

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 CA 2206

YVETTE ALEXANDER AND TRUDY M. WHITE

VS.

CITY OF BATON ROUGE/ PARISH OF EAST BATON ROUGE; AND
LON NORRIS, CLERK/ JUDICIAL ADMINISTRATOR

JUDGMENT RENDERED: NOV - 7 2007

ON APPEAL FROM THE
NINETEENTH JUDICIAL DISTRICT COURT
DOCKET NUMBER 532,048, DIVISION M
PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA

HONORABLE KAY BATES, JUDGE

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LON NORRIS, IN HIS OFFICIAL CAPACITY AS
CLERK/JUDICIAL ADMINISTRATOR,
BATON ROUGE CITY COURT

McClendon, J. Conours

BEFORE: GAIDRY, MCDONALD AND MCCLENDON, JJ.

MCDONALD, J.

Following a request for clarification on the identity of the appointing authority of the Baton Rouge City Court, the Parish Attorney for the City of Baton Rouge and Parish of East Baton Rouge issued an opinion on October 15, 2004, addressed to Baton Rouge City Court Judge Yvette Alexander and the court's Clerk and Judicial Administrator Lon Norris. The Parish Attorney concluded that the Clerk and Judicial Administrator was vested with authority to handle personnel matters for classified and unclassified employees, he was the court's appointing authority.

On January 24, 2005, at a judges' administrative meeting, the judges decided by majority vote to operate the court in accord with the Parish Attorney's opinion that the Clerk and Judicial Administrator was its appointing authority.

Thereafter, on May 5, 2005, the plaintiffs, Baton Rouge City Court Judges Yvette Alexander and Trudy M. White, filed suit in the Nineteenth Judicial District Court, naming as defendants the City of Baton Rouge and East Baton Rouge Parish and Mr. Norris, in his capacity as Clerk and Judicial Administrator. They alleged that the three other Baton Rouge City Court Judges, Laura Davis, Alex Wall and Suzan Ponder, appointed Lon Norris as Clerk and Judicial Administrator of the Baton Rouge City Court on February 27, 2002, by a vote of 3 to 2, but that the Plan of Government of the Parish of East Baton Rouge and the City of Baton Rouge required the appointment to be unanimous.

The plaintiffs also asserted that the Clerk and Judicial Administrator usurped the authority of the Baton Rouge City Court Judges, and sought a temporary restraining order enjoining Mr. Norris from making an appointment for the position of Deputy Senior Clerk in the Criminal and

Traffic Department, and also sought to vacate his previous appointment of the Deputy Senior Clerk. The plaintiffs asked for a judgment declaring the judges the appointing authority for the Baton Rouge City Court; declaring that the appointment of the Clerk and Judicial Administrator must be by unanimous vote of the judges; and further, declaring Mr. Norris's appointment null and void.

On May 25, 2005, the judges, by a vote of 3 to 2, amended the Clerk and Judicial Administrator's job description to clarify that he was the court's appointing authority.

The defendants filed exceptions of lack of subject matter jurisdiction, no cause of action, and in the alternative, peremption. They asserted that the judges had clearly delegated their appointing authority to Mr. Norris; thus, the issue of whether the judges or Mr. Norris was the appointing authority was moot, and the district court lacked subject matter jurisdiction. The defendants further contended that meetings of the judges were not public meetings; therefore, there was no requirement for a roll call vote to be made or placed on the record, and there was no cause of action stated in that regard. The defendants asserted there was no requirement for a unanimous vote for actions by the judges, citing Rule 3 of En Banc Order, Rules of Court, Baton Rouge City Court, effective November 1, 2000. The defendants also asserted that attorney fees were not recoverable because there was no contractual or statutory authority for attorney fees.

In the alternative, the defendants asserted that even if the Open Meetings Law, La. R.S. 42:4.1, did apply, any action taken in violation of the Open Meetings Law was only voidable, and must be voided within 60 days under La. R.S. 42:9. They argued that the suit was filed more than 3

years after the action was taken, and thus the action was perempted. The defendants asked that the suit be dismissed.

A hearing on the exceptions was held on November 17, 2005. Thereafter, the trial court ruled that there was no justiciable issue because the issue of the appointing authority was decided by the Baton Rouge City Court when it subscribed to the Parish Attorney's legal opinion and ratified that decision by amending Mr. Norris's job description; thus, the case was moot and the court had no subject matter jurisdiction. The plaintiffs are appealing that judgment, and make the following assignments of error:

1. The Trial Court erred in declaring, as "moot", this dispute where no "official" action occurred and no superceding legislative enactment ensued.
2. The Trial Court erred in determining the dispositive issue of who is the "appointing authority" at Baton Rouge City Court, outside the ambit of a full and complete trial on declaratory relief (especially where one of the plaintiffs was not even in town), yet within the confines of an [e]xception.
3. The Trial Court erred in refusing to afford any weight or allow introduction of the Guillot memorandum advising Norris to [back date] and alter City-Parish documents to be submitted to the Equal Employment Opportunity Commission so that the Michelli appointment would not look so "white", as said memorandum was clearly relevant as the imprimatur for this litigation as well as serving as a clear exception to the "mootness" doctrine.
4. The Trial Court erred in refusing to issue injunctive relief and, further, by refusing to determine the issue of contempt.
5. The Trial Court erred in failing to afford the plaintiffs a full trial on the merits and, in response to the defendants' [e]xceptions, an opportunity to amend prior to dismissal of their claims entirely.
6. The Trial Court erred in assessing the plaintiff Judges with "costs" when they appear in this litigation in their official capacity.

ASSIGNMENT OF ERROR NO. 1

In its written reasons for judgment, the trial court found:

This Court finds that Rule 3 of En Banc Order, Rules of Court, Baton Rouge City Court, effective November 1, 2000 clearly states that a majority of the judges must decide how to effectively operate the City Court. The rule provides, in pertinent part, “it is necessary for administrative policy reasons to coordinate and operate the divisions as one unified court to the maximum extent possible. Accordingly, except as to decisions and judgments of each judge in cases specifically assigned to him or in other litigious matters submitted to him for decision as part of the specific duties assigned to him by these rules, the decision and judgment of a majority of the judges then actively pursuing their duties shall be necessary to administer the affairs of this court.

On January 24, 2005 the City Court, through a valid majority vote, subscribed to the Parish Attorney’s legal opinion and effectively vested Lon Norris with the appointing authority of the City Court as a matter of law. Subsequently on May 24, 2005, after this suit was filed, the City Court judges, through a valid majority vote, amended Lon Norris’ job description to clarify that he was their appointing authority. As the minutes reflect, Judge Alexander recognized that the majority vote would constitute the City Court’s delegation of that authority to Norris. In addition, Judge White recognized that the passage of the motion would obviate the need for this Court to decide the issue of appointing authority.

There is no justiciable issue for this Court to decide. The issue of appointing authority was decided by the City Court, when they subscribed to the Parish Attorney’s legal opinion and then ratified that decision by amending Lon Norris’ job description. In finding that this issue is moot, the remainder of defendants’ exceptions need not be addressed.

A case is “moot” when a rendered judgment or decree can serve no useful purpose and give no practical relief or effect. If the case is moot, then there is no subject matter on which the judgment of the court can operate. That is, jurisdiction, once established, may abate if the case becomes moot. **Cat’s Meow v. City of New Orleans, Through Department of Finance**, 98-0601 (La. 10/20/98), 720 So.2d 1186, 1193.

When the challenged article, statute, or ordinance has been amended or expired, mootness may result if the change corrects or cures the condition

complained of or fully satisfies the claim. Further, if it is concluded that the new legislation was specifically intended to resolve the questions raised by the controversy, a court may find that the case or controversy is moot. In such a case, there is no longer an actual controversy for the court to address, and any judicial adjudication on the matter would be an impermissible advisory opinion. However, legislative changes to the challenged legislation will not moot the controversy if an exception to the mootness doctrine applies. **Cat's Meow**, 720 So.2d at 1194.

The court must determine the nature of the relief sought by the parties in concluding whether or not a change in the law moots a case. Thus, if a plaintiff's petition sought solely prospective relief in the form of a declaratory judgment, then the change in the law may lead to dismissal of the case. However, if, in addition to prospective relief, claims for compensatory relief are made, then a change in the law may not moot the case. Therefore, although the primary subject of a dispute has become moot, the controversy is not moot if there are collateral consequences to one of the parties. **Cat's Meow**, 720 So.2d at 1196.

In **Cat's Meow**, the plaintiffs sought a declaratory judgment that the amusement tax ordinances were unconstitutional, and sought a refund of the amusement taxes already paid. The amusement tax ordinances were amended after the suit was filed, and the amendment would have rendered the case moot, except for the collateral consequence of the request for a refund of taxes paid prior to the amendment.

In this case, the plaintiffs assert that there are collateral consequences, namely, that Judges Alexander and White could be held personally answerable for money damages in a discrimination suit, citing **Louisiana Environmental Action Network v. Louisiana Department of**

Environmental Quality, 02-2377 (La. App. 1 Cir. 9/26/03), 857 So.2d 541 and **J. Manoco, Inc. v. State of Louisiana, Gaming Control Board**, 98-1412 (La. App. 1 Cir. 12/28/99), 756 So.2d 430, writ denied, 00-0248 (La. 3/24/00), 758 So.2d 155.

In **Louisiana Environmental Action Network**, the plaintiffs appealed a judgment dismissing their petition for judicial review of an amended air quality permit issued to Georgia-Pacific Corporation by the Louisiana Department of Environmental Quality. While the petition for judicial review was pending, the Louisiana Department of Environmental Quality issued another permit pursuant to 40 C.F.R. Part 70 that incorporated the terms of the amended air quality permit. Georgia-Pacific Corporation then filed a motion to dismiss the petition for judicial review, asserting that the Part 70 permit issuance made moot the petition for judicial review of the amended permit.

The plaintiffs asserted that there was an exception to the mootness doctrine due to collateral consequences because the challenged permit allegedly legalized the release of extra amounts of volatile compounds into the air in an area where health standards were already violated, thus the plaintiffs' health and welfare was further threatened. This court noted that the exception to the mootness doctrine appeared to apply to amended or expired articles, statutes and ordinances, and that it was questionable whether the doctrine applied to individual permits. 875 So.2d at 544. In any case, this court found that there were remedies available to the plaintiffs concerning the Part 70 permit, thus the adoption of the Part 70 permit did not leave unresolved issues. 857 So.2d at 545. This case does not support the argument of the plaintiffs that there are unresolved collateral issues in the present case.

In **J. Manoco, Inc.**, a truck stop sought review of the Louisiana Gaming Control Board's revocation of its video gaming license. This court found that the appeal of the revocation of the video gaming license was not moot because although East Baton Rouge Parish subsequently rejected video poker in a statewide referendum after the suit was filed, there was still the outstanding issue of a five-year prohibition of the truck stop obtaining any gaming license following the revocation of its video gaming license. 756 So.2d at 434.

In the present suit, the plaintiffs are seeking only prospective relief in the form of a declaratory judgment and there is no compensatory relief sought within this lawsuit. Thus, the trial court judgment finding that the suit is moot and that the trial court therefore lacked subject matter jurisdiction is correct. The plaintiffs' argument that they could be held personally liable in a later suit for money damages is not a collateral consequence in the present suit, but rather, mere speculation on their part. Courts are not permitted to issue advisory opinions based on a contingency which may or may not occur. **Louisiana Supreme Court Committee on Bar Admissions ex rel Webb v. Roberts**, 00-2517 (La. 2/21/01), 779 So.2d 726, 728.

Because we find that the case is moot and that the trial court had no subject matter jurisdiction over the suit, consideration of assignments of error numbers 2, 3, 4 and 5 is pretermitted.

ASSIGNMENT OF ERROR NO. 6

In this assignment of error, the plaintiffs assert that the trial court erred in assessing them with costs when they appear in this litigation in their official capacity. The judges took a formal vote on whether to file this lawsuit, and the majority voted against filing it. Thus, we conclude that the

two judges who filed suit did so in their individual capacities, not in their official capacities. Thus, we find it was appropriate and within the district court's discretion for the court to cast the plaintiffs with costs in this matter.

For the foregoing reasons, the district court's judgment dismissing the suit for lack of subject matter jurisdiction is affirmed. Plaintiffs are cast with costs.

AFFIRMED.