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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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FIRST AMERICAN BANK, Trustee u/t/a Dated April 6, 2009, and Known as Trust No. 1-09-111,	)	
	)	Appeal from the Circuit Court of Cook County.
Plaintiff-Appellee,	)	
	)	No. 13 CH 03719
v.	)	
	)	The Honorable
EAST-WEST UNIVERSITY INC., a Wisconsin Not-For-Profit Corporation,	)	Franklin U. Valderrama,
	)	Judge Presiding.
Defendant-Appellant.	)	
	)	

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PRESIDING JUSTICE GORDON delivered the judgment of the court.  
Justices Hall and Reyes concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appeal is dismissed as moot where (1) defendant failed to seek a stay of the trial court's judgment denying its petition to vacate the court's order that established an easement over defendant's real property for the benefit of plaintiff's property and (2) plaintiff has since sold the parcel of real property, including the easement, to a third party.

¶ 2 Plaintiff First American Bank filed a declaratory judgment action against defendant East-West University, seeking the establishment of an easement over a parcel of property owned

by defendant. On August 14, 2014, the trial court entered a default judgment against defendant, declaring the existence of an easement over defendant's property to benefit plaintiff's property, which adjoined defendant's property and lacked vehicular access. Defendant filed a petition to vacate the default judgment against it pursuant to section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2014)), which the trial court denied. Defendant appeals, arguing that the trial court should have granted its petition to vacate. However, defendant failed to seek a stay of the trial court's judgment pending appeal and, since the entry of the trial court's judgment, plaintiff has sold its parcel of real property, which includes the easement, to a third party. For this reason, we dismiss the instant appeal as moot.

¶ 3

## BACKGROUND

¶ 4

### I. Complaint

¶ 5

On February 7, 2013, plaintiff filed a complaint for declaratory judgment against defendant, seeking the establishment of an easement over defendant's property. The complaint alleges that plaintiff and defendant owned two adjoining parcels of real estate in Chicago, Illinois, both of which were used as parking lots; plaintiff's parcel is referred to by the parties as "East Parcel," while defendant's parcel is referred to as "West Parcel." West Parcel bordered East 9th Street and Wabash Avenue, while East Parcel lacked any vehicular access; it was bordered on the north and south by condominium and office buildings, was bordered on the east by Michigan Avenue,<sup>1</sup> and was bordered on the west by defendant's property.

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<sup>1</sup> Under section 17-4-0503-D of the Chicago Zoning Ordinance and Land Use Ordinance, the segment of Michigan Avenue running from Oak Street south to Roosevelt Road is designated as a pedestrian street. Chicago Zoning Ordinance and Land Use Ordinance § 17-4-0503-D (added May 26,

¶ 6 The complaint alleges that the two parcels were originally under common ownership, by Chicago Title Land Trust Company, as trustee under a trust agreement dated September 9, 1998, and known as Trust No. 1106328 (Chicago Title). Chicago Title entered into a contract to sell the property to Renaissance Development Group, LLC (Renaissant), in October 2005, which, in turn, entered into a contract to sell West Parcel to defendant immediately upon the sale of the entirety of the property to Renaissance. The closings for both sales occurred on December 2, 2005, and Chicago Title conveyed title to East Parcel to Renaissance<sup>2</sup> and West Parcel to defendant on the same day.

¶ 7 The complaint alleges that, prior to the sale of the two parcels, Chicago Title executed a declaration of zoning rights concerning the property as a whole, which was to provide for the “efficient operation of the Property and to assure the harmonious relationship of Renaissance and Defendant.” The declaration, which was attached to the complaint, also provides that the property as a whole was subject to the provisions of the City of Chicago’s planned development ordinance, which was also attached to the complaint and required that development of the property “shall be made under single ownership or under single designated control.” As part of the planned development ordinance, a “Ground Level Site/Landscape Plan” showed an access corridor running from East 9th Street across West Parcel to East Parcel. The complaint alleges that at the time it acquired title to West Parcel, defendant had “notice and actual knowledge” of the declaration.

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2004). Section 17-4-0504-G requires that vehicle access to lots located along pedestrian streets must come from an alley, and no curb cuts or driveways are allowed from a pedestrian street. Chicago Zoning Ordinance and Land Use Ordinance § 17-4-0504-G (added March 9, 2005). Thus, there was no vehicular access to East Parcel via Michigan Avenue.

<sup>2</sup> Plaintiff became the owner of East Parcel after the foreclosure and sale of East Parcel on September 6, 2012.

¶ 8 The complaint further alleges that in the contract to purchase West Parcel, which was attached to the complaint, defendant made a covenant “run[ning] with the land” that provided that, “from and after the date of this Agreement and continuing after the closing date if necessary Purchaser shall promptly take all steps and execute all documents requested by Seller (at Seller’s expense) \*\*\* to enable Seller to develop the portion of Seller’s property which Seller will continue to own following the Closing as a condominium development pursuant to its proposed plans and specifications consistent with Exhibit E.” Accordingly, the complaint alleges that after the conveyance of West Parcel, Renaissance requested defendant to execute a recordable easement agreement to establish the access corridor. However, defendant declined to execute the easement agreement.

¶ 9 The complaint alleges that after it became the owner of East Parcel, plaintiff also made demand on defendant to provide the access easement for the benefit of East Parcel. However, defendant again declined to provide the access easement. Consequently, plaintiff filed suit, seeking the establishment of an easement across West Parcel to provide East Parcel vehicular access to East 9th Street. The complaint alleges that such an access easement was intended by defendant and Renaissance “as a present and perpetual easement for the benefit of the East Parcel at the time of the conveyances of the East and West Parcels” from Chicago Title. The complaint further alleges that “[w]ithout the Access Easement, the East Parcel will have no reasonable means of vehicular and pedestrian access.”

¶ 10 On April 16, 2013, defendant filed an appearance and answer. However, this answer was ultimately stricken without prejudice on June 17, 2014, as a sanction because defendant failed to comply with a number of plaintiff’s discovery requests.

¶ 11

## II. Motion for Default Judgment

¶ 12

On August 12, 2014, plaintiff filed a motion for default judgment due to defendant's failure to file an answer. The proposed order attached to the motion provided a "non-exclusive, irrevocable and perpetual easement for ingress and egress" over West Parcel for the benefit of East Parcel which would provide vehicular and pedestrian access to East 9th Street. The proposed order also granted a second easement over West Parcel for the benefit of East Parcel which would provide pedestrian and vehicular access to Wabash Avenue. Both easements would "run with the Defendant's Parcel and the Plaintiff's Parcel and shall be binding upon and inure to the benefit of the Defendant and its successors and assigns as well as the Plaintiff and its successors and assigns." On August 14, 2014, the trial court entered the proposed order, a copy of which was to be sent to defendant's attorney of record. The order was recorded in the Cook County Recorder's Office on August 22, 2014.

¶ 13

## III. Petition to Vacate Default

¶ 14

On August 28, 2015, defendant, through new counsel, filed a petition to vacate the default judgment pursuant to section 2-1401 of the Code. In the petition, defendant claimed that, although it was represented by counsel at all times, it did not become aware that a default judgment had been entered against it until a third party provided a copy of the judgment on July 8, 2015. Up until that point, defendant "was under the impression that [counsel] was actively defending it from the allegations in the Complaint." After discovering that judgment had been entered, defendant "promptly started looking for new counsel," which it retained on August 7, 2015. Defendant claimed that "[h]ad [defendant] been properly advised by its counsel, the Judgment order would not have been entered, or it would

have been timely vacated.” Accordingly, defendant requested that the default judgment be vacated.

¶ 15 Defendant claimed that all requirements for vacating a petition under section 2-1401 were satisfied. First, it claimed that it had a meritorious defense, as there was no easement granted through the purchase documents and there was no easement by necessity. Additionally, defendant claimed that it exercised due diligence in presenting its defenses in the original case and in the filing of the 2-1401 petition, as defendant’s former counsel actively concealed the status of the case from defendant and plaintiff had taken no steps to enforce the judgment such that defendant would be placed on notice of the entry of the judgment.

¶ 16 Defendant also claimed that the judgment order was void because the trial court granted relief in excess of what was requested in the complaint, namely, granting a second easement that would provide access to Wabash Avenue.

¶ 17 On September 16, 2015, plaintiff filed a motion to dismiss defendant’s 2-1401 petition under section 2-615 of the Code (735 ILCS 5/2-615 (West 2014)), arguing that defendant had not shown due diligence in bringing the petition or in the underlying court proceedings, nor did defendant have a meritorious defense.

¶ 18 In its response to plaintiff’s motion to dismiss, defendant alternatively argued that even if the trial court found that due diligence had not been demonstrated, justice required the default judgment to be vacated because defendant had been misled by its counsel and reasonably believed that its case was being properly handled.

¶ 19 On December 1, 2015, the trial court denied plaintiff’s motion to dismiss defendant’s 2-1401 petition. The trial court found that the judgment order was not void because the court had personal jurisdiction over defendant and subject matter jurisdiction over the underlying

action. The court further found that the due diligence requirements should not be relaxed based on the conduct of defendant’s counsel because “[m]ere failure of counsel is not a sufficient reason to relax the due diligence requirement of section 2-1401.” However, the trial court found that plaintiff’s complaint sought only an easement to East 9th Street and not an easement to Wabash Avenue and found “that the fact that the order of default judgment—drafted by counsel for Plaintiff—awarded Plaintiff relief in excess of that which was requested in the Complaint warrants relaxing the due diligence requirements in the circumstances of this case. Thus, having relaxed the due diligence requirements of section 2-1401 based on equitable considerations, the Court deems the due diligence requirements of section 2-1401 satisfied.” The court also found that defendant “has sufficiently alleged meritorious defenses to Plaintiff’s Complaint.” Accordingly, the trial court denied plaintiff’s motion to dismiss the 2-1401 petition.

¶ 20 On February 23, 2016, the trial court granted in part and denied in part defendant’s 2-1401 petition “for the reasons stated on the record in open court.”<sup>3</sup> The trial court’s order provides:

“1. Defendant’s Petition is granted in part and denied in part for the reasons stated on the record in open court.

2. The portion of the relief in the default judgment with respect to the Wabash Avenue Easement granted in favor of Plaintiff and against Defendant pursuant to the Court’s Order of Judgment Declaring Easements dated August 14, 2014 was not included in the *ad damnum* of Plaintiff’s Complaint.

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<sup>3</sup> There is no transcript or bystander’s report of the hearing on the 2-1401 petition contained in the record on appeal.

3. Under *Dils v. Chicago*, 62 Ill. App. 3d 474, 481-82 (1st Dist. 1978), the relief granted in the default judgment with respect to the Wabash Avenue Easement is void. Accordingly, the Court grants Defendant's Petition with respect to the portion of the relief in the default judgment with respect to the Wabash Avenue Easement granted in favor of Plaintiff and against Defendant pursuant to the Court's Order of Judgment Declaring Easements dated August 14, 2014.

4. The Court denies the remainder of Defendant's Petition, including Defendant's request that the Court vacate the entirety of the default judgment and, specifically, Defendant's request that the Court vacate the East 9th Street Easement on the basis that Defendant has failed to establish the prerequisites to relief under section 2-1401. Specifically, the Court finds that Defendant has failed to establish due diligence. Additionally, as the Court has vacated the portion of the relief granted in the default judgment with respect to the Wabash Avenue Easement on the basis that it is void, the Court finds that there is no basis to relax the due diligence standard."

¶ 21

#### IV. Appeal

¶ 22

On March 23, 2016, defendant filed a notice of appeal.

¶ 23

On May 24, 2016, plaintiff filed a motion before this court to dismiss the appeal as moot. The motion states that on April 22, 2016, plaintiff sold its right, title, and interest to East Parcel, "including the right, title, and interest to the East 9th Street Access Easement," to 1000 South Michigan Equities LLC, a third-party purchaser with no involvement in the underlying case or its appeal. The motion further states that defendant did not seek, and therefore did not perfect, a stay of the judgment denying its 2-1401 petition. Consequently, the motion claims that under Illinois Supreme Court Rule 305(k) (eff. July 1, 2004), the

third-party purchaser's rights in the easement are free and clear from any claims from defendant. Therefore, the motion argues that "1000 South Michigan Equities LLC has a protected interest in the Easement, and any reversal or modification of the judgment concerning the Easement will not affect 1000 South Michigan Equities LLC's right, title, or interest in or to the Easement," rendering defendant's appeal moot. Attached to the motion to dismiss the appeal was a copy of the trustee's deed granting 1000 South Michigan Equities LLC "all of [plaintiff's] right, title and interest, if any, in" East Parcel. The trustee's deed specifically states that "[t]he Real Estate conveyed by this Trustee's Deed is conveyed SUBJECT TO: \*\*\* (c) all recorded declarations, covenants, conditions, restrictions and easements; \*\*\* Together with the tenements and appurtenances thereunder belonging."

¶ 24

In response to plaintiff's motion to dismiss the appeal, defendant "[did] not dispute" that plaintiff sold its interest in the easement or that "the new owner of the East 9th Street Easement would not be bound by any reversal of the trial court that would otherwise do away with the East 9th Street Access Easement." However, defendant argued that the appeal was not rendered moot because "[g]iven the plain language of [Supreme Court Rule 305(k)], while anyone who acquires title to the property during the pendency of this appeal will not be impacted by a reversal or modification of the judgment, such immunity would not be granted to any person who subsequently obtained title *after* the judgment is modified as a result of the appeal." (Emphasis in original.) Thus, defendant argues that "in the event that this Court were to reverse the trial court's declaration concerning the East 9th Street Access Easement, Defendant concedes that such a ruling would not affect or otherwise interfere with the Buyer's interest in the East 9th Street Access Easement. However, if/when the Buyer ultimately conveys the parcel to a future buyer, that future buyer *would* be bound by this

Court’s ruling because it would not have acquired interest in the parcel ‘*after the judgment becomes final and before the judgment is stayed.*’ ” (Emphasis in original.) (quoting Ill. S. Ct. R. 305(k) (July 1, 2004)). Accordingly, defendant argued that “[w]hile the issue has become moot for Plaintiff and the Buyer, the controversy is still very much ripe for Defendant and all of its future prospective neighbors.”

¶ 25 On June 7, 2016, we ordered the motion to be taken with the case.

¶ 26 ANALYSIS

¶ 27 On appeal, defendant argues that the trial court erred in not relaxing the due diligence requirements in connection with its 2-1401 petition. However, we agree with plaintiff that the instant appeal is moot due to the subsequent sale of plaintiff’s property to a third-party purchaser.

¶ 28 “A case on appeal is normally considered moot ‘where the issues raised below no longer exist because events subsequent to the filing of the appeal make it impossible for the reviewing court to grant the complaining party effectual relief.’ ” *Goodman v. Ward*, 241 Ill. 2d 398, 405 (2011) (quoting *Hossfeld v. Illinois State Board of Elections*, 238 Ill. 2d 418, 423-24 (2010)). “As a general rule, courts in Illinois do not decide moot questions, render advisory opinions, or consider issues where the result will not be affected regardless of how those issues are decided.”<sup>4</sup> *In re Alfred H.H.*, 233 Ill. 2d 345, 351 (2009). In the case at bar, plaintiff argues that its sale of East Parcel renders the instant appeal moot because defendant failed to seek a stay of the judgment denying the 2-1401 petition that sought to vacate the order granting the easement across West Parcel to East 9th Street. We agree.

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<sup>4</sup> There are exceptions to the mootness doctrine, but defendant does not argue that any of them apply. See *In re Donald L.*, 2014 IL App (2d) 130044, ¶ 19 (setting out three recognized exceptions to the mootness doctrine).

¶ 29 Illinois Supreme Court Rule 305 (eff. July 1, 2004) governs the stay of judgments pending appeal. Under Rule 305(b), “on notice and motion, and an opportunity for opposing parties to be heard, the [trial] court may \*\*\* stay the enforcement of any” nonmoney judgment or other appealable order. Ill. S. Ct. R. 305(b) (eff. July 1, 2004). Rule 305(k), which is entitled “Failure to Obtain Stay; Effect on Interests in Property,” provides the consequence of not seeking a stay:

“If a stay is not perfected within the time for filing the notice of appeal, or within any extension of time granted under subparagraph (c) of this rule, the reversal or modification of the judgment does not affect the right, title, or interest of any person who is not a party to the action in or to any real or personal property that is acquired after the judgment becomes final and before the judgment is stayed; nor shall the reversal or modification affect any right of any person who is not a party to the action under or by virtue of any certificate of sale issued pursuant to a sale based on the judgment and before the judgment is stayed. This paragraph applies even if the appellant is a minor or a person under legal disability or under duress at the time the judgment becomes final.” Ill. S. Ct. R. 305(k) (eff. July 1, 2004).

Thus, Rule 305(k) requires that “(1) the property passed pursuant to a final judgment; (2) the right, title and interest of the property passed to a person or entity who is not part of the proceeding; and (3) the litigating party failed to perfect stay of judgment within the time allowed for filing a notice of appeal.” *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 523-24 (2001).

¶ 30 In the case at bar, defendant does not dispute any of these elements. Defendant does not dispute that it failed to seek a stay of the trial court’s judgment denying defendant’s 2-1401

petition, which left in place the order granting the easement to East 9th Street and also does not dispute that plaintiff subsequently sold East Parcel, with the easement, to a third-party purchaser who was not a party below and is not a party to the instant appeal. Accordingly, under the plain terms of Rule 305(k), “the reversal or modification of the judgment does not affect the right, title, or interest” of the current owner. Ill. S. Ct. R. 305(k) (eff. July 1, 2004). Indeed, defendant affirmatively admits this point. Thus, since any action by this court would not have any effect on the existence of the easement, the appeal is rendered moot. See *Steinbrecher*, 197 Ill. 2d at 523 (noting that, “[i]f this court extends [the purchaser] Rule 305(j) [(now Rule 305(k))] protection, the issue is moot and any judgment or reversal by a reviewing court is without effect”).

¶ 31           However, defendant argues that the instant appeal is not moot because a reversal by this court *would* affect the “right, title, or interest” of any subsequent purchaser of East Parcel. In other words, defendant concedes that the current owner owns East Parcel and its appurtenant easement across West Parcel, but argues that, in the event that we reverse the trial court’s judgment and the current owner later sells the property, the future owner would be purchasing only East Parcel itself, not the easement. Defendant cites no authority in support of this novel reading of Rule 305(k) and we do not find this argument persuasive.

¶ 32           “An easement is a right or a privilege in the real estate of another, [citation] and, when exercised in connection with the occupancy of other land, it is said to be appurtenant thereto. [Citation.]” *Beloit Foundry Co. v. Ryan*, 28 Ill. 2d 379, 388 (1963). “[A]n easement is a privilege in land existing distinct from the ownership of the land, and is an estate or interest in itself[.]” *Mueller v. Keller*, 18 Ill. 2d 334, 340 (1960) (citing *Boland v. Walters*, 346 Ill. 184, 188 (1931)). “An easement appurtenant runs with the land and may be transferred.”

*Hahn v. County of Kane*, 2012 IL App (2d) 110060, ¶ 11 (citing *Kankakee County Board of Review v. Property Tax Appeal Board*, 226 Ill. 2d 36, 48 (2007)). “An easement appurtenant passes by conveyance of the land to which it is annexed, even without being expressly mentioned, and the servient estate continues to be subject thereto until such right is terminated or abandoned.” *Beloit Foundry*, 28 Ill. 2d at 388; *Hahn*, 2012 IL App (2d) 110060, ¶ 11. “[E]asement rights pass to and are binding upon all subsequent grantees of the land.” *527 S. Clinton, LLC v. Westloop Equities, LLC*, 2014 IL App (1st) 131401, ¶ 35.

¶ 33 In the case at bar, the current owner of East Parcel purchased the property along with the easement appurtenant to that property, which provided vehicular and pedestrian access to East Parcel from East 9th Street. As noted, the current owner would be entitled to that easement “until such right is terminated or abandoned” (*Beloit Foundry*, 28 Ill. 2d at 388). The easement granted by the trial court was a “non-exclusive, irrevocable and perpetual easement for ingress and egress” over West Parcel for the benefit of East Parcel which would provide vehicular and pedestrian access to East 9th Street. The order establishing the easement specifically noted that it would “run with the Defendant’s Parcel and the Plaintiff’s Parcel and shall be binding upon and inure to the benefit of the Defendant and its successors and assigns as well as the Plaintiff and its successors and assigns.” Accordingly, when the current owner purchased East Parcel, it did so with the expectation of a perpetual easement over West Parcel that would provide access to East 9th Street. Again, defendant does not dispute this point and affirmatively admits that the current owner has the right to the easement.

¶ 34 However, defendant’s position on appeal is that the easement would *not* exist with respect to any future owners. This position, however, attempts to circumvent the plain

language of Rule 305(k), which states that “the reversal or modification of the judgment does not affect the right, title, or interest” of the current owner. Ill. S. Ct. R. 305(k) (eff. July 1, 2004). Taking defendant’s theory to its logical conclusion, when the current owner attempts to sell the property, it will not be able to sell the easement as an appurtenance to East Parcel, even though the easement currently exists by virtue of court order. As noted, “an easement is a privilege in land existing distinct from the ownership of the land, and is an estate or interest in itself[.]” *Mueller*, 18 Ill. 2d at 340. As such, it has value to the owner of the property for whose benefit the easement runs. See, e.g., *Kankakee County Board of Review*, 226 Ill. 2d at 54 (noting that “[w]ere the easements at issue here appurtenant, naming the subject property as the beneficiary of the right to place wells and pipes on the land of others, then such right would be attributed to the subject property and assessable” by the Kankakee County Board of Review for tax purposes); *Metropolitan Water Reclamation District of Greater Chicago v. Terra Foundation for American Art*, 2014 IL App (1st) 130307, ¶ 61 (noting that, “[h]istorically, tort damages have been allowed for interferences with easements”); *Village of Round Lake v. Amann*, 311 Ill. App. 3d 705, 719 (2000) (noting that, in the eminent domain context, “when the dominant estate holds an easement for ingress and egress that is exclusive, loss of the right to exclude may constitute a compensable taking”). Under defendant’s view, despite having the right to the easement, the current owner cannot sell it to another. As noted, “easement rights pass to and are binding upon all subsequent grantees of the land.” *527 S. Clinton*, 2014 IL App (1st) 131401, ¶ 35. Thus, by restricting the ability of the current owner to sell its full interest in East Parcel—which includes the easement—a reversal of the judgment granting the easement<sup>5</sup> would, in fact, “affect the right, title, or

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<sup>5</sup> Technically, a reversal by this court does not mean that there is no easement but only means that the trial court’s default judgment establishing the easement would be vacated. Litigation of the matter

interest” of the current owner, in contravention to Supreme Court Rule 305(k). Defendant provides no authority that would permit us to circumvent the clear language of Rule 305(k) in this way. Accordingly, due to defendant’s failure to seek a stay of the judgment pending appeal, the current owner holds a “non-exclusive, irrevocable and perpetual easement for ingress and egress” over West Parcel, and this easement will transfer to any subsequent grantee. The instant appeal is therefore rendered moot, as any decision by this court will have no effect on the status or rights of the parties below. See *Goodman*, 241 Ill. 2d at 405 (“A case on appeal is normally considered moot ‘where the issues raised below no longer exist because events subsequent to the filing of the appeal make it impossible for the reviewing court to grant the complaining party effectual relief.’ ” (quoting *Hossfeld*, 238 Ill. 2d at 423-24)).

¶ 35 While the instant result may seem harsh, we note that our supreme court has indicated that “[p]ublic policy of this state supports our conclusion” (*Steinbrecher*, 197 Ill. 2d at 528), as “Illinois law protects the integrity and finality of property sales” (*Steinbrecher*, 197 Ill. 2d at 528). Our supreme court has further noted that “[t]his finality and permanence is relied on by both purchasers and others in connection with the purchase of the property, including financial institutions, title insurers, realtors, and tenants. Absent this policy, no person would purchase real property involved in a judicial proceeding, if afterwards he incurred the hazard of losing the property due to facts unknown to him at the time of the sale. A party may avoid the harshness of this rule by complying with the procedural mechanisms available, such as a motion to stay enforcement of the judgment and sale.” *Steinbrecher*, 197 Ill. 2d at 528-29.

There is nothing in the instant case to suggest that the sale to the current owner was not an

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would then continue in order to determine whether there was an easement, either by agreement or through necessity. Defendant’s position, of course, is that there was no easement. Thus, if defendant prevailed below, the current owner would be left without an easement at the time it attempted to sell the property.

arms'-length transaction, and defendant raises no issues suggesting that the sale was in any way improper. See *Steinbrecher*, 197 Ill. 2d at 549-54 (Freeman, J., dissenting) (criticizing majority opinion due to the defendant's allegations suggesting that the sale was fraudulent). Defendant could have sought a stay of the judgment, but did not do so. The plain language of Rule 305(k) dictates the result of that failure and, consequently, we must dismiss the instant appeal as moot.

¶ 36

#### CONCLUSION

¶ 37

The instant appeal is dismissed as moot, since defendant did not seek a stay of the trial court's judgment pending appeal and the property at issue was subsequently sold to a third-party purchaser.

¶ 38

Appeal dismissed.