STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: September 2, 2015)

RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT	:	
v.	:	**C.A. No. PC-2013-5841**
LYNN R. WILKINSON	:	

DECISION

MCGUIRL, J. In this administrative appeal, appellant, the Rhode Island Department of Environmental Management (RIDEM), challenges a decision by the Administrative Adjudication Division for Environmental Matters (AAD), which remanded RIDEM's denial of appellee Lynn R. Wilkinson's license application to open two pet stores. Jurisdiction is pursuant to G.L. 1956 § 42-35-15. For the reasons set forth herein, the Court dismisses RIDEM's appeal as moot.

I

Facts and Travel

In March of 2013, appellee Lynn R. Wilkinson applied for two pet store licenses for Super Sonic Pets, located at 1435 Victory Highway in North Smithfield and 1465 Atwood Avenue in Johnston. (Decision, Findings of Fact, ¶ 2; AG Ex. 2; AG Ex. 3.) Previously, on March 5, 2012, RIDEM had revoked the pet shop license for Super Sonic Pets at these two locations for the mistreatment of animals pursuant to G.L. 1956 § 4-19-8.[1] See AG Ex. 1.

[1] Section 4-19-8 reads as follows:

> "A certificate of registration may be denied to any pound or animal shelter and a license may be denied to any public auction, kennel, pet shop or dealer or, if granted, the certificate or license may be revoked by the director if, after a hearing, it is determined

Although Ms. Wilkinson alleged that she was not associated with the revoked license holder,[2] in April of 2013, RIDEM denied Ms. Wilkinson's application. (AG Ex. 1.) This denial letter stated that "[y]our applications are being denied because [RIDEM] previously found that the subject pet shops' practices were not consistent with the intent of RI General Law §4-19-1, *et seq*." Id.

Thereafter, Ms. Wilkinson appealed RIDEM's denial to the AAD. In a decision dated October 16, 2013, the AAD hearing officer determined that RIDEM had assumed that Ms. Wilkinson "was related to the previously revoked license holder because of her intended use of the previous trade name, but there was no proof [of that fact] offered at [the] Hearing." (Decision, 6.) Consequently, the hearing officer remanded the matter to RIDEM, concluding that "[t]he Division should reconsider [Ms. Wilkinson's] applications on their merit and not on the assumption that she is related to the prior revoked license holder." Id.

On November 15, 2013, RIDEM filed the present appeal from the AAD's remand. (Compl.) A justice of this Court then ordered a briefing schedule with RIDEM's brief due June 27, 2014, and Ms. Wilkinson's brief due on or before July 28, 2014. In June of 2014, RIDEM

> that the housing facilities and/or primary enclosures are inadequate for the purposes of this chapter or if the feeding, watering, sanitizing and housing practices at the pound, animal shelter, public auction, pet shop or kennel are not consistent with the intent of this chapter or with the intent of the rules and regulations which may be promulgated pursuant to the authority of this chapter."

[2] According to the hearing officer's written decision, Ms. Wilkinson testified at the hearing before the AAD that "[s]he was aware that the previous owner had problems with the operation of pet shops at these locations" but that she "doesn't know the previous owner." (Decision, 2.) The hearing officer further noted that Ms. Wilkinson is the sister-in-law of a past owner named James Reagan who operated under the business name "Creatures." Mr. Reagan "had problems in 2010 and lost his license." Id. According to the hearing officer's decision, Ms. Wilkinson testified that "she was not an employee or co-owner with [Mr.] Reagan and had nothing to do with [his] operation." Id. It should be noted that on Ms. Wilkinson's license applications, she listed "Jim Reagan" as the "After Hours Telephone/ Emergency Contact." (AG Ex. 2; AG Ex. 3.)

attempted to contact Ms. Wilkinson to inform her of the briefing schedule. (Appellant's June 15, 2015 Letter.) In response, RIDEM received a letter from Ms. Wilkinson, stating as follows:

> "This letter is to inform you that Super Sonic Pets and Plus 1 Pet Supplies no longer exist. I sold the business back in November of 2013. Please stop sending letters to me about them. I have no intention to open any kind of business in that state ever again." (Attached to Appellant's June 15, 2015 Letter.)

Consistent with her letter, Ms. Wilkinson has not filed any brief or other memorandum with this Court regarding RIDEM's appeal. Nonetheless, RIDEM asks this Court to reverse the AAD's decision on the grounds that (1) the hearing officer's decision ignored the requirements of § 4-19-1, et seq., the Animal Care Act; and (2) the hearing officer improperly denied RIDEM's motion for judgment as a matter of law. (Appellant's Brief, 3, 7.)

II

Standard of Review

When reviewing the decisions of an administrative agency, this Court "sits as an appellate court with a limited scope of review." Mine Safety Appliances Co. v. Berry, 620 A.2d 1255, 1259 (R.I. 1993). When examining the certified record, this Court "shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact." Sec. 42-35-15(g). Accordingly, "[i]n the event competent evidence exists in the record, the Superior Court is required to uphold the agency's conclusions." R.I. Pub. Telecomms. Auth. v. R.I. State Labor Relations Bd., 650 A.2d 479, 485 (R.I. 1994). The Court, therefore, "is confined to a determination of whether there is any legally competent evidence to support the agency's decision." Envtl. Scientific Corp. v. Durfee, 621 A.2d 200, 208 (R.I. 1993). This standard is permissive in that the Court "must affirm the decision of the agency unless its findings are 'clearly erroneous.'" Guarino v. Dep't of Soc. Welfare, 122 R.I. 583, 588, 410 A.2d 425, 428

(1980) (quoting § 42-35-15(g)(5)).

III

Discussion

Although neither party raised the issue of mootness, this Court must determine whether the present case is moot given that Ms. Wilkinson has purportedly sold the business and, therefore, cannot pursue the pet shop license at issue. It is well-settled that mootness is "a threshold issue of justiciability." Boyer v. Bedrosian, 57 A.3d 259, 272 (R.I. 2012); see also City of Cranston v. R.I. Laborers' Dist. Council Local 1033, 960 A.2d 529, 533 (R.I. 2008) ("Although neither party directly has raised the issue, this Court first must address the threshold issue of justiciability before we may entertain the merits of the parties' substantive arguments.").

The Rhode Island Supreme Court has made clear that "'[a]s a general rule [the Court] only consider[s] cases involving issues in dispute; [the Court] shall not address moot, abstract, academic, or hypothetical questions.'" Swain v. Estate of Tyre ex rel. Reilly, 57 A.3d 283, 289 (R.I. 2012) (quoting Morris v. D'Amario, 416 A.2d 137, 139 (R.I. 1980)); see also State v. Gaylor, 971 A.2d 611, 613 (R.I. 2009) ("It is well settled in this jurisdiction that, as a general rule, a necessary predicate to a court's exercise of its jurisdiction is an actual justiciable controversy."). "'[A] case is moot if it raised a justiciable controversy at the time the complaint was filed, but events occurring after the filing have deprived the litigant of an ongoing stake in the controversy.'" City of Cranston, 960 A.2d at 533 (quoting Seibert v. Clark, 619 A.2d 1108, 1110 (R.I. 1993)). Significantly, "[a]n appeal is moot when 'a decision by this [C]ourt on the merits [would] not have a practical effect on the underlying controversy.'" Town Houses at Bonnet Shores Condo. Ass'n v. Langlois, 45 A.3d 577, 581 (R.I. 2012) (quoting Campbell v. Tiverton Zoning Bd., 15 A.3d 1015, 1021 (R.I. 2011)).

Here, Ms. Wilkinson has sold the subject property and stated that she does not intend to open a business in Rhode Island again. In Daley v. License Appeal Comm'n, the License Appeal Commission reversed the local liquor control commissioner's denial of appellee's retail license application for a package liquor store. 205 N.E.2d 269, 271 (Ill. App. Ct. 1965). The commissioner then appealed the License Appeal Commission's decision. Id. The appellee, however, moved to dismiss the commissioner's appeal as moot, since the appellee had "withdrawn his application for the retail liquor license, [ ] requested the refund of his license fee and [ ] relinquished the possession of, and all right, title and interest in, the premises . . . ." Id. The court in Daley ultimately held that "no actual controversy remain[ed] between the parties" because "[t]he substantive issue [was] extinguished by the withdrawal of the license application[.]" Id. at 272. Similarly, here, Ms. Wilkinson has, in effect, withdrawn her application, and therefore, "no longer ha[s] an articulable stake in the outcome." H.V. Collins Co. v. Williams, 990 A.2d 845, 848 (R.I. 2010).

It should be further noted that the AAD did not grant Ms. Wilkinson the license, but simply remanded the matter with instructions that RIDEM consider the fact that Ms. Wilkinson was unrelated to the revoked license holder. Consequently, RIDEM is not contesting the validity of an outstanding license. Cf. Lynch v. R.I. Dep't of Envtl. Mgmt., 994 A.2d 64, 71 (R.I. 2010) ("[T]he issue of the validity (vel non) of the original license has not become moot by virtue of its having been rendered a dead letter for all purposes; its initial validity may still be challenged . . . ."). Moreover, in this Court's opinion, the AAD's decision to remand the matter was clearly reasonable and justified given Ms. Wilkinson's testimony that she did not know the previous owner and was not involved in any previous pet store operation at the subject locations. See Foster-Glocester Reg'l Sch. Comm. v. Bd. of Review, 854 A.2d 1008, 1012 (R.I. 2004) (defining

"legally competent evidence" as "such relevant evidence that a reasonable mind might accept as adequate to support a conclusion, and means an amount more than a scintilla but less than a preponderance") (internal quotation marks omitted). Regardless, since Ms. Wilkinson has sold the property where she had planned to operate Super Sonic Pets, any decision regarding the propriety of the AAD's remand would have no "'practical effect on the underlying controversy.'" Langlois, 45 A.3d at 581 (quoting Campbell, 15 A.3d at 1021); see also Hallsmith-Sysco Food Servs., LLC v. Marques, 970 A.2d 1211, 1214 (R.I. 2009) ("Because a decision on the merits by this Court would have no effect on the actual litigants, the issue raised in this appeal clearly is moot.").

The present appeal is also distinguishable from those decisions that consider whether a case is moot due to a party's voluntary cessation of the prohibited conduct. The Rhode Island Supreme Court has stated "it is well recognized that [a] defendant's voluntary cessation of allegedly unlawful conduct ordinarily does not suffice to moot a case." Bucci v. Lehman Bros. Bank, FSB, 68 A.3d 1069, 1080 (R.I. 2013) (internal quotation marks omitted). The rationale for this rule is that "'[t]he voluntary cessation of challenged conduct does not ordinarily render a case moot because a dismissal for mootness would permit a resumption of the challenged conduct as soon as the case is dismissed.'" Id. (quoting Knox v. Serv. Emps. Int'l Union, Local 1000, 132 S. Ct. 2277, 2287 (2012)). However, this principle is simply inapplicable to the present circumstances. Ms. Wilkinson has sold the property that is the subject of the license application. Thus, "any possible recurrence necessarily will involve different factual circumstances and considerations than those that obtained previously." Africano v. Castelli, 837 A.2d 721, 730 (R.I. 2003); see also Daley, 205 N.E.2d at 272 ("If [the applicant] should apply for another license and if there should be another appeal to the commission, a new record would

be made before that commission. A prior determination of an administrative body is not res judicata in subsequent proceedings before it.").

In addition, this Court is mindful of the fact that "the rule against judicial consideration of moot, abstract, academic, or hypothetical questions is not absolute." Sullivan v. Chafee, 703 A.2d 748, 752 (R.I. 1997). Accordingly, the Rhode Island Supreme Court has recognized that "[o]ne narrow exception to the mootness doctrine exists for those cases that are 'of extreme public importance, which [are] capable of repetition but which [evade] review.'" City of Cranston, 960 A.2d at 533 (quoting Arnold v. Lebel, 941 A.2d 813, 819 (R.I. 2007)). However, "[f]or a matter to be deemed of extreme public importance, it will usually implicate 'important constitutional rights, matters concerning a person's livelihood, or matters concerning citizen voting rights.'" Id. at 533-34 (quoting Cicilline v. Almond, 809 A.2d 1101, 1106 (R.I. 2002)). Here, the propriety of the AAD's remand directing RIDEM to reconsider the denial of a pet store license that the applicant has since withdrawn is not a matter of such "extreme public importance." Id.; see also In re Briggs, 62 A.3d 1090, 1097 (R.I. 2013) ("This exception to the mootness doctrine involves a two-pronged test. First, a petitioner must demonstrate that the case is of extreme public importance.") (internal quotation marks omitted). Consequently, RIDEM's appeal is moot.

IV

Conclusion

For the foregoing reasons, RIDEM's appeal is dismissed as moot. RIDEM shall submit an order consistent with this opinion.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**Rhode Island Department of Environmental Management v. Wilkinson**
CASE NO:	**PC-2013-5841**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**September 2, 2015**
JUSTICE/MAGISTRATE:	**McGuirl, J.**
ATTORNEYS:	
For Plaintiff:	**Susan B. Forcier, Esq.**
For Defendant:	**Lynn R. Wilkinson, pro se**