Note: In the case title, an asterisk (*) indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2018-142

OCTOBER TERM, 2018

David Buckley, Administrator c.t.a. of the Estate of John J. Fanelli v. Stetson Enterprises, Inc.*	}	APPEALED FROM:
	}	
	}	Superior Court, Windham Unit,
	}	Civil Division
	}	
	}	DOCKET NO. 145-3-13 Wmcv
		Trial Judge: Michael R. Kainen

In the above-entitled cause, the Clerk will enter:

Defendant Stetson Enterprises, Inc., appeals from the trial court's order granting plaintiff's motion to "enforce" a final judgment of foreclosure.[1] Stetson raises various procedural challenges to the court's decision. We affirm.

The record indicates the following. Plaintiff held a mortgage on land owned by Stetson on both sides of Route 5 in Putney, Vermont. At some point, plaintiff released the easterly portion of the property from the mortgage and Stetson owned this property outright. Plaintiff later initiated foreclosure proceedings on the westerly portion of the property. While the foreclosure proceedings were pending, Stetson sold the westerly land to Lillian Billewicz, subject to plaintiff's mortgage. By separate deed in connection with the same conveyance, Stetson conveyed to Billewicz an appurtenant wastewater easement benefitting the westerly parcel and burdening Stetson's easterly parcel. This easement allowed for the continued use of a built wastewater mound system on the easterly portion of the property, which Stetson still owned, servicing a building on the westerly portion of the property. The deed conveyed rights to Billewicz as well as her heirs, successors, and assigns, and it was to run with the land. The Stetson-Billewicz easement deed was not recorded.

Pursuant to a stipulation signed by all parties, as well as by Billewicz as successor-in-interest to title to the westerly portion subject to the foreclosure proceeding, the court issued a decree of strict foreclosure with respect to the westerly portion in January 2014. The redemption amount was $300,000 plus any taxes paid after November 19, 2013, and the redemption date was July 11, 2014. The stipulated judgment order described the mortgaged property subjected to the foreclosure as the westerly land and "all easements, appurtenances thereto."

Stetson later asserted that the wastewater easement had not passed to plaintiff through the foreclosure. In October 2016, plaintiff moved to "enforce" the parties' settlement agreement,

[1] John Fanelli died during these proceedings and the substituted plaintiff is David Buckley, Administrator c.t.a. of the Estate of John J. Fanelli.

seeking permission to execute and record an easement deed to itself on Stetson's behalf. The court denied the motion.

Plaintiff moved for reconsideration, and the court granted its request. The court found it undisputed that Stetson granted Billewicz an appurtenant easement that ran with the land. See Rowe v. Lavanway, 2006 VT 47, ¶ 12, 180 Vt. 505 (mem.) ("An appurtenant easement is one that serves a parcel of land rather than a particular person, and a construction that an easement is appurtenant is favored."). This meant that the easement was automatically conveyed to whoever held title to the dominant estate, whenever title to that land was transferred. See Barrett v. Kunz, 158 Vt. 15, 18 (1992) ("[A]n appurtenant easement passes with subsequent conveyances, even if the specific language of the [easement] is not repeated."). Plaintiff was the successor-in-interest to Billewicz and thus, pursuant to the foreclosure decree, plaintiff owned the wastewater easement. In other words, the court explained, there was no need for Stetson to "grant" an easement to plaintiff; the easement given to Billewicz was automatically conveyed to plaintiff when plaintiff took title to the westerly lands. Stetson moved for reconsideration, which was denied. This appeal followed.

Stetson first argues that the case is moot because plaintiff no longer owns the property in question. The trial court rejected this argument below, citing plaintiff's assertion that one condition of the sale of the property was that plaintiff escrow $25,000 to resolve the "easement issue." This assertion was based on a signed filing by the attorney for the Administrator of the Estate of John Fanelli and based on his personal knowledge. The court found that this condition showed that plaintiff had a cognizable interest in having this matter resolved in its favor, and thus, the case was not moot.

We agree. "A case becomes moot . . . when there no longer is an actual controversy or the litigants no longer have a legally cognizable interest in the outcome of the case." Paige v. State, 2017 VT 54, ¶ 7, 171 A.3d 1011. The conditional sale and the existence of plaintiff's escrowed funds provided plaintiff with a legally cognizable interest in the outcome of this case; the court had the ability to "grant effective relief." See id. (explaining that case becomes moot when the court "can no longer grant effective relief" (quotation omitted)). The signed statement from the Administrator's attorney, based on the attorney's personal knowledge, supported the court's finding as to the conditional sale and the $25,000 put in escrow.

Stetson next asserts that plaintiff's motion to enforce was actually an untimely motion to amend the foreclosure judgment. Stetson maintains that there was nothing to "enforce" here, and emphasizes that plaintiff never filed with the court the settlement agreement it was purportedly seeking to enforce. In a related vein, he also appears to argue that this is an impermissible appeal of a foreclosure judgment.[2]

The trial court rejected these arguments below and we agree with its decision. Although captioned as a motion to enforce a settlement agreement, in practical effect plaintiff's motion

[2] To the extent that Stetson asserts that the court lacked authority to order the recording of a copy of the easement deed between Stetson and Billewicz, he offers no argument to support this assertion beyond the single sentence above. This argument is inadequately briefed and we do not address it. See V.R.A.P. 28(a) (stating that brief shall contain concise statement of case and specific claims of error, contentions of appellant, and citations to authorities, statutes and parts of record relied on); Johnson v. Johnson, 158 Vt. 160, 164 n.* (1992) (explaining that Court will not address contentions so inadequately briefed as to fail to minimally meet standards of V.R.A.P. 28(a)).

sought enforcement of the court's final foreclosure judgment, issued pursuant to the parties' stipulation. The final judgment order provided in relevant part that "[t]he property which is the subject of this foreclosure . . . is . . . [and includes] all improvements . . . and all easements, appurtenances thereto." Plaintiff sought to enforce the plain language of this order and establish its right to the wastewater easement pursuant to the foreclosure order. Plaintiff was not seeking to reopen the foreclosure judgment or modify its terms. We find no error in the court's decision.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Marilyn S. Skoglund, Associate Justice

Beth Robinson, Associate Justice