

IN THE UTAH COURT OF APPEALS

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Brian Swanson, Chairman, Wayne)	MEMORANDUM DECISION
County Democratic Party,)	(Not For Official Publication)
)	
Plaintiff and Appellant,)	Case No. 20060652-CA
)	
v.)	F I L E D
)	(February 15, 2007)
Wayne County Commission; Allen)	
Jones, Chairman; and Thomas A.)	2007 UT App 47
Jeffrey,)	
)	
Defendants and Appellees.)	

Sixth District, Loa Department, 060600008
The Honorable Wallace A. Lee

Attorneys: Christian Burridge, West Jordan, for Appellant
Marvin D. Bagley, Richfield, for Appellees

Before Judges Bench, McHugh, and Thorne.

PER CURIAM:

Brian Swanson, as Chairman of the Wayne County Democratic Party, appeals the district court's order denying his motion for summary judgment and granting Appellees' (Wayne County Commission) summary judgment. This matter is before the court on Wayne County Commission's suggestion of mootness.¹

In November of 2004, Scott Durfey ran as a Democratic party candidate for Wayne County Commissioner. He won the election. After taking office, Durfey switched his political affiliation to

¹Swanson argues that we should strike the Wayne County Commission's motion as it was untimely and did not comply with rule 23 of the rules of appellate procedure. However, rule 37 states that a suggestion of mootness can and should be raised at any time it becomes clear that the appeal has become moot. See Utah R. App. P. 37(a). Further, the Wayne County Commission's failure to fully comply with rule 23 is easily forgiven when both parties agree that resolution of this case would not affect the rights of either party.

the Republican party. In April of 2006, Durfey resigned his position due to health problems. As a result, the Wayne County Commission sent an invitation to the Republican Central Committee for Wayne County to submit names for nominees to replace Durfey. Swanson initiated this action claiming that the Wayne County Commission misinterpreted the statute and that he, as chairman of the Democratic party for Wayne County, should have submitted the list of nominees to replace Durfey. The sole issue between the parties was whether under Utah Code section 20A-1-508(2) the Republican party had the right to name Durfey's successor because Durfey was a member of the party at the time he resigned, or whether the Democratic party have the right to name Durfey's successor because Durfey was elected as a Democrat. The district court ruled in favor of the Wayne County Commission. During the general election in November of 2006, a new commissioner was elected to replace Durfey.

"[A] case is moot where the requested judicial relief cannot affect the rights of the litigants." Jones v. Schwendiman, 721 P.2d 893, 894 (Utah 1986) (per curiam). Both parties agree that a new commissioner was elected to replace Durfey in the November 2006 election. Accordingly, Swanson's requested relief cannot affect the rights of these parties. However, Swanson argues that we should nonetheless resolve the issue in this appeal because it affects the public interest, is likely to recur in the same manner, and the issue is likely to evade appellate review. See State v. Sims, 881 P.2d 840, 841-42 (Utah 1994) (noting general exception to mootness). While this issue certainly affects the public interest, we cannot agree that the case is likely to recur in the same manner. Aside from the present case, Swanson has pointed the court to only two other instances in other states where this factual scenario has arisen. He has pointed to no other instances in which this scenario has occurred in Utah. Under these circumstances, we cannot conclude that the issue is likely to recur. As such, the exception to the mootness doctrine does not apply in this case.

This matter is dismissed as moot.

Russell W. Bench,
Presiding Judge

Carolyn B. McHugh, Judge

William A. Thorne Jr., Judge