

IN THE COURT OF APPEALS OF IOWA

No. 9-829 / 07-1877
Filed November 25, 2009

IN RE THE MARRIAGE OF MERLIN G. BIRETZ AND SANDRA A. BIRETZ

MERLIN G. BIRETZ,
Petitioner-Appellant,

And Concerning

**AIMEE L. CORWIN and ADAM J.
BIRETZ, as Co-Executors for the
Estate of SANDRA A. BIRETZ,**
Respondents-Appellees.

Appeal from the Iowa District Court for Black Hawk County, Jon C. Fister,
Judge.

Appeal from the district court's decision on review of the amount of a
supersedeas bond. **APPEAL DISMISSED.**

D. Raymond Walton of Beecher Law Offices, Waterloo, for appellant.

David Kelsen of Kelsen Law Office, Waterloo, for appellees.

Considered by Sackett, C.J., Vaitheswaran and Danilson, JJ.

SACKETT, C.J.

Merlin G. Biretz appeals, arguing that the district court abused its discretion in setting a supersedes bond. The issue raised in this appeal is moot and we do not address it. Appeal dismissed.

BACKGROUND. On August 3, 2007, the district court dissolved Merlin Biretz's thirty-nine-year marriage to Sandra Biretz. The issues before the dissolution court were spousal support and division of the assets and liabilities of the party. Merlin, unhappy with the decision of the district court, appealed to the Iowa Supreme Court. The district court set the amount of the supersedes bond to stay execution of judgment against Merlin at \$770,000. Merlin applied to the district court for review of the bond contending that a bond of \$1000 was all that was necessary. The district court denied his application for review and reduction of the bond. He appealed from that finding to the Iowa Supreme Court.

The dissolution appeal was transferred to this court and on August 19, 2009, the court filed an opinion in that case and affirmed the district court decision in its entirety. *In re Marriage of Biretz*, No. 07-1522 (Iowa Ct. App. Aug. 19, 2009). Procedendo issued on September 15, 2009.

The supreme court has now transferred the appeal addressing the supersedes bond to this court. However, the dissolution appeal has now gone to final judgment. Consequently, we find the issue challenging the amount of the bond to be a moot question. An appeal "is moot if it no longer presents a justiciable controversy because [the contested issue] has become academic or nonexistent." *In re D.C.V.*, 569 N.W.2d 489, 494 (Iowa 1997) (quoting *In re*

Meek, 236 N.W.2d 284, 288 (Iowa 1975)). “The test is whether the court’s opinion would be of force or effect in the underlying controversy.” *Id.*; see also *Iowa Mut. Ins. Co. v. McCarthy*, 572 N.W.2d 537, 540 (Iowa 1997). As a general rule, we will dismiss an appeal “when judgment, if rendered, will have no practical legal effect upon the existing controversy.” *Christensen v. Iowa Dist. Ct.*, 578 N.W.2d 675, 679 (Iowa 1998) (quoting *Roth v. Reagan*, 422 N.W.2d 464, 466 (Iowa 1988)). The dissolution case having gone to final judgment, any judgment we might render in this case would have no practical effect.

There is an exception to this general rule of mootness “where matters of public importance are presented and the problem is likely to recur.” *Iowa Freedom of Info. Council v. Wifvat*, 328 N.W.2d 920, 922 (Iowa 1983). Under these circumstances, our court has discretion to hear the appeal. See *Christensen*, 578 N.W.2d at 679. In deciding whether to do so, an important factor to consider is “whether the challenged action ‘is such that often the matter will be moot before it can reach an appellate court.’” *Id.* (quoting *Danner v. Hass*, 257 Iowa 654, 660, 134 N.W.2d 534, 539 (1965)), *overruled on other grounds by Needles v. Kelley*, 261 Iowa 815, 822, 156 N.W.2d 276, 280 (1968). We decline to reach the merits of this case under the public importance exception to the general rule of mootness. The issue in this case is fact specific and there is no reason to find that the issue here is such that it often will be moot before it can be addressed by an appellate court. The appeal is dismissed.

APPEAL DISMISSED.