

MAY 13 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GEORGE A. BROOKS and BROOKS  
INDUSTRIES, INC.,

Plaintiffs - Appellants,

MICHAEL JOSEPH TREVELLINE,

Appellant,

v.

MOTSENBOCKER ADVANCED  
DEVELOPMENTS, INC.; et al.,

Defendants - Appellees.

No. 09-55449

D.C. No. 3:07-cv-00773-MMA-  
NLS

ORDER\*

Appeal from the United States District Court  
for the Southern District of California  
Michael M. Anello, District Judge, Presiding

Submitted April 9, 2010 \*  
Pasadena, California

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\* This order is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Before: D.W. NELSON and REINHARDT, Circuit Judges, and WHALEY, Senior District Judge.\*\*\*\*

Michael Trevelline appeals the revocation of his pro hac vice status as a sanction in the underlying consolidated cases of *Brooks, et al. v. Motsenbocker Advanced Developments, Inc., et al.*, S.D. Cal. Nos. 07-cv-773 MMA (NLS) & 08-cv-378 BTM (NLS). The revocation of Trevelline's pro hac vice status was with regard to that action only, and that action has now settled. Trevelline's appeal is moot, as there is no longer any case in which to restore him as counsel. Trevelline was not a party to the underlying settlement agreement; that agreement, and the resulting mootness of his appeal, were beyond his control. "A party who seeks review of the merits of an adverse ruling, but is frustrated by the vagaries of circumstance, ought not in fairness be forced to acquiesce in the judgment." *U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18, 25 (1994). Accordingly, we vacate the order revoking Trevelline's pro hac vice status. *See id.* at 25 & n.3; *see also United States v. Munsingwear, Inc.*, 340 U.S. 36, 40 (1950); *Dilley v. Gunn*, 64 F.3d 1365, 1370 (9th Cir. 1995).

**VACATED**

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\*\*\* The Honorable Robert H. Whaley, United States District Judge for the Eastern District of Washington, sitting by designation.