemed to be within the District's statutory authority, then the District would take those steps including notice and opportunity for hearing required by law to implement the plan.

Under section 455.135, The Code, if estimated improvement costs exceed the original district cost and subsequent improvements, then a majority of landowners in the district owning in the aggregate more than 70% of the land in such district may file a written remonstrance against the proposed improvement. In such a case all proceedings regarding the improvements must cease and the plans dropped. The proposed agreement itself provides that all legally-required procedures will be followed including those of section 455.135.

Prior to the submission of this appeal, it was made to appear that the defendant-trustees have abandoned any interest or right to proceed or make any claims under the proposed agreement which was the subject of the trial court's declaratory judgment. The plaintiffs are claiming no rights under said agreement. The issue of the validity of the agreement is therefore moot as between the parties. Because of the uniqueness of the situation presented, the legal issues presented have no broad public interest. We conclude the matter must be dismissed as moot. See Beam v. Iowa Employment Security Commission, 264 N.W.2d 742 (Iowa 1978); State ex rel Turner v. Midwest Development Corporation, 210 N.W.2d 525 (Iowa 1973).

At oral argument plaintiffs contended (and filed supplemental briefs) urging that collateral issues between the parties may depend upon whether the now-abandoned proposed agreement and the actions of the trustees thereunder were valid. Assuming this to be the case, we will adopt an ameliorative procedure to protect plaintiffs from the possible preclusive effects of the trial court's declaratory judgment as to issues now moot.

As stated in United States v. Munsingwear, 340 U.S. 36, 71 S.Ct. 104, 95 L.Ed. 36 (1950): "The established practice of the Court in dealing with a civil case from a court in the federal system which has become moot while on its way here or pending our decision on the merits is to reverse or vacate the judgment below and remand with a direction to dismiss. \* \* \* When that procedure is followed, the rights of all parties are preserved; none is prejudiced by a decision which in the statutory scheme was only preliminary." 340 U.S. at 39-40, 71 S.Ct. at 106-07, 95 L.Ed. at 41. See application of Munsingwear in Florida Wildlife Federation v. Goldschmidt, 611 F.2d 547, 550 (5th Cir. 1980); Marshall v. Whittaker Corp., Berwick Forge, 610 F.2d 1141, 1145 (3rd Cir. 1979).

The problem is also discussed in 1B Moore's Federal Practice ¶0.416[6] (2nd ed. 1974). Moore describes the alternatives open to an appellate court presented with a moot appeal: "It may simply dismiss the appeal as moot, and leave the appealed judgment standing; or it may vacate the judgment and remand with instructions to dismiss the complaint for mootness. By adopting the latter course, the appellate court makes certain that the judgment will have no conclusive effect whatsoever, either as res judicata should the cause of action cease to be moot, or as collateral estoppel in an action on a different cause." Id. at 2328-29.

While the above authorities are concerned with the federal courts, we see no reason why this same procedure (vacate and remand with directions to dismiss) could not be used by state courts. The procedure spelled out in Munsingwear and the other federal cases does not appear to be based on a specific federal rule. In fact, Moore states that state appellate courts, while dismissing moot appeals, have felt free to determine whether the judgment left standing should have res judicata or collateral estoppel effect. Id. at 2333. Stapels v. Zinn, 302 Minn. 149, 223 N.W.2d 415 (1974) ("A vacated judgment has no res judicata or collateral estoppel effect." 223 N.W.2d at 417); Rawlings v. Claggett, 174 Miss. 845, 165 So. 620 (1936); Knowelton v. Swampscott, 280 Mass. 69, 181 N.E. 849 (1932).

The judgment of the trial court is vacated and the matter remanded to that court with directions to dismiss the action as moot.

VACATED AND REMANDED WITH DIRECTIONS TO DISMISS.