

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

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Sep 24 2020

SC Court of Appeals

Appeal from the
ADMINISTRATIVE LAW
COURT

The Honorable Shirley C. Robinson, Administrative Law Judge

Appellate Case No. 2020-
00837 Docket No. 19-ALJ-
17-0001-CC

Eighteen Ink, LLC, d/b/a Group Therapy.....Respondent,

v.

South Carolina Department of Revenue.....Respondent,

and

Thomas R. Gottshall, April C. Lucas, and Michael Drennan....Intervenors, Appellants.

MOTION TO DISMISS APPEAL

On April 29, 2020, the South Carolina Administrative Law Court (“ALC”) entered an order finding the location of Respondent Eighteen Ink’s establishment (“Group Therapy”) was suitable for the renewal of its on-premises beer and wine permit and restaurant liquor by the drink license for a period ending August 31, 2020, and ordering Respondent SCDOR to issue such licenses. Appellants filed this appeal seeking to challenge the ruling of the ALC. Group Therapy now moves to dismiss the appeal because the expiration of Group Therapy’s permit and license has rendered the issues on appeal moot.

ARGUMENT

Appellants' appeal must be dismissed because there is no justiciable controversy before this court, as this issue has been rendered moot by the expiration of Group Therapy's permit and license.

"Before any action can be maintained, a justiciable controversy must be present." *Sloan v. Greenville Cty.*, 356 S.C. 531, 546, 590 S.E.2d 338, 346 (2003). "A justiciable controversy is a real and substantial controversy appropriate for judicial determination, as opposed to a dispute or difference of a contingent, hypothetical or abstract character." *Id.* "The concept of justiciability encompasses the doctrines of ripeness, mootness, and standing." *Id.* at 547, 590 S.E.2d at 346.

"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 [c]ourt to grant effectual relief." *Id.* at 552, 590 S.E.2d at 349 (alterations in original) (quoting *Curtis v. State*, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001)). "The function of appellate courts is not to give opinions on merely abstract or theoretical matters, but only to decide actual controversies injuriously affecting the rights of some party to the litigation." *Id.* "Accordingly, cases or issues which have become moot or academic in nature are not a proper subject of review." *Id.* Thus, an appellate court "will not pass on moot and academic questions or make an adjudication where there remains no actual controversy[.]" *id.*, rather, "[when] the questions presented by an appeal are moot, *the appeal will be dismissed.*" *Nolas Trading Co. v. S.C. Dep't of Health and Env'tl. Control*, 289 S.E. 345, 348, 345 S.E.2d 507, 508 (Ct. App. 1986) (emphasis added).

Here, the justiciable controversy originally appealed from was whether Group Therapy’s location was suitable for the renewal of an existing on-premises beer and wine permit and an existing restaurant liquor by the drink license, which would expire on August 31, 2020. However, Group Therapy’s permit and license, which was approved by the Court has now expired.¹ *See Sloan*, 356 S.C. at 552, 590 S.E.2d at 349 (“Moot appeals . . . result when intervening events render a case nonjusticiable.”). Thus, a determination that Group Therapy’s location is not suitable for the renewal of its permit and license will have no practical effect because the renewed license period has now ended. *See id.* (“A case becomes moot when judgment, if rendered, will have no practical legal effect upon [the] existing controversy.” (alteration in original) (quoting Curtis, 345 S.C. at 567, 549 S.E.2d at 596)). Rather, any decision issued by this court would address only the hypothetical issue of whether Group Therapy’s location is suitable for the renewal of *an existing permit and license*. *See id.* (“A justiciable controversy is a real and substantial controversy which is ripe and appropriate for judicial determination, *as distinguished from a contingent, hypothetical or abstract dispute*.” (emphasis added) (quoting *Pee Dee Elec. Coop., Inc. v. Carolina Power Light Co.*, 279 S.C. 64, 66, 301 S.E.2d 761, 762 (1983))); *id.* (“*The function of appellate courts is not to give opinions on merely abstract or theoretical matters*, but only to decide actual controversies injuriously affecting the rights of some party to the litigation.” (emphasis added)). Accordingly, the issue on appeal has become moot and this court should dismiss the appeal. *See id.* (“[C]ases or issues which have become moot or academic in nature *are not a proper subject of review*.” (emphasis added)); *Nolas Trading Co.*, 289 S.E. at 348, 345 S.E.2d at 508 (“W[hen] the questions presented by an appeal are moot, *the appeal will be dismissed*.” (emphasis added)).

¹ Group Therapy applied for a renewed license in July 2020 that would cover the period is September 1, 2020, to August 31, 2022. This renewal application was conditionally denied because of protests by the Intervenors, Appellants.

CONCLUSION

Based on the fact that the issues in this appeal are now moot, this appeal should be dismissed.

Respectfully submitted:



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CERTIFICATE OF SERVICE

I, Erica Preston, Paralegal to the attorneys for the Respondent Eighteen Ink, LLC, certify that on September 24, 2020, served the following document to the below mentioned persons:

Document: Respondent Eighteen Ink, LLC's Motion to Dismiss Appeal

Served:	Patrick McCabe	Christopher P. Kenney
	SC Department of Revenue	Richard A. Harpootlian
	Post Office Box 12265	Post Office Box 1090
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