

STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Tanya A. Gee, Circuit Court Judge

Appellate Case No. 2015-002532

**RECEIVED**

JAN 11 2017

**SC Court of Appeals**

Christ Central Ministries.....Respondent,

v.

City of Columbia Board of Zoning Appeals.....Appellant.

**MEMORANDUM IN OPPOSITION TO  
RESPONDENT’S MOTION TO DISMISS APPEAL**

**BACKGROUND**

Appellant agrees and acquiesces with the statement of facts presented in the first paragraph of Respondent’s Memorandum of Points and Authorities in Support of Motion to Dismiss Appeal. Appellant did issue to Respondent a zoning permit on February 19, 2016, allowing the construction of the changeable copy billboard pursuant to the ruling of the lower court. The permit was issued after a discussion with Respondent that it would seek to have potential lost profits from the billboard paid as a bond to the Clerk of Court pending the outcome of the appeal. The bond sought would have been significant (\$5,000/month) for the pendency of the appeal in this matter. Appellant is a municipality and opted to issue the permits pursuant to

the lower court's order until this case could be heard on the merits, and with knowledge that the court would have the authority to order the sign removed if it indeed was erected prior to a final decision by the court.

### ARGUMENT

Respondent argues that Appellant's appeal is moot. That is incorrect. A matter becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy. *Collins Music Co., Inc. v. IGT, et al.*, 365 SC 544 (2005). Respondent presents an argument that because they have erected the sign, there is no legal effect to be reached by a decision for the Appellant. That is also incorrect. The filing of the appeal to this Court did not stay the decision of the Circuit Court. The Appellant's issuance of the zoning and building permits were issued pursuant to the Circuit Court's order and after discussions with Respondent that it intended to pursue a bond equivalent to the missed profits it would have incurred during the pendency of the appeal (\$5,000.00/month). As the City of Columbia is a municipality which is self-insured, the permits were issued in avoidance of having to pay a bond to the clerk's office pending this appeal. The appeal was timely filed and Respondent was on notice well prior to making the decision to incur the costs of erecting a new sign prior to a final decision in this case. Respondent is attempting to take advantage of the system. Appellant argues that a determination in Appellant's favor would serve to reverse the decision of the Circuit Court and instruct Respondent to remove the after erected sign.

Respondent erred in referencing *Mathis v. S.C. State Highway Dept.* In that case the issue was regarding a period of suspension. Once a period of time has passed, there is nothing the Court can do to have a legal effect on the controversy, which does make the issue moot. In

the present case, there is no intangible time frame. Respondent can remove the sign just as it erected it, which would absolutely have a “practical legal effect upon the existing controversy.”

In the *Seabrook* case that Respondent cites, the key issue regarding mootness revolves around a procedural due process claim and the actions of a city’s council in a zoning type dispute. In the present case, there are no issues regarding due process and no parallels with the cited case. A ruling by this court for the Appellant would not be advisory. Respondent is under the impression that the removal of the sign is not an option since the action of erecting it has already taken place. We disagree.

A case is considered moot when it is impossible for the reviewing court to grant effectual relief. *Curtis v. State*, 345 SC 557, 567-68 (2001). There are also three exceptions to the mootness doctrine:

- (1) An appellate court can retain jurisdiction if the issue is capable of repetition yet evading review;
- (2) An appellate court can decide cases of urgency to establish a rule for future conduct in matters of important public interest; and
- (3) If the decision by the trial court can affect future events or have collateral consequences to the parties, the appellate court can take jurisdiction.

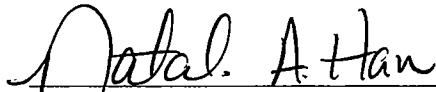
*Curtis* at 568.

Appellant contends that the issues in this case are not moot, however, even if the Court finds them to be moot, the first exception listed above would apply. Respondent and any other similarly situated company would have the constant ability to circumvent the Appellant’s ordinance by simply filing an appeal each time it was denied a permit. Both Appellant and Respondent agree that the sign in question was a “legal non-conforming sign” under the

Appellant's code. The ordinance involved in this matter does not allow for a "legal non-conforming sign" to be replaced once it has been removed unless the conditions of an exception are made. Respondent would be able to circumvent the conditions of the exception and continuously remove non-conforming signs in whatever manner they so choose by just filing an appeal when the permit for a new sign erection is denied. The controversy would continuously evade review. A decision for the Appellant in this matter would not be advisory and would set a precedent regarding the applicable law.

### CONCLUSION

The controversy in this appeal is not moot and even if it were, there is an exception to the mootness doctrine that applies and would serve to continue to have the court hear the case. If this court were to rule that the trial court erred, it would set a legal precedent and the trial court could order Respondent to remove the sign.

  
\_\_\_\_\_  
NATALIE ARMSTRONG HAM  
Office of the City Attorney  
PO Box 667  
Columbia, SC 29202  
(803) 737-4242  
ATTORNEY FOR APPELLANT

January 10, 2017  
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Tanya A. Gee, Circuit Court Judge

**RECEIVED**

JAN 11 2017

2015-CP-40-3357

**SC Court of Appeals**

Christ Central Ministries ..... Respondent,

v.

City of Columbia Board of Zoning Appeals ..... Appellant.

**PROOF OF SERVICE**

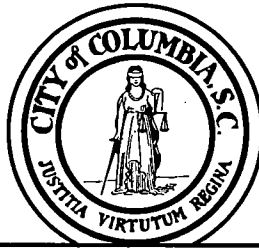
The undersigned hereby certifies that she served a copy of the MEMORANDUM IN OPPOSITION TO RESPONDENT’S MOTION TO DISMISS APPEAL upon the Attorneys below by placing copies in the United State mail, first class postage prepaid to them at their offices as indicated below on this 11<sup>th</sup> day of January, 2017:

Jay Bender, Esquire  
Baker Ravenel & Bender, LLP  
PO Box 8057  
Columbia, SC 29202

J. Derrick Jackson, Esquire  
Tobias G. Ward, Jr., PA  
Post Office Box 50124  
Columbia, SC 29250

January 11, 2017  
Columbia, South Carolina

  
NATALIE ARMSTRONG HAM  
Attorney for Appellant



We Are Columbia

Office of the City Attorney  
Post Office Box 667 • Columbia, SC 29202 • (803) 737-4242 • Fax (803) 737-4250

January 11, 2017

**RECEIVED**

JAN 11 2017

**SC Court of Appeals**

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

RE: Christ Central Ministries v. City of Columbia Board of Zoning Appeals  
Court of Appeals Case No.: 2015-002532

Dear Ms. Kitchings:

Enclosed for filing, please find the original and nine (9) copies the *Memorandum in Opposition to Respondent's Motion to Dismiss Appeal* along with the *Proof of Service* in the above referenced case. Please return the extra copies to the courier of this letter.

By copy of this letter, I am serving same on the attorneys for the Respondent and Intervenor.

Sincerely,

Natalie A. Ham  
Assistant City Attorney

NAH/jlh  
Enclosure(s) as Stated

cc: (w/encl.): Jay Bender, Esquire  
J. Derrick Jackson, Esquire