FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-3516

DONALD E. WATERS,

Appellant,

v.

DEPARTMENT OF CORRECTIONS,
et al.,

Appellees.

On appeal from the Circuit Court for Leon County.
Charles W. Dodson, Judge.

November 16, 2020

B.L. THOMAS, J.

This pro se appeal challenges the trial court's dismissal of his petition for writ of mandamus as moot. We affirm.

Appellant is incarcerated in the Florida Department of Corrections. On August 2, 2018, during the interview portion of Appellant's yearly medical appointment, the nurse noted that Appellant's medical passes had expired. The nurse informed Appellant that his renewed passes would be ready within seven days.

Appellant never received his passes, so he filed an informal grievance. Appellant's informal grievance was denied. Appellant then filed a formal grievance, to which the warden's office

responded and denied. Appellant appealed the denial of his formal grievance. Appellant's sole point on appeal was that the medical staff failed to renew his medication and passes. The Department returned Appellant's appeal without action and stated it was untimely.

On November 7, 2018, Appellant filed his petition for writ of mandamus with the trial court. Appellant raised two issues: (1) the Department erroneously determined his appeal was untimely based on the facts and legal authorities outlining the Prison Mailbox Rule where the Department's response was issued on August 31, 2018, and his appeal was filed on September 10, 2018, five days before the deadline; and (2) the Department committed reversible error by failing to follow state and federal laws, its own rules, and clearly established constitutional requirements.

On May 10, 2019, the Department issued a response to Appellant's petition, arguing that Appellant's claims were moot because on September 20, 2018, Appellant received renewed passes and his medication was renewed. The Department stated that Appellant had been sent to the pharmacy on October 8, 2018. Appellant's passes were again renewed between December 2018 and March 2019. And, as of May 10, 2019, Appellant had an active prescription.

Appellant filed a response, alleging that his petition should not be dismissed because the subsequent actions taken by the Department did not cure the factual issues of his petition and dismissing the petition would prejudice him. On August 30, 2019, the trial court issued an order dismissing Appellant's petition as moot because the Department's subsequent actions provided all the relief the trial court could have granted.

The de novo standard of review applies when appellate courts consider an order granting a motion to dismiss a petition for writ of mandamus. *Walker v. Ellis*, 989 So. 2d 1250, 1251 (Fla. 1st DCA 2008).

"A case is 'moot' when it presents no actual controversy or when the issues have ceased to exist." *Godwin v. State*, 593 So. 2d 211, 212 (Fla. 1992). Mootness occurs when an intervening event makes it impossible for the court to grant a party any effectual

relief. *Montgomery v. Dep't of HRS*, 468 So. 2d 1014, 1016 (Fla. 1st DCA 1985). Additionally, a claim may become moot if officials give the petitioner the relief sought. *Martinez v. Singletary*, 691 So. 2d 537, 538 (Fla. 1st DCA 1997).

Here, Appellant's petition for writ of mandamus requested that the trial court declare his formal grievance appeal was timely. Had Appellant's appeal been designated as timely, the Department would have been required to address its failure to provide Appellant with his passes and medication. However, Appellant admitted that he was provided renewed passes on September 20, 2018. The Department also provided evidence that Appellant's medication was renewed on September 20, 2018, and he was sent to the pharmacy on October 8, 2018. Finally, the Department provided evidence that Appellant's passes were renewed between December of 2018 and March of 2019, and, as of May 10, 2019, he had an active prescription.

Based on the evidence, even if the trial court had declared that Appellant's formal grievance appeal was timely, it was unable to grant Appellant any effectual relief because the Department had already provided Appellant's renewed passes and medication. *See Montgomery*, 468 So. 2d at 1016; *Martinez*, 691 So. 2d at 538. Because the issues Appellant requested the trial court determine ceased to exist at the time his petition was filed, the trial court properly dismissed Appellant's petition for writ of mandamus as moot.

Appellant also argues his petition was not moot under the "capable of repetition, yet evading review" exception. There is a narrow exception to the mootness doctrine for controversies that are "capable of repetition, yet evading review." *Morris Publ'g Grp., LLC v. State*, 136 So. 3d 770, 776 (Fla. 1st DCA 2014) (quoting *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 563 (1980)). "That exception applies when '(1) the challenged action was 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 subjected to the same action again.'" *Morris Publ'g Grp., LLC*, 136 So. 3d at 776 (citing *Weinstein v. Bradford*, 423 U.S. 147, 149 (1975)).

Appellant failed to show that this exception to the mootness doctrine applies. First, Appellant failed to present evidence that this is a controversy that is short in duration because he was able to challenge this issue on appeal more than a year after he filed his first grievance. *Cf. Morris Publ'g Grp., LLC*, 136 So. 3d at 776–77 (holding closure order issued during a criminal trial was only in effect for a short period of time, thus evading review). Second, Appellant's prior appeals show that this is not a controversy that has evaded review. *See Waters v. Dep't of Corr.*, 144 So. 3d 609, 610 (Fla. 1st DCA 2014); *Waters v. Dep't of Corr.*, 144 So. 3d 613, 614 (Fla. 1st DCA 2014). In Appellant's prior appeals, this Court reversed the portion of the trial court's order dismissing Appellant's petition as untimely, which he argues again here. *Id.* Thus, this issue has not evaded review and Appellant has failed to show that this case falls within the narrow exception to the mootness doctrine.

Finally, Appellant argues he was prejudiced because he had to pay the filing fees and other costs surrounding his petition for writ of mandamus and the subsequent appeal. "The *party recovering judgment* shall recover all his or her legal costs and charges which shall be included in the judgment . . . ." § 57.041(1), Fla. Stat. (2018) (emphasis added). A petitioner is not a "party recovering judgment" when his or her action is dismissed. *See Higgs v. Klock*, 873 So. 2d 591, 592 (Fla. 3d DCA 2004). Furthermore, a petitioner is not a prevailing party entitled to costs where the petition is dismissed as moot. *See Cash Wallace Pawley v. Fla. Dep't of Corr.*, 45 Fla. L. Weekly D1962 (Fla. 1st DCA Aug. 17, 2020).

Here, because the trial court properly dismissed Appellant's petition as moot, Appellant is not the "party recovering judgment." *See id.*; *Higgs*, 873 So. 2d at 592. Thus, Appellant is not entitled to the costs associated with the filing of his petition.

AFFIRMED.

RAY, C.J., and JAY, J., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Donald E. Waters, pro se, Appellant.

Ashley Moody, Attorney General, Kristen J. Lonergan, Assistant Attorney General, Tallahassee, for Appellees.