

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CITY OF WILMINGTON,	§
	§
Aggrieved Party Below-	§ No. 142, 2007
Appellant,	§
	§
v.	§ Court Below—Family Court
	§ of the State of Delaware,
K.J.C.,	§ in and for New Castle County
	§ CPI No. 060811165
Petitioner Below-	§
Appellee.	§

Submitted: May 31, 2007
Decided: August 8, 2007

Before **STEELE**, Chief Justice, **JACOBS**, and **RIDGELY**, Justices.

ORDER

This 8th day of August 2007, upon consideration of the notice to show cause, the appellee’s motion to dismiss, and the response thereto, it appears to the Court that:

(1) On March 21, 2007, the City of Wilmington filed a notice purporting to appeal from the Family Court’s denial of the City’s motion to modify a prior Family Court order, which granted the petition of a City employee (hereinafter identified as “KJC”) to expunge his criminal arrest record. The Clerk of the Court issued a notice to the City to show cause why the appeal should not be dismissed as moot. Thereafter, the appellee also

filed a motion to dismiss the appeal as being moot. After considering the parties' positions, we find this appeal must be dismissed.

(2) The record reflects that KJC was arrested in August 2006 for alleged criminal conduct unrelated to his employment with the City. On September 21, 2006, the Family Court dismissed the criminal charges. Thereafter, KJC filed a petition in the Family Court to expunge his criminal arrest record. That motion was granted on January 5, 2007. The City filed a petition for modification of the expungement order requesting that it be permitted to access and review KJC's arrest record for the limited purpose of conducting an internal investigation related to KJC's employment with the City. The Family Court held that the City did not have standing under 10 *Del. C.* § 1025 to seek modification of the expungement order. Moreover, the Family Court held that, even if the City had standing, the City had no substantive right to access KJC's expunged records in this case.

(3) After filing its notice of appeal, the City sent a letter to the Court on May 4, 2007, indicating that City was no longer pursuing employment-related disciplinary charges against KJC for the conduct that was the subject of the expungement order. In light of this information, the Court issued a notice to the City to show cause why the appeal should not be

dismissed as moot. KJC also filed a motion to dismiss the appeal on the grounds of mootness.

(4) Ordinarily, this Court will not consider moot issues.¹ The City contends, however, that the Court should apply the “public interest” exception to the mootness doctrine in this case.² The City argues that its appeal should not be dismissed as moot because the issue on appeal—whether the City, as a law enforcement agency, can modify its employee’s expungement order under the “employment application” exception of 10 *Del. C.* § 1026—is capable of repetition while evading review and presents a matter of “great public interest.”

(5) We disagree that the public interest exception should be applied in this case. While the issue on appeal is capable of repetition, it will not necessarily evade review. As the City’s letter to the Court points out, it was the City’s own decision to withdraw the disciplinary charges against KJC, for reasons unrelated to the appeal, which made the issue on appeal moot. Accordingly, under these circumstances, we decline to apply the public interest exception to the mootness doctrine in this case.

¹ *Radulski v. Delaware State Hosp.*, 541 A.2d 562, 566 (Del. 1988).

² *Id.* (noting that the “public interest exception to the mootness doctrine is usually applied to issues which are ‘capable of repetition, yet evading review’”).

NOW, THEREFORE, IT IS ORDERED that the within appeal is
DISMISSED as moot.

BY THE COURT:

/s/Henry duPont Ridgely
Justice