

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

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JUL 17 2017

E. C. Burnett, III and Roger Couch, Circuit Court Judges **S.C. SUPREME COURT**

APPELLATE CASE NO. 2012-212473
OPINION NO. 4970

Carolina Convenience Stores, Inc.,
Harry Lancaster, Jr., as Power of
Attorney for Harry Lancaster, Sr.
and Willard Oil Company, Inc.,

Petitioners,

v.

City of Spartanburg, SC,

Respondent.

MOTION TO DISMISS APPEAL AND VACATE PRIOR ORDERS

David L. Morrison, Esquire
7453 Irmo Drive, Suite B
Columbia, South Carolina 29212
Phone: (803) 661-6285
Fax: (803) 661-6289
E-mail: david@dmorrison-law.com

Columbia, South Carolina

July 17, 2017

The parties have settled this matter, with the condition that each party be allowed to

present its position to the Court with regard to the continuation of this appeal. Respondent contends that since the case is resolved the appeal must be dismissed and prior orders vacated. Appellant contends that the appeal should continue.

This case involves the appeal of an order granting summary judgment in an inverse condemnation action seeking money damages for the destruction of a building during successful life saving efforts by police in a hostage situation. Prior orders have been issued by the Court of Appeals and by the Supreme Court. The matter is now pending before the Court after the grant of a petition for re-hearing.

The parties have resolved this case and have announced that to the Court. Respondents now make this motion to dismiss the appeal as it is now moot, and to vacate prior orders since the matter is still under consideration.

Dismissal of Appeal

Here, no controversy remains between the parties. No controversy remains that will afford any relief to the Petitioner. Respondent contends that the appeal is moot. Ordinarily, an “appellate court will not pass on moot and academic questions or make an adjudication where there remains no actual controversy.” *Jackson v. State*, 331 S.C. 486, 489 S.E.2d 915 (1997). An actual case or controversy must exist at all stages of the litigation.

“**Moot appeals** differ from unripe **appeals** in that **moot appeals** result when intervening events **render** a **case** nonjusticiable. See Jean Hoefler Toal, Shahin Vafai & Robert A. Muckenfuss, *Appellate Practice in South Carolina* 122 (1999). “A **case** becomes **moot** when judgment, if **rendered**, will have no practical legal effect upon [the] existing controversy. This is true when some event occurs making it impossible for [the] reviewing Court to grant effectual relief.”

Mathis v. South Carolina State Highway Dep't, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973).

Typically, the settlement of a case renders any appeal moot. *Moore v. Hinson*, 107 S.C. 290 (1917); *South Carolina State Highway Dept. v. McKeown Food Store No. 9*, 174 S.E.2d 342 (1972). However, the courts do recognize three exceptions to the mootness doctrine;

In the civil context, there are three general exceptions to the mootness doctrine. First, an appellate court can take jurisdiction, despite mootness, if the issue raised is capable of repetition but evading review.” *Curtis v. State*, 345 S.C. 557, 568, 549 S.E.2d 591, 596 (2001); see also *Byrd*, 321 S.C. at 431–32, 468 S.E.2d at 864 (clarifying that South Carolina recognizes an exception to the mootness doctrine allowing the court to retain jurisdiction **638 when an issue is capable of repetition, yet evading review). “Second, an appellate court may decide questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest.” *Curtis*, 345 S.C. at 568, 549 S.E.2d at 596. “Finally, if a decision by the trial court may affect future events, or have collateral consequences for the parties, an appeal from that decision is not moot, even though the appellate court cannot give effective relief in the present **case**. *Id.*

Holden v. Cribb, 349 S.C. 132, 138, 561 S.E.2d 634, 637–38 (Ct. App. 2002).

None of the exceptions applies here. First, the case does not evade review. There is no contention that the events are terminated prior to appellate courts having the opportunity for review. Quite contrary, this case has been on review since 2009 and has resulted in two prior opinions. This clearly does not present a situation that is “capable of repetition, yet evades review”.

The third exception has no application here either. There is no collateral consequence to the parties that the continuation of this appeal will effect. There are no future events between the parties that would be effected.

The second exception is matters of manifest and imperative urgency that affect the public interest where a rule needs to be established. This is not a matter that is likely to recur. This is a unique situation that has never been litigated in South Carolina before and is not likely to be litigated again. In his dissenting opinion, Justice Kittredge wrote, “I would allow this admittedly distinctive and rare inverse condemnation claim to proceed, while acknowledging the overwhelming majority of law enforcement actions would not give rise to a constitutional takings claim.”

Given the uniqueness of the situation, there is no manifest and imperative urgency to adopt a rule to this limited scenario when the parties have resolved their differences. This is not an ongoing or repeating scenario. The second exception has no application either.

For these reasons, this appeal should be dismissed.

Vacation of prior Orders

The Court of Appeals and this Court have previously issued opinions in this matter. The validity of those opinions is questionable as the matter is currently pending review on a petition for re-hearing. As the matter has been settled and the appeal should be dismissed, the Respondent has no objection to the prior orders in this unique circumstance being vacated and moves the Court to do so in light of the pendency of the matter on re-hearing.

MORRISON LAW FIRM, LLC

By: 

David L. Morrison, (Fed. #3581)

7453 Irmo Drive, Suite B

Columbia, South Carolina 29212

Phone: (803) 661-6285

Fax: (803) 661-6289

E-mail: david@dmorrison-law.com

ATTORNEYS FOR THE RESPONDENT

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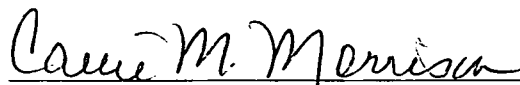
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CERTIFICATE OF SERVICE

The undersigned employee of Morrison Law Firm, LLC, attorney for the Defendant, does hereby certify that service of the Motion to Dismiss Appeal and Vacate Prior Orders in the above-captioned action was made upon all counsel of record by mailing these documents the 17th day of July, 2017, addressed as follows:

Charlie J. Hodge, Esquire
Ryan T. Langley, Esquire
Post Office Box 2765
Spartanburg, South Carolina 29304



Callie M. Morrison

Columbia, South Carolina