VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 8th day of December, 2022.

Present: All the Justices

Michael N. Handberg, Appellant,

against Record No. 210780
Circuit Court No. CL-2018-14335

The Morgan Center and Northern
Virginia Advocacy Counseling Services, Appellees.

Upon an appeal from a judgment rendered by the Circuit Court of Fairfax County.

Upon consideration of the record, briefs, and argument of counsel, for the reasons below, the Court is of the opinion that there is no error in the judgment of the Circuit Court of Fairfax County.

BACKGROUND

In March 2017, Michael N. Handberg ("Handberg") obtained a $45,035 judgment on a counterclaim alleging conversion[1] against The Morgan Center ("TMC"), a child counseling and advocacy services corporation owned by Dr. Felicia M. Goldberg ("Dr. Goldberg") and operated with her husband Jon[2] W. Goldberg ("Mr. Goldberg") (collectively, the "Goldbergs"). Shortly

[1] The judgment was a result of a jury trial where the jury found in favor of Dr. Goldberg and against Handberg on a defamation claim. The jury awarded Dr. Goldberg $90,000 in compensatory damages and declined to award punitive damages. On Handberg's counterclaim against TMC for conversion, the jury awarded $35 in compensatory damages and $45,000 in punitive damages.

[2] In various locations throughout the record, Mr. Goldberg is referred to as both "John" and "Jon." Jon appears to be the correct spelling of his name.

after the entry of the judgment, on April 26, 2017, the Goldbergs formed Northern Virginia Advocacy and Counseling Services, Inc. ("NVACS") with Dr. Goldberg as President and CEO.

TMC had previously leased a multi-room commercial office at a location off Herndon Parkway in Fairfax County ("Herndon Parkway Office") and, upon NVACS' formation, sub-leased the office to NVACS. In May 2017, the Goldbergs ceased operations at TMC but did not close the company. At trial, in response to Handberg's counsel's question to Mr. Goldberg about the status of TMC, he testified, "No, sir, we ceased doing business. We did not close it." In the circuit court bench trial, Mr. Goldberg testified that TMC had been dormant since then and had not conducted any business. In November 2017, the Herndon Parkway Office lease ended and NVACS moved to a one-room office in Sterling in Loudoun County ("Sterling Office").

As part of NVACS' move, TMC, in a $100 cash sale dated April 26, 2017, transferred about 10 to 20 percent of its used office furniture to NVACS ("furniture transfer"); specifically, two red chairs, two reception area chairs, a credenza, a filing cabinet, a Canon printer, a desk, a Keurig coffee machine, two sofas, and artwork. Dr. Goldberg described the items as "worn" and "well used." The Goldbergs moved this furniture to the Sterling Office and left the remaining furniture at the Herndon Parkway Office.

On October 3, 2018, Handberg, claiming the transfer was effectuated to prevent collection of his judgment against TMC, filed a complaint in the Circuit Court of Fairfax County ("circuit court") against TMC, NVACS, and the law firm that facilitated the transfer. Handberg alleged that the transaction was a fraudulent conveyance under Code § 55.1-400 (formerly Code § 55-80), a voluntary conveyance made without consideration under Code § 55.1-401 (formerly Code § 55-81), and sought sanctions in the form of attorney's fees under Code § 55.1-403

(formerly Code § 55-82.1).[3] In his amended complaint filed on August 9, 2019, Handberg added a successor liability claim against NVACS.

On November 3, 2017, prior to the filing of Handberg's complaint, the Goldbergs filed a voluntary individual Chapter 7 bankruptcy petition in the United Stated Bankruptcy Court for the Eastern District of Virginia ("Bankruptcy Court"). Handberg filed a "Complaint to Determine Dischargeability of Debt" in the Goldbergs' bankruptcy case, seeking to have the conversion judgment declared a non-dischargeable debt based on the allegedly fraudulent transfer between TMC and NVACS. The Bankruptcy Court dismissed Handberg's complaint for failure to state a claim[4] and closed the Goldbergs' case after the trustee filed a "Report of No Distribution."

In September 2019, the circuit court held a two-day bench trial on Handberg's complaint. At the close of the trial, the circuit court indicated it would take the case under advisement. Thereafter, a discussion between counsel and the court ensued concerning the date by which the court would rule. After this discussion, the circuit court indicated it would rule by November 11, 2019.

On October 3, 2019, before the circuit court's impending decision, TMC and NVACS filed voluntary bankruptcy petitions in the Bankruptcy Court. In response to the automatic stay triggered by the Bankruptcy Court proceedings, the circuit court dismissed Handberg's claims against TMC and NVACS without prejudice. TMC and NVACS' bankruptcy filings were consolidated for administration; the Bankruptcy Court denied Handberg's motion for relief from the automatic stay. The Bankruptcy Court noted that through substantive consolidation

[3] In 2019, the General Assembly repealed Title 55 and replaced the fraudulent and voluntary conveyance statutes with Chapter 4 of Title 55.1. *See* 2019 Acts ch. 712.

[4] Judge Klinette H. Kindred ruled that a debt obtained by conversion may not be re-characterized as a debt obtained through an alleged fraudulent transfer even if the corporate veils of TMC and NVACS are pierced.

Handberg would receive "exactly what he seeks in the Fraudulent Transfer/Alter Ego Action, with absolutely no corresponding prejudice." It also noted that the fraudulent transfer and alter ego claims were property of the bankruptcy estate until the trustee abandons or administers the claims. In March 2021, the bankruptcy trustee filed a "Report of No Distribution" stating that the estates had been fully administered and had no property available for distribution. The Bankruptcy Court discharged the trustee and closed the case.

In April 2021, given that the automatic stay had been lifted upon the close of the bankruptcy matter, Handberg filed a motion to reopen his case in the circuit court. Then, in May 2021, TMC and NVACS filed Articles of Merger with the Virginia State Corporation Commission, formally merging into one entity, TMC. TMC and NVACS subsequently filed a brief in opposition to reopening the case, arguing that relief under the fraudulent and voluntary conveyance statutes was unavailable because the entities had merged and had no recoverable assets.

On May 17, 2021, the circuit court entered a final order denying Handberg's motion to reopen and holding that the case was moot. The circuit court found that the merger between TMC and NVACS, combined with the Bankruptcy Court's determination that neither entity had distributable assets, foreclosed the circuit court's ability or need to void the conveyance, determine successor liability, and afford relief. Handberg appealed to this Court.

ANALYSIS

I. Standard of Review

Mootness, a justiciability issue, is a matter of law and thus this Court reviews the circuit court's decision under a de novo standard of review. *See Platt v. Griffith*, 299 Va. 690, 692 (2021) (reviewing de novo the question of whether plaintiff has established standing, a

justiciable issue); *see also City of Fairfax v. Shanklin*, 205 Va. 227, 229 (1964) (stating in the context of declaratory judgments that "[t]he controversy must be one that is justiciable, that is, where specific adverse claims, based upon present rather than future or speculative facts, are ripe for judicial adjustment") (citations omitted). When addressing "issues of statutory interpretation," this Court also applies a de novo standard of review. *Cole v. Smyth Cnty. Bd. of Supervisors*, 298 Va. 625, 635 (2020) (citing *Virginia Dep't of Corr. v. Surovell*, 290 Va. 255, 262 (2015)).

II. Mootness

"A question is moot when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome." *Godlove v. Rothstein*, 300 Va. 437, 439 (2022) (internal quotation marks omitted) (quoting *Board of Supervisors v. Ratcliff*, 298 Va. 622, 622 (2020) (citation omitted)). "It is not the office of courts to give opinions on abstract propositions of law, or to decide questions upon which no rights depend, and where no relief can be afforded." *E.C. v. Virginia Dep't of Juvenile Justice*, 283 Va. 522, 530 (2012) (quoting *Franklin v. Peers*, 95 Va. 602, 603 (1898)). Accordingly, when a case is moot, "it is the duty of every judicial tribunal not to proceed to the formal determination of the apparent controversy, but to dismiss the case." *Id.*

III. Fraudulent and Voluntary Conveyance Statutes

Under Code § 55.1-400, a fraudulent conveyance is a conveyance made "with intent to delay, hinder, or defraud creditors, purchasers, or other persons of or from what they are or may be lawfully entitled to [and] shall, as to such creditors, purchasers, or other persons or their representatives or assigns, be void." Under Code § 55.1-401, a voluntary conveyance is a

conveyance "that is not upon consideration deemed valuable in law," and "shall be void as to creditors whose debts were contracted at the time such . . . conveyance . . . was made."

Code §§ 55.1-400 and 401 thus "contain a specific remedy – a judicial decree declaring the conveyance void as to the transferor's creditors." *Grayson v. Westwood Buildings L.P.*, 300 Va. 25, 49 (2021). Under Code § 55.1-400, the "avoidance of a transaction is the only remedy available." *La Bella Dona Skin Care, Inc. v. Belle Femme Enterprises, LLC*, 294 Va. 243, 257 (2017).

IV. Application

In this case, voiding the furniture transfer is a legal and factual impossibility. First, the two entities have merged, thereby foreclosing the ability to void the transfer. Even if the transfer could be voided, there would be nothing to return as the entities have been determined by the Bankruptcy Court to have no recoverable assets. Therefore, there was no available relief for the circuit court to provide and it properly concluded that it could not reach the merits, given that no relief was available. To do so under these circumstances would mean rendering an impermissible "advisory opinion[] on [a] moot question[]." *Ratcliff*, 298 Va. at 622; *see also Wallerstein v. Brander*, 136 Va. 543, 546 (1923) ("When, pending an appeal from the judgment of a lower court, an event occurs which renders it impossible for the court to grant [the appellant] any effectual relief whatever, the court will not proceed to a final judgment, but will dismiss the appeal.") (citations omitted).

Handberg argues that, even if this is the case, the circuit court could have awarded attorney's fees as sanctions under Code § 55.1-403. Pursuant to this provision, if under Code §§ 55.1-400 or 401 a conveyance "is declared void, the court shall award counsel for the creditor reasonable attorney fees against the debtor." Code § 55.1-403. Further, "[u]pon a finding of

fraudulent conveyance pursuant to § 55.1-400, the court may assess sanctions, including such attorney fees, against all parties over which it has jurisdiction who, with the intent to defraud and having knowledge of the judgment, participated in the conveyance." *Id.* Handberg argues that Code § 55.1-403, by its terms, contemplates a remedy in the form of sanctions upon a mere judicial "finding" of fraudulent conveyance.

Such a reading is not supported by the plain language of the statute. "[T]his Court seeks to effectuate the intent of the legislature as expressed by the plain meaning of the words used in the statute," and thus the plain language controls "unless the words are ambiguous or such application would render the law internally inconsistent or incapable of operation." *Llewellyn v. White*, 297 Va. 588, 595 (2019). Code § 55.1-403 authorizes sanctions "[u]pon a *finding* of fraudulent conveyance pursuant to § 55.1-400." (Emphasis added). Therefore, Code § 55.1-400's mandate that fraudulent conveyances "shall . . . be void" is incorporated into Code § 55.1-403 and operates as a prerequisite to a court assessing sanctions. This interpretation is consistent with the general rule that "attorney's fees are not recoverable as damages." *Bolton v. McKinney*, 299 Va. 550, 554 (2021) (citing *Hiss v. Friedberg*, 201 Va. 572, 577 (1960)); *see also Heitmuller v. Stokes*, 256 U.S. 359, 362 (1921) ("Where no controversy remains, except as to costs, this court will not pass upon the merits.") (citation omitted). Accordingly, the statutory scheme does not permit a court to award attorney's fees without first voiding the transaction.

Handberg nevertheless argues that the two recognized exceptions to the mootness doctrine apply in this case. First, "[i]f the underlying dispute is capable of repetition, yet evading review, it is not moot." *Daily Press, Inc. v. Commonwealth*, 285 Va. 447, 452 (2013) (quoting *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 563 (1980) (internal quotation marks and citation omitted)). Second, "voluntary cessation of allegedly illegal conduct" does not make a

case moot. *City of Virginia Beach v. Brown*, 858 F. Supp. 585, 590 (E.D. Va. 1994) (quoting *County of Los Angeles v. Davis*, 440 U.S. 625, 631 (1979)).

The first exception is inapplicable here because the conduct at issue—the furniture transfer—has already occurred and, since the two entities have merged and have no assets, cannot be repeated. Even if they had not merged, the validity of any additional transfer would have to be independently and separately analyzed. The second exception is likewise inapplicable because the allegedly wrongful conduct in this case was not voluntarily ceased; the transfer already occurred and was not undone. Consequently, neither mootness exception applies.

Although the parties offer additional arguments, none of them change our conclusion that this case is moot. Therefore, because this Court decides cases on "the best and narrowest grounds available," we need not address them further. *Butcher v. Commonwealth*, 298 Va. 392, 396 (2020) (quoting *Commonwealth v. White*, 293 Va. 411, 419 (2017) (alteration omitted)).

CONCLUSION

The circuit court did not err in holding that Handberg's claims were rendered moot by the entities' merger and the Bankruptcy Court's determination that they had no assets. Therefore, this Court affirms the judgment of the Circuit Court of Fairfax County.

This order shall be certified to the Circuit Court of Fairfax County.

A Copy,

Teste:

Clerk