

# No. 16-2524

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## United States Court of Appeals for the Eighth Circuit

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ELAINE ROBINSON, *et al.*,

Plaintiffs-Appellees

vs.

PFIZER, INC.,

Defendant-Appellant

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*On appeal from the United States District Court for the Eastern District of  
Missouri, 4:16-cv-00439-CEJ*

### MOTION TO DISMISS APPEAL

Plaintiffs-Appellees Elaine Robinson *et al.* (“Plaintiffs”) hereby move to dismiss this appeal as moot. Defendant-Appellant Pfizer, Inc. (“Pfizer”) appeals from a final order of the district court awarding Plaintiff \$6,200 in attorney’s fees in connection with Plaintiffs’ successful motion to remand their case to the Circuit Court of the City of St. Louis, in which it was originally filed and from which Pfizer had removed it. The remand order itself is not appealable. As for the award of attorney’s fees, Plaintiffs have disclaimed any interest in the award and have filed in the district court a

Satisfaction of Judgment. In light of the filing of the Satisfaction of Judgment, Plaintiffs' claim is extinguished and they no longer have any legal entitlement to any money from Pfizer. Because Pfizer cannot possibly obtain any relief in this Court, any opinion the Court might render of the appropriateness of a fee award in this case could only be hypothetical and advisory. Accordingly, Plaintiffs respectfully request that this Court dismiss Pfizer's appeal as moot.

### **BACKGROUND AND PROCEDURAL HISTORY**

Plaintiffs commenced this action with the filing of a Petition in the Circuit Court of the City of St. Louis on February 29, 2016. (A copy of the Plaintiffs' Petition is Exhibit A to the accompanying Declaration of Eric S. Johnson in Support of Plaintiffs' Motion to Dismiss ("Johnson Dec.")). The Petition alleges claims sounding in product liability, negligence, fraud, and unjust enrichment; it contains no claims arising under federal law. *See* Johnson Dec., Ex. A at pp. 16-28. Nor are the parties completely diverse, as some of the plaintiffs are citizens of New York, as is Pfizer. *See id.* at p. 3-12. On March 31, 2016, Pfizer removed the case to the United States District Court for the Eastern District of Missouri. *See* Johnson Dec., Exhibit B. In its Notice of Removal, Pfizer recognized that, as the Complaint was pleaded,

complete diversity necessary to support federal jurisdiction was lacking. Pfizer nonetheless argued that all plaintiffs who were not Missouri residents had been fraudulently mis-joined and should be disregarded for purposes of determining diversity jurisdiction. If only the plaintiffs resident in Missouri were considered, Pfizer argued, the requirement of complete diversity would be satisfied. *See* Exhibit B at pp. 7-28.

On April 8, 2016, Plaintiffs moved in the Eastern District of Missouri for remand of their action back to the Circuit Court. *See* Johnson Dec., Exhibit C. On April 29, 2016, the district court remanded the action to the Circuit Court; the remand was docketed in the Circuit Court on May 2, 2016. *See* Johnson Dec., Exhibit D. In its April 29, 2016 remand order, the district court also awarded costs to the Plaintiffs, holding that in light of similar remands in more than 30 other similar cases over six years, some of them involving Pfizer itself, “defendant can no longer argue that its asserted basis for seeking removal to federal court in these circumstances is objectively reasonable.” *Id.* at pp. 8-9. Following submission by Plaintiffs of their fees and costs associated with the remand motion, on May 19, 2016, the Court ordered Pfizer to pay to Plaintiffs within 30 days attorneys’ fees in the amount of \$6,200. Johnson Dec., Exhibit E. The next day, Pfizer filed a

Notice of Appeal by Defendant Pfizer, Inc., appealing the May 19, 2016 order “insofar as the Court awarded costs and expenses against Pfizer. . . .” Johnson Dec., Exhibit F. As Pfizer appears to recognize, the remand order itself is not appealable, *see Farm Credit Bank of St. Paul v. Finstrom*, 888 F.2d 559, 559 (8th Cir. 1989) (“Remand orders issued under § 1447(c) and invoking the grounds specified therein -- that removal was improvident and without jurisdiction -- are immune from review. . . .”); 28 U.S.C. § 1447(d) (“An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise. . . .”), nor has Pfizer attempted to appeal from the April 29 order of remand.

On June 16, 2016, Plaintiffs filed a Satisfaction of Judgment (“Satisfaction”) in the district court. *See* Johnson Dec., Exhibit G.<sup>1</sup> The Satisfaction stated that Plaintiffs had “disclaimed any interest in collecting [the Court’s] award” and that “full and complete satisfaction of said judgment or order is hereby acknowledged, and the Clerk of the Court is

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<sup>1</sup> Plaintiffs had previously informed Pfizer they did not want to collect, and had no intention of collecting, the judgment.

hereby authorized and directed to make an entry of the full and complete satisfaction on the docket of said judgment or order.” *Id.*

## ARGUMENT

### PFIZER’S APPEAL IS MOOT

This Court has repeatedly recognized that, under article III of the constitution, federal courts lack power to decide moot cases. *See, e.g., Americans United for Separation of Church & State v. Prison Fellowship Ministries, Inc.*, 509 F.3d 406, 421 (8th Cir. 2007) (“Federal courts lack power to decide the merits of a moot case.”); *United States v. Asset Based Res. Grp., LLC*, 612 F.3d 1017, 1018 (8th Cir. 2010) (federal courts not empowered to give opinions on moot questions); *Doe v. Nixon*, 716 F.3d 1041, 1051 (8th Cir. 2013) (“A federal court has no authority to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it.”), *quoting Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12 (1992); *see also Amalgamated Ass’n of St., Elec. Ry. & Motor Coach Emp. of Am., Div. 998 v. Wisconsin Employment Relations Bd.*, 340 U.S. 416, 418 (1951) (“A federal court is without power to decide moot questions or to give advisory opinions which cannot affect the rights of the litigants in the case before it.”). This is because “[t]he

federal power of the judiciary only extends to ‘Cases’ or ‘Controversies’ . . . [and] [t]he ‘case or controversy’ requirement is not met if the question sought to be adjudicated has been moot. . . .” *Roberts v. Norris*, 415 F.3d 816, 819 (8th Cir. 2005). Thus, “[n]o matter how vehemently the parties continue to dispute the lawfulness of the conduct that precipitated the lawsuit, the case is moot if the dispute is no longer embedded in any actual controversy about [a party’s] particular legal rights.” *Already, LLC v. Nike, Inc.*, 133 S. Ct. 721, 727 (2013).

The test for mootness is a practical one: as the Supreme Court has recently reminded, a case becomes moot “when it is impossible for a court to grant any effectual relief whatever to the prevailing party.” *Campbell-Ewald Co. v. Gomez*, 136 S. Ct. 663, 669 (2016), quoting *Knox v. Service Employees*, 132 S. Ct. 2277, 2287 (2012); accord *Deerbrook Pavilion, LLC v. Shalala*, 235 F.3d 1100, 1103 (8th Cir. 2000) (same); see also *Ali v. Cangemi*, 419 F.3d 722, 723 (8th Cir. 2005) (“When, during the course of litigation, the issues presented in a case lose their life because of the passage of time or a change in circumstances and a federal court can no longer grant effective relief, the case is considered moot.”); *Lebanon Chem. Corp. v. United Farmers Plant Food, Inc.*, 179 F.3d 1095, 1099 (8th Cir. 1999) (“Through the passage of

time and the occurrence of irrevocable events, disputes may disappear so that federal courts no longer can grant effective relief.” . . . When this happens, the issue is moot and a federal court has no power to decide the issue.”); *Flight Engineers' Int'l Ass'n, AFL-CIO, TWA Chapter v. Trans World Airlines, Inc.*, 305 F.2d 675, 680 (8th Cir. 1962) (“a cause is moot when the question presented for decision seeks a judgment upon some matter which, if the judgment was rendered, could not have any practical effect upon the then existing controversy”).

Here, Pfizer’s appeal is moot because neither this Court nor any other can grant Pfizer any effective relief and the appeal can have no practical effect. Upon the filing of the Satisfaction, Pfizer’s debt was extinguished. If Pfizer were to prevail on its appeal, it would obtain nothing: it does not owe Plaintiffs anything now and so cannot be relieved of an obligation it does not have. Nor could a successful appeal entitle Pfizer to a refund, because the judgment was satisfied and extinguished without a payment to refund. In the absence of any relief that can be obtained, there is nothing for this Court to adjudicate, and, under the authorities from this Court and the United States Supreme Court cited above, the appeal is moot. *See also Deposit Guar. Nat. Bank, Jackson, Miss. v. Roper*, 445 U.S. 326, 333 (1980) (case or controversy

is mooted by satisfaction unless other issues remain); *Fidelcor Mortgage Corp. v. Ins. Co. of N. Am.*, 820 F.2d 367, 370 (11th Cir. 1987) (where satisfaction resolved all issues, there was nothing left to appeal; appeal dismissed as moot); *Little v. Bowers*, 134 U.S. 547, 556 (1890) (where judgment was satisfied and extinguished, appeal was moot because “[n]either the affirmance nor the reversal of that judgment would make any difference as regards the controversy”).

Nor does the district court’s statement that Pfizer’s removal had no objectively reasonable basis keep this case alive. As noted above, the remand order itself is not appealable, has not been appealed, and cannot be reversed here. *See* 28 U.S.C. § 1447(d); *Farm Credit Bank of St. Paul*, 888 F.2d at 559. What Pfizer seeks here is an advisory opinion as to whether it had a reasonable basis for its removal. But, because nothing could turn on such an opinion – the case would remain remanded, and Pfizer’s obligations to the Plaintiffs (none) would not change – that is precisely the kind of hypothetical, advisory opinion that article III and the precedents of this Court and the United States Supreme Court prohibit.



## CONCLUSION

For the foregoing reasons, this Court should dismiss this appeal as moot.

Dated: June 22, 2016

Respectfully submitted,

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