

SUPREME COURT OF ARKANSAS

No. 12-682

KEITH RUSSELL JUDD

APPELLANT

v.

MARK MARTIN, SECRETARY OF
STATE OF ARKANSAS; and STATE OF
ARKANSAS

APPELLEES

Opinion Delivered March 28, 2013PRO SE MOTION TO FILE A
SUPPLEMENTAL BRIEF [APPEAL
FROM THE PULASKI COUNTY
CIRCUIT COURT, 60CV 11-6086,
HON. CHRISTOPHER CHARLES
PIAZZA, JUDGE]APPEAL DISMISSED AS MOOT;
MOTION MOOT.**PER CURIAM**

Appellant Keith Russell Judd appeals from an order of the Pulaski County Circuit Court that denied his complaint for declaratory judgment and preliminary injunction. Now before us is appellant's pro se motion to file a supplemental brief in his appeal. Because it is clear that appellant's claim no longer presents a justiciable issue for determination by the court, the appeal is dismissed for mootness. His motion is accordingly moot as well.

Appellant is an inmate in the custody of the Federal Correctional Institute in Texarkana, Texas. On December 20, 2011, appellant filed a pro se complaint in the Pulaski County Circuit Court, seeking an injunction to require Arkansas Secretary of State Mark Martin to place appellant's name as a candidate for President of the United States on the 2012 Democratic primary ballot and to register all convicted felons to vote in that primary election. Appellee Martin moved to dismiss the complaint, and, on May 10, 2012, the circuit court entered an order granting appellee Martin's motion to dismiss and dismissing appellant's

complaint with prejudice.¹ Appellant timely filed an appeal from that order in this court, though he did not request to expedite the appeal. He filed his brief-in-chief, appellee Martin filed a reply brief, and appellant has filed the instant motion seeking permission to file a supplemental brief.

Because the election for which appellant wanted his name placed on the ballot has already occurred, and the time for registering to vote in that election has passed, the first issue that this court must resolve is whether the appealed question is moot. *See City of Clinton v. S. Paramedic Servs., Inc.*, 2012 Ark. 88, 387 S.W.3d 137. As a general rule, the appellate courts of this state will not review issues that are moot. *Id.* (citing *Terry v. White*, 374 Ark. 387, 288 S.W.3d 199 (2008)). To do so would be to render advisory opinions, which this court will not do. *Id.* We have generally held that a case becomes moot when any judgment rendered would have no practical legal effect upon a then-existing legal controversy. *Terry*, 374 Ark. 387, 288 S.W.3d 199 (citing *Cotten v. Fooks*, 346 Ark. 130, 55 S.W.3d 290 (2001)). In other words, a moot case presents no justiciable issue for determination by the court. *Id.* (citing *Shipp v. Franklin*, 370 Ark. 262, 258 S.W.3d 744 (2007)).

The 2012 Democratic primary election in Arkansas was held on May 22, 2012. *See AR Election Results*, <http://results.enr.clarityelections.com/AR/39376/83979/en/summary.html>. The deadline for placing one's name on the ballot for that election was March 1, 2012. *See Ark. Code Ann. § 7-7-203(c)(1)* (Repl. 2011). The deadline for registering to vote in the

¹Appellee State of Arkansas was not properly served when appellant filed his petition in the circuit court, and the State did not file any response at the circuit court level or in the instant appeal.

May 22 election was April 23, 2012. *See* Ark. Code Ann. § 7-5-201(a) (requiring that a person must register no later than thirty days prior to the election in which he wishes to vote); *see also* Ark. Code Ann. § 7-1-108 (explaining that, if an election-law deadline occurs on a Saturday, Sunday, or legal holiday, the deadline shall be the next day which is not a Saturday, Sunday, or legal holiday).

This court has recognized two exceptions to the mootness doctrine, one of which involves issues that are capable of repetition, yet evading review. *See Terry*, 374 Ark. at 393, 288 S.W.3d at 203 (citing *Honeycutt v. Foster*, 371 Ark. 545, 268 S.W.3d 875 (2007)). The other mootness exception concerns issues that raise considerations of substantial public interest which, if addressed, would prevent future litigation. *City of Clinton*, 2012 Ark. 88, ___ S.W.3d ___ (citing *Terry*, 374 Ark. at 393, 288 S.W.3d at 203). Because Arkansas's 2012 Democratic primary election is long past, the issues of whether appellant should be placed on the ballot for, and certain inmates should be registered to vote in, that election are moot unless one of the two exceptions applies. We hold that neither exception is applicable here.

The first mootness exception deals with issues where persons will frequently be faced with a particular situation, but will likely cease to be in a position where the court could provide a remedy for them within the time that it takes for the case to proceed through the justice system. *See Campbell v. State*, 311 Ark. 641, 846 S.W.2d 639 (1993) (citing *DeFunis v. Odegaard*, 416 U.S. 312, 318–19 (1974)). This exception has been applied only where (1) the challenged action is in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be

Cite as 2013 Ark. 136

subjected to the same action again. *Turner v. Rogers*, 131 S. Ct. 2507 (2011) (internal citation omitted).

Neither of those factors is present in the instant case; appellant has not indicated that he intends to run for President of the United States again in 2016 or later, and there is nothing to suggest that, were he to run again, he would be subjected to the same action. Indeed, our courts have in place adequate procedures for accelerating consideration of election-related matters. *See Fite v. Grulkey*, 2011 Ark. 188. Beginning with the circuit court, Rule 78(d) of the Arkansas Rules of Civil Procedure (2012) requires petitions for writs of mandamus in election contests to be heard no sooner than two, and no longer than seven, days after filing. *See id.* An aggrieved party may then pursue an expedited appeal pursuant to Rule 6-1(b) of the Rules of the Arkansas Supreme Court and Court of Appeals (2012), which appellant chose not to do. *Id.*

The second mootness exception applies where a case involved issues that raise considerations of substantial public interest which, if addressed, would prevent future litigation. *City of Clinton*, 2012 Ark. 88, ___ S.W.3d ___. The instant appeal involves no such issues. Appellant sought to have his name placed on the ballot without following the procedures, and paying the requisite fees, established by the Democratic Party of Arkansas. He further sought to force the Secretary of State of Arkansas to register unspecified persons to vote in that primary, in contravention of state law to the contrary. We take judicial notice of the fact that this is the first case of this type to reach this court on appeal, and we find that

Cite as 2013 Ark. 136

this is simply not an issue of great public interest that needs to be addressed to prevent similar litigation in the future.

The lapse of time has rendered moot the issues presented on appeal. *Fite*, 2011 Ark. 188. We perceive no need to issue an opinion that would be purely advisory, as the interests raised are not likely to recur and do not implicate the public interest. *Id.* Accordingly, the appeal is dismissed as moot, and appellant's motion to file a supplemental brief on appeal is also moot.

Appeal dismissed as moot; motion moot.