

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2280**

Palmer Bus Service of St. Peter, Minnesota, Inc.,
Appellant,

vs.

Independent School District No. 508,
Respondent.

**Filed December 16, 2008
Appeal dismissed
Schellhas, Judge**

Nicollet County District Court
File No. 52-CV-07-386

Dustan J. Cross, Gislason & Hunter, LLP, 2700 South Broadway, P.O. Box 458, New
Ulm, MN 56073; and

Andrew M. Tatge, Gislason & Hunter, LLP, 124 East Walnut Street, Suite 200, P.O. Box
4157, Mankato, MN 56002-4157 (for appellant)

Maggie R. Wallner, Peter G. Mikhail, Kennedy & Graven, 470 U.S. Bank Plaza, 200
South Sixth Street, Minneapolis, MN 55402 (for respondent)

Considered and decided by Minge, Presiding Judge; Schellhas, Judge; and Larkin,
Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant brings this interlocutory appeal from the district court's denial of its motion for a temporary injunction. Because appellant no longer desires a temporary injunction, we dismiss this appeal as moot.

FACTS

In February 2007, after 19 years of contracting for bus services with appellant Palmer Bus Service of St. Peter, Minnesota, Inc. (Palmer), respondent Independent School District No. 508 (ISD) decided to seek quotations for bus services from competing vendors. ISD invited all interested contractors to an informational meeting to ask questions about the services desired and the process for submitting quotes. Palmer was the only contractor that attended this meeting, and Palmer and ISD disagree about the statements made at the meeting by ISD's representatives as to whether ISD would reject all non-compliant bids and to what extent quotations could be amended after submission. Palmer and ISD agree, however, that at this meeting their representatives agreed that itemizing the costs of special-education bus services would be helpful to ISD in determining the overall cost of these services if any part of them was discontinued.

The quotation forms ISD ultimately sent to interested contractors requested that special-education bus services be itemized. The quotation instructions stated that ISD intended to "accept and evaluate all quotations as they are submitted" and did not intend "that the quotations would be substantially altered after submission." These instructions further provided that ISD was requesting written quotations pursuant to Minn. Stat.

§ 123B.52, subd. 3 (2006), that the contract was not subject to a sealed bid process and that ISD reserved its rights to (1) “accept or reject any or all quotations and to waive any irregularities,” (2) “negotiate any or all portions of the contract directly with any or all vendors at any time following the receipt of the quotation,” and (3) “negotiate on proposed bus service that does not appear to be a part of the accepted quotation.”

On April 24, 2007, ISD opened the quotes it received from Palmer and Saints Bus Services (Saints), a competing vendor. Saints submitted the lower quote, but had crossed out the word “day” in the special-education section and written in the word “year,” quoting an annual cost of \$125,000 for special-education busing costs. ISD’s superintendent and transportation consultant agreed that Saints could be allowed to amend its quote to provide daily cost figures for special-education service and still be in compliance “as long as the dollar amount was not changed even a penny,” and asked Saints to amend its quote accordingly. Saints amended its quote, which set forth the same total cost for special-education services of \$125,000, along with itemized daily cost figures. But, the actual sum of the itemized costs quoted by Saints yields a total cost of \$125,350.75, although this total was not set forth in Saints’ amended quote.

When Palmer learned that ISD would allow Saints to amend its quote, it asked that Saints’s quote be disregarded or, alternatively, that Palmer be allowed to amend its own quote. ISD denied both requests, but issued its own request, that Palmer clarify its quote for special-education services, which ISD felt was ambiguous because it did not specify whether the quoted costs applied to both the a.m. and p.m. runs, or separately to each run. Palmer clarified that the quoted cost covered both runs.

Before ISD selected a contractor, Palmer filed suit against it, arguing that ISD had impermissibly considered Saints's noncompliant quotation and had impermissibly allowed Saints to make a substantial alteration to its quotation. Palmer also moved the district court to temporarily restrain ISD from contracting with Saints for bus services. The district court denied Palmer's motion, and ISD awarded Saints the contract in May 2007. In July 2007, Palmer moved the district court to temporarily enjoin ISD from performing on its contract with Saints. The district court denied Palmer's motion, relying on the same findings and analysis it used to support its denial of Palmer's motion for a temporary restraining order. The district court noted that ISD's explicit statements that it was not using a sealed-bid process and its reservation of rights to waive irregularities in quotations and to directly negotiate with any contractor weighed heavily in favor of denying injunctive relief.

Palmer appealed from the district court's denial of temporary injunctive relief. But, in its oral argument before this court in October 2008, its counsel advised that given the length of time that had passed during the appeal, Palmer was not seeking to "undo this contract today and somehow force I.S.D. to . . . releas[e] the public bids or somehow restart[] that process." Palmer's counsel noted ISD and Saints were already into the second year of their two-year contract, and ISD would likely begin seeking new bids in a few months. When asked by this court to specify the kind of relief Palmer sought, counsel responded, "I believe, your honor, [a] . . . declaration that the process was not followed in this instance." At oral argument, Palmer's counsel confirmed that the action

from which this interlocutory appeal is taken was still pending at that time in district court.

DECISION

A reviewing court will decide only actual controversies and will not issue advisory opinions. *In re McCaskill*, 603 N.W.2d 326, 327 (Minn. 1999). Generally, when an event makes an award of effective relief impossible or a decision on the merits unnecessary, the appeal should be dismissed as moot. *In re Application of Minnegasco*, 565 N.W.2d 706, 710 (Minn. 1997). The mootness doctrine requires a comparison between the relief demanded and the circumstances of the case at the time of decision to determine whether there is a live controversy that can be resolved. *Id.* Where a reviewing court cannot grant effective relief, it will deem an issue moot and dismiss the appeal. *Id.* But mootness is a “flexible discretionary doctrine, not a mechanical rule that is invoked automatically.” *Jasper v. Comm’r of Pub. Safety*, 642 N.W.2d 435, 439 (Minn. 2002) (quotation omitted).

In this case, the question of whether the appeal is moot first arose when Palmer asserted at oral argument that it was no longer interested in obtaining the injunctive relief sought in district court. Mootness may be considered by a reviewing court even if it is not raised by a party to an appeal. *In re Schmidt*, 443 N.W.2d 824, 826 (Minn. 1989) (citing *St. Paul Fire & Marine Ins. Co. v. Barry*, 438 U.S. 531, 537, 98 S. Ct. 2923, 2927 (1978)).

Palmer brings this appeal from a denial of a motion for temporary injunctive relief. An appeal from an order denying a motion for a temporary injunction is limited in scope

to whether the denial constitutes a clear abuse of discretion. *Pac. Equip. & Irrigation, Inc. v. Toro Co.*, 519 N.W.2d 911, 914 (Minn. App. 1994), *review denied* (Minn. Sept. 16, 1994). But Palmer is no longer seeking injunctive relief, and whether there was an abuse of discretion is now moot. Thus, the mootness doctrine applies to this appeal. *See Minnegasco*, 565 N.W.2d at 710 (stating that an appeal should be dismissed as moot where an event renders effective relief impossible or a decision on the merits unnecessary); *Schmidt*, 443 N.W.2d at 826 (stating that a reviewing court will generally dismiss a case as moot if it is unable to grant effectual relief). Because Palmer's request for a "declaration that the process was not followed in this instance" is not within our scope of review in this appeal and because that issue has not been finally determined by the district court, the request is improper.

Palmer argues that because the issue is capable of repetition and evades review, an exception to the mootness doctrine applies in this case. An issue capable of repetition may nevertheless evade review if it does not remain a live controversy until the completion of appellate review. *McCaskill*, 603 N.W.2d at 328. In district court, Palmer requested that the district court: (1) enjoin ISD from accepting the quotations Saints submitted in 2007; (2) require ISD to proceed with its quotation process in compliance with the process it set forth or, in the alternative, require ISD to reopen the quotation process and allow Palmer to amend its quote; (3) award Palmer in excess of \$50,000 in damages; and (4) award Palmer its costs and disbursements. Due to the passage of time and changed circumstances, Palmer has withdrawn interest in injunctive relief. We conclude that the issues of whether ISD's quotation process was unfair and whether

Palmer has therefore incurred damages, although capable of repetition, remain live controversies better resolved by the district court than by this court in an interlocutory appeal.

Appeal dismissed.