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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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JESUS CHAVEZ,	)	Appeal from the Circuit Court
	)	of Du Page County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 15-L-817
	)	
ROBERT LEONE, DENEEN LEONE, and	)	
R&R PROPERTIES,	)	Honorable
	)	Brian McKillip,
Defendants-Appellees.	)	Judge, Presiding.

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JUSTICE HUDSON delivered the judgment of the court.  
Justices Schostok and Spence concurred in the judgment.

**ORDER**

¶ 1 *Held*: Plaintiff's claim was moot where damages were based on the outcome of a workers' compensation case that had been vacated and remanded for new proceedings.

¶ 2 Plaintiff, Jesus Chavez, appeals a decision of the circuit court of Du Page County dismissing his complaint against defendants, Robert Leone, Deneen Leone, and R&R Properties. The trial court dismissed plaintiff's complaint in accordance with section 2-615 of the Civil Practice Law (735 ILCS 5/2-615 (West 2016)) and entered judgment on the pleadings. For the reasons that follow, we affirm.

¶ 3 Plaintiff's complaint alleges fraud. To state a claim for fraud, a plaintiff must plead facts that, if proven, would satisfy these elements: "(1) a false statement of material fact; (2) defendant's knowledge that the statement was false; (3) defendant's intent that the statement induce the plaintiff to act; (4) plaintiff's reliance upon the truth of the statement; and (5) plaintiff's damages resulting from reliance on the statement." *Connick v. Suzuki Motor Co., Ltd.*, 174 Ill. 2d 482, 496 (1996). Plaintiff's claim is based on allegedly fraudulent testimony given by defendants Robert Leone and Deneen Leone in a workers' compensation case. The Illinois Workers' Compensation Commission (Commission) denied plaintiff's request for benefits under the Illinois Workers' Compensation Act (820 ILCS 305/1 *et seq.* (West 2010)) in that case.

¶ 4 Regarding the fifth element of fraud, damages, plaintiff alleges the following: "As a direct and proximate result of one or more of the foregoing false statements, the Commission ruled in favor of Respondent and against Jesus, and caused Jesus to incur substantial costs on appeal, caused him to go into debt, has negatively affected his credit rating, and caused him not to receive his workers compensation benefits." However, plaintiff previously appealed the Commission's decision. On appeal, we concluded the arbitrator conducted an improper extra-judicial investigation. *Chavez v. R&R Properties*, 2016 IL App (2d) 151160WC-U, ¶ 5. We ultimately ruled:

"Accordingly, in the interests of justice, we deem it best that the parties begin anew.

We remand this cause to the Commission. On remand, the Commission is to assign a different arbitrator to conduct a new arbitration hearing. The order of the trial court and the Commission's decision are both vacated."

Given that plaintiff's primary claim of damages is based on the outcome of the workers' compensation case, we fail to see how plaintiff could prove damages at this point.

¶ 5 We note that, in addition to plaintiff's primary claim for damages—loss of the underlying workers' compensation case—plaintiff also seeks compensation for the cost of the appeal in the

underlying case, going into debt, and a negative effect on his credit rating. These are not properly recoverable damages. First, as for the costs of prosecuting the appeal in the underlying case, it is well established that the American rule mandates that parties generally bear their own costs of litigation. *Morris B. Chapman and Associates, Ltd. v. Kitzman*, 197 Ill. 2d 560, 572 (2000). Only where a party's tortious conduct causes the second party to incur costs outside the original action may the second party recover such costs. See *Goldstein v. DABS Asset Manager, Inc.*, 381 Ill. App. 3d 298, 303 (2008). Thus, since the appeal in question was part of the underlying workers' compensation action, plaintiff's attempt to recover the cost of the appeal is improper. *Id.* Second, that plaintiff has gone into debt and that his credit rating has suffered are merely restatements of his primary claim. Quite simply, if plaintiff prevailed in the underlying suit, he would have secured an award and those consequences would not have followed. The same is true if they are viewed as a recast of his claim about the costs of the appeal—if he had not expended sums on the appeal, he would not have gone into debt and his credit rating would be better. Either way, plaintiff would be attempting to recover damages that we have determined are not recoverable.

¶ 6 Generally, when intervening events render it impossible for a court to grant effectively relief, a case is moot. *In re Tekela*, 202 Ill. 2d 282, 292-93 (2002). Here, if we were reverse and remand, plaintiff could never prove damages, as the underlying judgment that formed the basis of plaintiff's claim for damages is, in essence, a nullity. See *Village of Riverside v. Kuhne*, 335 Ill. App. 547, 553 (1948). As the relief plaintiff seeks—damages for fraud flowing from the vacated case—is not a possible consequence of this appeal, it is moot.

¶ 7 Having determined that this appeal is moot, our proper course is to affirm the trial court's dismissal of this case. Though the trial court articulated a different basis for the dismissal, dismissal is the proper disposition. We, of course, may affirm on any basis regardless of the trial court's actual reasoning. *Reyes v. Walker*, 358 Ill. App. 3d 1122, 1124 (2005). In *Felzak v. Hruby*, 226 Ill. 2d 382, 392 (2007), the trial court lost the ability to enforce a civil contempt order while that order was being

appealed. The reviewing court held that under such circumstances, “the appropriate disposition of the case, and the action we take here, is to vacate the judgments of the lower courts and remand the cause with instructions to dismiss.” *Id.* This case is similar; however, there is no need for a remand, as the trial court has already dismissed the case, albeit on other grounds.

¶ 8 Parenthetically, we further note that plaintiff’s fraud complaint is barred by the doctrine of election of remedies. This doctrine applies when the possibility of double compensation is threatened. *Streams Condominium No. 3 Ass’n v. Bosgraf*, 219 Ill. App. 3d 1010, 1015 (1991). Plaintiff successfully prosecuted an appeal in the workers’ compensation action, the remedy for which was a new arbitration hearing. Plaintiff cannot now seek damages for alleged fraud in the very same workers’ compensation action. That is, plaintiff cannot use what transpired in the original arbitration hearing as the basis for damages in a fraud claim and as the rationale for holding a new hearing.

¶ 9 Accordingly, we affirm the trial court’s dismissal of plaintiff’s complaint. As explained above, it is moot.

¶ 10 Affirmed.