

Commonwealth of Kentucky
Court of Appeals

NO. 2014-CA-000462-MR

CITY OF LANCASTER, KENTUCKY,
AND LANCASTER CITY COUNCIL

APPELLANTS

v. APPEAL FROM GARRARD CIRCUIT COURT
HONORABLE C. HUNTER DAUGHERTY, JUDGE
ACTION NO. 13-CI-00360

BRENDA POWERS

APPELLEE

OPINION AND ORDER
DISMISSING

** ** * * * * *

BEFORE: DIXON, JONES AND NICKELL, JUDGES.

NICKELL, JUDGE: The City of Lancaster, Kentucky, and the Lancaster City Council have appealed from the Garrard County Circuit Court's reversal of the City Council's decision to remove Brenda Powers from her elected post as Mayor

of the City of Lancaster. Following a careful review, we have determined this matter is moot and must therefore be dismissed.

Powers was the Mayor of the City of Lancaster. Following an incident on October 31, 2013, a complaint was filed with the City Council regarding Powers' alleged pattern of hostile and unprofessional conduct and incidents seen as "an embarrassment to the City and to local government." In response to the complaint, and upon receiving preliminary evidence, the City Council conducted a public hearing to consider removing Powers as Mayor pursuant to KRS¹ 83A.040(9). At the conclusion of the hearing, at which Powers was represented by counsel, the City Council voted unanimously to remove Powers from her position on the basis of official misconduct. An interim Mayor was appointed shortly thereafter to serve out the remainder of Powers' term.

Powers appealed her removal to the Garrard Circuit Court which vacated the City Council's decision upon concluding substantial evidence did not support the City Council's conclusion to remove the Mayor for misconduct or willful neglect of her duties. The trial court concluded the City Council's action was thus arbitrary and capricious. That order was entered on March 14, 2014. The City appealed to our Court and briefing was concluded on December 5, 2014. In the intervening time period, a new Mayor was duly elected in the November 2014 General Election. Based on these facts, it is clear the issues presented in this appeal are now moot, and dismissal is required.

¹ Kentucky Revised Statutes.

A decision now of the matters of controversy over the office would be to decide an abstract question disconnected from any actual relief which could be granted, because, if the judgment should be reversed, no actual relief could be granted by the circuit court touching the matter in controversy. Even if, pending an appeal, an event occurs which makes a decision unnecessary, or places matters in such shape that no actual relief can be afforded any one, the appeal will be dismissed as moot. The doctrine that this court will not entertain an appeal when only an abstract question is to be decided, and from the determination of which no practical relief can follow, or when, during the pendency of an appeal, an event occurs which renders the decision unnecessary, the appeal will be dismissed, has been upheld in numerous decisions. *King v. Tilford*, 70 S.W. 1064, 24 Ky. Law Rep. 1270; *McGill v Bartman*, (Ky.) 68 S.W. 1100; *Pittinger v Gratz*, 157 Ky. 401, 163 S.W. 203; *Ballard County Drainage Com'rs v. Henderson*, 154 Ky. 350, 157 S.W. 700; *Benton v. Clay*, 192 Ky. 497, 233 S.W. 1041; *Winslow v. Gayle*, 172 Ky. 126, 188 S.W. 1059; *Thompson v. Thompson*, 188 Ky. 811, 224 S.W. 350; *Williams v Howard*, 193 Ky. 848, 237 S.W. 1062; *Wheeler v. Patrick*, 192 Ky. 529, 233 S.W. 1054; *Board of Education v. Jones*, 194 Ky. 603, 240 S.W. 65.

Logan County Fiscal Court v. Childress, 196 Ky. 1, 243 S.W. 1038, 1039 (1922).

The function of the Courts is “to try cases and not legal questions.” *West Virginia Water Service Co. v. Dillon*, 252 Ky. 365, 67 S.W.2d 471, 471 (1934) (citations omitted).

[R]egardless of how important the question is, or however extensive in its public significance, the appeal will be dismissed when it appears that the questions involved have passed beyond the jurisdiction of this court to consider because of becoming moot

Richardson v. Mason Const. Co., 235 Ky. 17, 29 S.W.2d 615, 616 (1930). Such is obviously the case in the matter before us as any Opinion of this Court on the merits would affect the rights of neither party.

The only relief requested in this matter was voiding the decision of the City Council and reinstatement of Powers to her post as Mayor of the City of Lancaster. However, the term of office to which she seeks reinstatement has expired and a new officer has been elected to the position. We can do nothing to affect Powers' rights now that the term has expired and no debate exists as to the Mayor presently serving a four-year term. *Jones v. Forgy*, 750 S.W.2d 434, 436 (Ky. 1988). *See also Hawkins v. Parsons*, 234 Ky. 771, 29 S.W.2d 37 (1930).

While it is apparent that appellant has thus been deprived of a statutory right of appeal through no fault of his own, and that he, as well as the community, has suffered a great injustice, if, as he claims, he has sustained his charges, and although both parties insistently urge us to review the evidence and render a decision thereon, the fact remains that our decision now would be of no force or effect whatever, except as it might arouse feelings of gratification or chagrin to the parties and their partisans. Such a purpose we must decline to serve; and, as the appeal very clearly presents only moot questions, it must be and is dismissed.

Williams v. Howard, 193 Ky. 848, 237 S.W. 1062, 1063 (1922) (internal citations omitted).

On the strength of the foregoing, and in the absence of a justiciable controversy, this appeal must be, and hereby is, DISMISSED as MOOT.

ALL CONCUR.

ENTERED: March 11, 2016

/s/ C. Shea Nickell
JUDGE, KENTUCKY COURT OF APPEALS

BRIEFS FOR APPELLANTS:

J. Hadden Dean
Danville, Kentucky

BRIEF FOR APPELLEE:

Bradley Guthrie
Harrodsburg, Kentucky