

IN THE COURT OF APPEALS OF TENNESSEE  
WESTERN SECTION AT JACKSON

LARRY RICE, )  
 )  
Plaintiff/Appellee, ) Shelby Chancery No. 10330-3 R.D.  
 )  
VS. ) Appeal No. 02A01-9507-CH-00146  
 )  
STEVEN SOL FELDMAN, )  
 )  
Defendant/Appellant. )

APPEAL FROM THE CHANCERY COURT OF SHELBY COUNTY  
AT MEMPHIS, TENNESSEE  
THE HONORABLE D. J. ALISSANDRATOS, CHANCELLOR

**FILED**

November 13, 1996

Cecil Crowson, Jr.  
Appellate Court Clerk

**SHEILA D. BROWN**  
**LAW FIRM OF SHEILA D. BROWN**  
Memphis, Tennessee  
Attorney for Appellant

**LARRY RICE**  
**KENDRA H. ARMSTRONG**  
**RICE, RICE, SMITH, BURSI, VEAZEY**  
**AND AMUNDSEN, L.L.P.C.**  
Memphis, Tennessee  
Attorneys for Appellee

**DISMISSED**

**ALAN E. HIGHERS, J.**

**CONCUR:**

**W. FRANK CRAWFORD, P.J., W.S.**

**HOLLY KIRBY LILLARD, J.**

Plaintiff, Larry Rice, filed this action in order to collect legal fees that were owed to him by his former client, the Defendant, Steven Sol Feldman. The Defendant filed a counter-complaint alleging that the Plaintiff was liable for negligence and attorney malpractice. The Plaintiff filed motions for summary judgment on both the complaint and the counter-complaint. The chancery court granted the Plaintiff's motion for summary judgment on the counter-complaint, dismissing the Defendant's claims of negligence and attorney malpractice. The Defendant appealed the chancery court's order granting summary judgment to the Plaintiff on the counter-complaint. The Plaintiff and the Defendant thereafter signed a consent order which disposed of the complaint and the counter-complaint. For the reasons stated hereafter, this appeal is moot and is therefore dismissed.

## **FACTS**

On January 31, 1992, the Defendant retained the Plaintiff to represent him in a divorce action. At the conclusion of the divorce case, the Defendant failed to pay the Plaintiff for legal services rendered. On September 7, 1993, the Plaintiff filed a complaint seeking to collect \$113,000 from the Defendant for legal fees incurred in the previous divorce action and for the attachment of certain property of the Defendant.

The Defendant answered the Plaintiff's complaint on April 7, 1994 and filed a counter-complaint against the Plaintiff and the Plaintiff's father, George Rice, alleging that they had committed negligence and attorney malpractice. The Plaintiff filed a motion for summary judgment on the original complaint on August 24, 1994. On October 17, 1994, the Plaintiff filed a motion for summary judgment on the counter-complaint.

On November 28, 1994, the day the summary judgment motions were argued, the Defendant served his affidavit as well as the affidavit of H. Wallace Maroney, Jr. on the Plaintiff. The Plaintiff objected to the service of both affidavits on the ground that the affidavits were not timely filed pursuant to Rule 11 of the Shelby County Chancery Court

Rules. An order was entered on December 6, 1994 striking the affidavits of Maroney and the Defendant on the basis that the affidavits were not timely filed under the Tennessee Rules of Civil Procedure and that no adequate reason for the delay had been stated by the Defendant's attorney.

On December 6, 1994, an order was entered granting the Plaintiff's motion for summary judgment on the counter-complaint and dismissing the Defendant's claims of negligence and attorney malpractice. The Defendant filed a notice of appeal on January 4, 1995.

Thereafter, on January 19, 1995, the Plaintiff and the Defendant entered a Consent Order on Writ of Inquiry and Judgment. The consent order, which is part of this record, stated the following:

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the counter-claim against Larry Rice, George Rice and the law firm of Rice, Rice, Smith, Bursi, Veazey and Amundsen is dismissed.

IT IS FURTHER ORDERED that Larry Rice is entitled to a judgment against Steven Sol Feldman in the amount of Seventy Five (\$75,000.00) Dollars for which execution may issue, at defendant's cost.

### **LAW**

It is well established in Tennessee that consent decrees are valid and binding. Underwood v. Zurich Ins. Co., 854 S.W.2d 94, 97 (Tenn. 1993). In Nance v. Pankey, 880 S.W.2d 944, 946 (Tenn. Ct. App. 1993), this Court stated:

[A consent] order is conclusive upon the consenting parties, and can neither be amended nor in any way varied without like consent; nor can it be reheard, appealed from or reviewed upon writ of error. After a consent decree has become final it can only be attacked by a suit against the counsel who consented to it or by a bill of review or some original action. Kelly v. Walker, 208 Tenn. 388, 346 S.W.2d 253, 255-56 (1961); see also City of Shelbyville v. State ex rel. Bedford County, 220 Tenn. 197, 415 S.W.2d 139, 144 (1967).

Moreover, in Gardiner v. Word, 731 S.W.2d 889, 893 (Tenn. 1987), our supreme court

reaffirmed the validity of consent decrees and stated that “the reason for the unassailability of a consent decree is based on the well-founded maxim *volenti non fit injuria* (he who consents to what is done cannot complain of it).” See also, Rachels v. Steele, 633 S.W.2d 473, 477 (Tenn. Ct. App. 1981).

In State v. Nashville Memorial Hosp., Inc., 914 S.W.2d 903, 907 (Tenn. Ct. App. 1995), this Court stated:

If by the time a controversy reaches the appellate court questions presented have been deprived of practical significance and have become academic and abstract in character, the appeal should be dismissed as moot. Perry v. Banks, 521 S.W.2d 549, 550 (Tenn. 1975); LaRouche v. Crowell, 709 S.W.2d 585, 587 (Tenn. Ct. App. 1985).

### CONCLUSION

Because the parties entered into a valid consent order on January 19, 1995 which effectively disposed of the Plaintiff’s complaint and the Defendant’s counter-complaint, it is the opinion of this Court that the Defendant’s appeal is moot and is therefore dismissed.

Costs on appeal are taxed to Appellant, for which execution may issue if necessary.

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HIGHERS, J.

CONCUR:

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CRAWFORD, P.J., W.S.

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LILLARD, J.