

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Ralph King Anderson III, Administrative Law Judge

Case No. 20-ALJ-07-0108-CC
Appellate Case No. 2020-001610

RECEIVED
Apr 07 2021
SC Court of Appeals

Lexington County Health Services
District Inc., d/b/a Lexington Medical Center, Petitioner/Respondent,

v.

South Carolina Department of Health and
Environmental Control, Prisma Health-
Midlands, Providence Hospital, LLC
d/b/a Providence Health, Providence Health
Northeast, Providence Health Fairfield,
and Kershaw Hospital, LLC d/b/a
Kershaw Health Medical Center, Respondents,

OF WHICH

Prisma Health-Midlands is the Appellant-Respondent,
and

Providence Hospital, LLC d/b/a Providence Health,
Providence Health Northeast, Providence Health
Fairfield, and Kershaw Hospital, LLC
d/b/a Kershaw Health Medical Center are the Respondents-Appellants.

MOTION TO WITHDRAW APPEAL AND VACATE APPEALED ORDERS

This is an appeal from the Administrative Law Court (ALC). It arose under the COPA program created by the Health Care Cooperation Act (the COPA Act) and administered by

Respondent South Carolina Department of Health and Environmental Control (DHEC).¹ Appellant Prisma Health - Midlands (PHM) moves to withdraw its appeal and vacate the DHEC Decision and the appealed ALC Orders, because the seller terminated the asset purchase agreement that allowed PHM to purchase the assets that were subject to the DHEC Decision. The termination of the asset purchase agreement moots the issues in this case. The DHEC Decision and the appealed ALC Orders should be vacated to avoid any potential collateral consequences such as res judicata, collateral estoppel, or future use as persuasive authority.²

Under the COPA Act, hospitals may enter a “cooperative agreement” to cooperate in providing healthcare in the relevant market. The legislative purpose behind the COPA Act is to provide “state action” protection when DHEC approves and regulates a cooperative agreement under the COPA Act by issuing a “certificate of public advantage” (a COPA). A COPA may provide immunity from civil and criminal liability under state and federal antitrust laws.

In 1997, DHEC approved the cooperative agreement creating Appellant PHM through its predecessor and issued a “certificate of public advantage” with conditions under the COPA Act pursuant to which PHM operates. In 2019, PHM negotiated a letter of intent with LifePoint Health, LLC, for the purchase of Providence Hospital, LLC and Kershaw Hospital, LLC, which have several healthcare assets, including Providence Hospital in downtown Columbia, Providence Northeast³ in Richland County and Kershaw Health in Camden, Kershaw County, South Carolina. PHM requested that DHEC make these assets subject to and covered by the 1997 certificate of public advantage (COPA-97-01) and its conditions. In 2020, DHEC determined that the assets to

¹ See generally S.C. Code Ann. §§ 44-7-500 to -590 (2017).

² If the appealed orders are vacated, DHEC’s Decision must also be vacated to avoid the anomaly of DHEC’s approval of the asset purchase acquisition being undisturbed.

³ The freestanding emergency department (Providence Health Fairfield) in Fairfield County is licensed under Providence Northeast.

be purchased by PHM would be covered by and become part of COPA-97-01 and the amended conditions when purchased by PHM. PHM and LifePoint executed the asset purchase agreement immediately after DHEC issued its Decision. Respondent Lexington Medical Center petitioned the ALC for a contested case hearing; the ALC reversed the DHEC Decision; PHM appealed to this Court.

The asset purchase agreement between LifePoint and PHM included a termination clause that gave LifePoint sole discretion to terminate the agreement for several reasons. After the first anniversary date of the asset purchase agreement, LifePoint exercised this discretion and terminated the asset purchase agreement.⁴ As a result, the issues raised in this appeal are moot, because there is no longer any need for any determination by DHEC, the ALC, or this Court in this matter. *Sloan v. Greenville County*, 670 S.E.2d 663, 667 (S.C. App. 2009) (“A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy. Mootness also arises when some event occurs making it impossible for the reviewing court to grant effectual relief.” (citations omitted)).

When an appeal “becomes moot through circumstances beyond the control of the appellant,” the court should vacate the appealed order, because it would be inequitable to deny the appellant any review of the order. *Byerly v. South Carolina Nat’l Bank Corp.*, 438 S.E.2d 233 (S.C. 1993), *aff’g* 427 S.E.2d 715 (S.C. App. 1993). Here, PHM had no control over LifePoint’s decision to exercise its contractual right to terminate the asset purchase agreement. It would be inequitable to deny PHM appellate review of the important issues in this case. Thus, this Court should vacate DHEC’s Decision and the ALC’s Orders.⁵

⁴ PHM had sought expedited treatment in this case since June 2020.

⁵ Research indicates that the appellate courts routinely vacate the appealed order when an appeal becomes moot for any number of reasons. *E.g., Beaufort County Bd. of Educa. v. Lighthouse Charter Sch. Comm.*, 576 S.E.2d 180 (S.C. 2003) (appeal dismissed and appealed order vacated when General Assembly substantially amends the subject statute

The law recognizes three exceptions to the mootness doctrine, including situations where the trial court's decision "may affect future events, or have collateral consequences for the parties." *Sloan v. Greenville County*, 670 S.E.2d 663 (S.C. App. 2009). The easiest way to avoid this problem is to vacate the appealed orders. Absent that, however, the appeal should continue to avoid any effect on future events or collateral consequences. Here, if this Court does not vacate DHEC's Decision and the ALC's Orders, this Court should retain the appeal and consider the issues to avoid potential collateral consequences such as res judicata, collateral estoppel, or use of the ALC Orders as persuasive authority in other administrative proceedings.

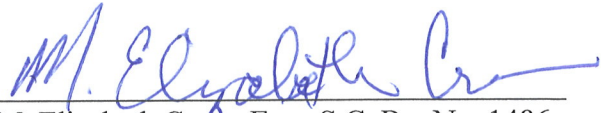
In sum, due to LifePoint's unilateral termination of the asset purchase agreement, this matter has become moot. Accordingly, DHEC's Decision and the appealed ALC Orders should be vacated, and the appeal should be dismissed as moot. In the alternative, if this Court does not vacate DHEC's Decision and the appealed ALC Orders, then this Court should retain this appeal and decide the issues presented therein. This is necessary to avoid the inequity of denying PHM any judicial review and to avoid potential collateral consequences such as res judicata, collateral estoppel, or use of the appealed Orders as persuasive authority in other administrative matters before the ALC.

CONCLUSION

For the reasons set forth above, PHM respectfully requests that the Court grant its "Motion to Withdraw Appeal and to Vacate Appealed Orders."

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during the appeal). The same is true when the Supreme Court has granted certiorari to review a decision by this Court, and the matter thereafter becomes moot. *E.g.*, *State v. Miller*, 762 S.E.2d 394 (S.C. 2014) (appellant dies during appeal), *vacating* 727 S.E.2d 32 (S.C. App. 2012); *Friends of McLeod, Inc. v. City of Charleston*, 682 S.E.2d 488 (S.C. 2009) (parties enter agreement that renders matter moot), *vacating* 658 S.E.2d 544 (S.C. 2008).



M. Elizabeth Crum, Esq., S.C. Bar No. 1486
lcrum@burr.com

Celeste T. Jones, Esq., S.C. Bar No. 3713
ctjones@burr.com

Pamela Baker, Esq., S.C. Bar No. 69413
pbaker@burr.com

Burr & Forman, LLP

Post Office Box 11390

Columbia, South Carolina 29211

(803) 799-9800

*Attorneys for Respondent/Appellant
Prisma Health-Midlands*

April 7, 2021
Columbia, SC

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OF WHICH

Prisma Health-Midlands is the Appellant-Respondent and
Providence Hospital, LLC d/b/a Providence Health, Providence
Health Northeast, Providence Health Fairfield, and Kershaw
Hospital, LLC d/b/a Kershaw Health Medical Center are the
Respondents-Appellants.

CERTIFICATE OF SERVICE

I, Donna O'Daniel, an employee of Burr & Forman, LLP, hereby certify that a true and correct copy of the **Motion to Withdraw Appeal and Vacate Appealed Orders** was served upon all counsel of record in the above-captioned matter, this 5th day of April 2021, as indicated and addressed as follows:

VIA EMAIL AND HAND DELIVERY

Jennifer J. Hollingsworth, Esq.
Shannon V. Lipham, Esq.
Hamilton B. Barber, Esq.
Cheryl D. Shoun, Esq.
Nexsen Pruet, LLC
1230 Main Street, Suite 700
Columbia, SC 29201
jhollingsworth@nexsenpruet.com
svlipham@nexsenpruet.com
HBarber@nexsenpruet.com
CShoun@nexsenpruet.com
LSmith@nexsenpruet.com
*Attorneys for Petitioner-Respondent
Lexington County Health Services District
Inc., d/b/a Lexington Medical Center*

VIA EMAIL

David B. Summer, Jr., Esq.
Faye A. Flowers, Esq.
Parker Poe Adams & Bernstein, LLP
1221 Main Street, Suite 1100
Columbia, SC 29201
davidssummer@parkerpoe.com
fayeflowers@parkerpoe.com
*Attorneys for Respondent-Appellants
Providence Hospital, LLC and Kershaw
Hospital, LLC
d/b/a Kershaw Health Medical Center*


Columbia, SC
April 7, 2021

VIA EMAIL

Kelly M. Jolley, Esq.
Ariail B. Kirk, Esq.
Jolley Law Group, LLC
810 Bellwood Road
Columbia, SC 29205
kjolley@jolleylawgroup.com
akirk@jolleylawgroup.com
*Attorneys for Petitioner-Respondent
Lexington County Health Services District
Inc., d/b/a Lexington Medical Center*

VIA EMAIL

Ashley C. Biggers, Esq.
Vito Wicevic, Esq.
Rita DeCarlis
**South Carolina Department of Health and
Environmental Control
Office of General Counsel**
2600 Bull Street
Columbia, SC 29201
biggerac@dhec.sc.gov
wicevivm@dhec.sc.gov
decarlrd@dhec.sc.gov



Donna O'Daniel