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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

DAVID E. HILL, Plaintiff/Appellant, v. CATALINA FOOTHILLS UNIFIED SCHOOL DISTRICT NO. 16, a political subdivision of the State of Arizona, Defendant/Appellee.	2 CA-CV 2011-0196 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. C20110026

Honorable Ted B. Borek, Judge

AFFIRMED

Law Office of David E. Hill, P.L.C.
David E. Hill — Tucson
In Propria Persona

DeConcini McDonald Yetwin & Lacy, P.C.
By John C. Richardson and Spencer A. Smith — Tucson
Attorneys for
Defendant/Appellee

E S P I N O S A, Judge.

¶1 In this action for declaratory and injunctive relief, plaintiff/appellant David Hill appeals from the trial court's entry of summary judgment in favor of defendant/appellee Catalina Foothills Unified School District No. 16 (CFSD). Hill raises a number of issues on appeal. Because the trial court correctly determined that this matter was rendered moot before it was submitted for decision, we affirm.

Factual Background and Procedural History

¶2 On appeal from a summary judgment, we view the evidence in a light most favorable to the party against whom judgment was entered, drawing all reasonable inferences in favor of that party. *Wallace v. Casa Grande Union High Sch. Dist. No. 82 Bd. of Governors*, 184 Ariz. 419, 424, 909 P.2d 486, 491 (App. 1995).[1] In November 2009, CFSD held a special bond election to raise funds for the acquisition and improvement of school facilities, including a school bus dispatch facility. Hill, who resides within the school district, filed a lawsuit alleging that CFSD had failed to comply with bond-election law and requesting that the trial court temporarily enjoin the improvement project, "determine and declare the permissible scope of the project . . . in terms of location, size, scope and total cost[,] and permanently enjoin the [project if] necessary" based on those findings. The trial court denied his preliminary injunction petition and subsequent motion for reconsideration, but Hill did not appeal at that time. Thereafter, the parties filed cross-motions for summary judgment and agreed to submit

[1]We decline CFSD's invitation to treat this matter as an appeal from a judgment entered pursuant to a bench trial and view the evidence in a light most favorable to upholding the trial court's ruling.

the matter for a decision on the existing record. The court entered summary judgment in favor of CFSD, concluding, *inter alia*, that the election procedures had been properly conducted, CFSD's use of bond proceeds was appropriate, and the matter was moot in any event because the improvement project had been completed. We have jurisdiction over Hill's appeal pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(1).

Discussion

¶3 We review *de novo* the trial court's entry of summary judgment, but will affirm if the disposition is correct for any reason. *Wallace*, 184 Ariz. at 424, 909 P.2d at 491. Hill presents eight issues for our review. Because we find one of those issues dispositive—whether the trial court erroneously concluded this matter is moot—we address it first.

¶4 "A case is moot when it seeks to determine an abstract question which does not arise upon existing facts or rights." *Contempo-Tempe Mobile Home Owners Ass'n v. Steinert*, 144 Ariz. 227, 229, 696 P.2d 1376, 1378 (App. 1985). A live case may become moot when, as a result of a change in circumstances, action by the court would no longer have any effect on the parties to the litigation. *Hall v. World Sav. & Loan Ass'n*, 189 Ariz. 495, 504, 943 P.2d 855, 864 (App. 1997); *see ASH, Inc. v. Mesa Unified Sch. Dist. No. 4*, 138 Ariz. 190, 191, 673 P.2d 934, 935 (App. 1983). Although in Arizona the mootness doctrine is prudential rather than jurisdictional, courts nevertheless generally will not consider moot cases. *Contempo-Tempe*, 144 Ariz. at 229, 696 P.2d at 1378.

¶5 The trial court correctly concluded that this case was moot because a decision on the merits would have no practical effect. In his complaint, Hill sought relief in three forms: (1) a preliminary injunction to halt the improvement project, (2) a declaration of the permissible scope of the project under law, and (3) a permanent injunction "as necessary." However, even if the trial court had found Hill legally entitled to any or all of the relief he requested, the court properly recognized it was too late to enjoin the improvements to the school bus facility because they had already been completed.

¶6 Two of our cases are particularly instructive. In *ASH, Inc.*, the petitioner, a school bus supplier, sought to invalidate a purchase contract between a school district and a different supplier, and to require the contract to be awarded to the petitioner instead. 138 Ariz. at 191, 673 P.2d at 935. The trial court denied relief and the petitioner appealed, but before all appellate briefs had been filed, the school district paid the other supplier for the buses, which the supplier delivered. *Id.* This court held that because the disputed contract had been fully performed, the relief sought by the petitioner would be futile and the lawsuit consequently was moot. *Id.* at 192, 673 P.2d at 936. The court also observed that "[b]y failing to obtain any interlocutory stay or injunction to enjoin performance of the disputed contract, [the petitioner] did not protect the status quo" and concluded that the failure to stay the contract's performance "made the issue of its propriety moot." *Id.*

¶7 By contrast, the petitioner in *Western Sun Contractors Co. v. Superior Court* prevented that matter from becoming moot by taking steps to preserve the status quo during the litigation. 159 Ariz. 223, 766 P.2d 96 (App. 1988). In that case, after a city had awarded a construction project to the contractor it had determined was the lowest bidder, the petitioner filed a special action in the superior court challenging the city's determination and requesting the contract be awarded to it instead. *Id.* at 225, 766 P.2d at 98. The petitioner obtained an interlocutory stay to prevent the city from proceeding on the contract and then, one day after the trial court denied relief, petitioned this court for special-action relief, obtained a stay at the appellate level, and was granted an accelerated briefing schedule. *Id.* at 226, 766 P.2d at 99. This court accepted jurisdiction, finding that "an appeal, if a stay were issued, would delay the public work with an increase in cost, and that if no stay were issued, the completion of the work would moot any relief." *Id.* at 227, 766 P.2d at 100. Relief ultimately was granted. *Id.* at 229, 766 P.2d at 102.

¶8 Here, as in *ASH, Inc.*, Hill failed to obtain a preliminary injunction or otherwise preserve the status quo during the pendency of the lawsuit. Although he petitioned the trial court to enjoin the construction, he did not seek review of the court's denial of his petition, unlike the petitioner in *Western Sun*. *See also* A.R.S. § 12-2101(A)(5)(b) (order denying injunction appealable). Thus, as in *ASH, Inc.*, the project was completed before the matter was submitted for the trial court's final decision, and "[f]ull performance of the contract has made the issue of its propriety moot." 138 Ariz. at 192, 673 P.2d at 936.

¶9 Hill's request that we interpret A.R.S. § 15-491, "if for no other reason than the fact [he] and other voters will know what may be in store for them when the next bond election rolls around," implicitly acknowledges that an interpretation of § 15-491 would have no effect in this litigation and amounts to a request for an advisory opinion, which appellate courts do not provide. *See Progressive Specialty Ins. Co. v. Farmers Ins. Co. of Ariz.*, 143 Ariz. 547, 548, 694 P.2d 835, 836 (App. 1985) ("It is not an appellate court's function to declare principles of law which cannot have any practical effect in settling the rights of litigants."); *see also Contempo-Tempe*, 144 Ariz. at 228-29, 696 P.2d at 1377-78 (matter moot where appeal reduced to advisory opinion). For all of these reasons, we conclude this matter is moot.

¶10 And, although Arizona cases have established certain exceptions under which courts may decide a case despite its mootness, we do not find that the circumstances of this case fall within those exceptions. Under one exception, the merits of a moot case may be considered if the issue presented is "'capable of repetition yet evad[es] review.'" *Contempo-Tempe*, 144 Ariz. at 230, 696 P.2d at 1379, *quoting Odle v. Imperial Ice Cream Co.*, 11 Ariz. App. 203, 205, 463 P.2d 98, 100 (1970). Although the issues involved in this case are capable of repetition, they do not necessarily evade review; had Hill appealed from the trial court's ruling denying his petition for a preliminary injunction, he might have prevailed and halted the project, preventing the matter from becoming moot. *Compare W. Sun*, 159 Ariz. at 227, 766 P.2d at 100, *with ASH, Inc.*, 138 Ariz. at 192, 673 P.2d at 936. Thus, this exception does not apply.

¶11 Under another exception, courts will consider "significant questions of public importance . . . [which] are likely to recur," even if the case in which the issue is raised is moot. *Big D Constr. Corp. v. Court of Appeals*, 163 Ariz. 560, 563, 789 P.2d 1061, 1064 (1990). This exception "usually involves an issue that will have broad public impact beyond resolution of the specific case." *Cardoso v. Soldo*, ___ Ariz. ___, ¶ 6, 277 P.3d 811, 814 (App. 2012). But Hill does not persuasively argue, nor do we find, that this case raises a question of public importance sufficient to disregard the mootness doctrine. *See id.* (public-importance exception inapplicable where arguments grounded in case-specific events); *cf. Fraternal Order of Police Lodge 2 v. Phx. Emp. Relations Bd.*, 133 Ariz. 126, 127, 650 P.2d 428, 429 (1982) (addressing moot question because important to "the hundreds of thousands of people living or working in Phoenix" and likely to recur).[2]

Conclusion

¶12 Because the improvement project at issue has been completed and a decision in this case would have no impact on the rights of the parties in this litigation, the trial court correctly determined that this matter is moot. The judgment is therefore affirmed. CFSD argues this appeal is frivolous and requests an award of its costs and attorney fees on appeal pursuant to Rule 25, Ariz. R. Civ. App. P., and A.R.S. § 12-2106.

[2]Even if the exception did apply, the meager argument in Hill's opening brief is insufficient to adequately develop the issues he has presented for our review. *See* Ariz. R. Civ. App. P. 13(a)(6) (opening brief shall include argument with respect to issues presented).

In our discretion, we decline to award attorney fees. CFSD is entitled to its costs on appeal, subject to compliance with Rule 21, Ariz. R. Civ. App. P.

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge