Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2002-015

AUGUST TERM, 2002

Lyndonville Savings Bank & Trust Company and Ken Davis v. John Kassel, Secretary of Agency of Natural Resources, et al.	}	APPEALED FROM: John Kassel, Secretary of Agency of Natural Resources, et al. DOCKET NO. 141-3-99 Wncv Trial Judge: Alan W. Cheever

In the above-entitled cause, the Clerk will enter:

Plaintiffs Lyndonville Savings Bank & Trust Co. and Ken Davis appeal from a superior court order dismissing their complaint as moot and entering judgment in favor of defendants Agency of Natural Resources, et al. Plaintiffs contend the court erred in dismissing the complaint because it fits within one of two exceptions to the mootness doctrine. We affirm.

This case arose out of a logging operation in 1997 conducted by plaintiff Davis on land then owned by plaintiff Lyndonville Savings. In February 1999, ANR issued an Administrative Order against the bank for an alleged violation of Vermont's "heavy cutting" law, and proposed a penalty of $22,000. In March, the bank contested the order in the Environmental Court, and also - together with Davis - filed this action for declaratory and injunctive relief in superior court, claiming that defendants had imposed a punitive fine for the alleged logging violation which entitled them to certain criminal trial rights. Thereafter, ANR moved to voluntarily dismiss the underlying administrative order and environmental court case, and the environmental court issued an order in November stating that the case would be dismissed with prejudice, thereby precluding the Secretary from issuing another administrative order against the bank for the 1997 timber harvest. Following a series of motions over the next year and a half concerning the conditions of the dismissal, the environmental court issued a final judgment in March 2001, dismissing the case with prejudice.

Defendants then moved to dismiss the superior court action on several grounds, including a claim of mootness. The court ruled that, with the dismissal of the environmental court case, there was no pending live controversy between the parties on which the court could grant relief. Accordingly, the court granted the motion to dismiss and entered judgment for defendants. This appeal followed.

The general rule is that a case becomes moot when the issues are no longer "live" or the parties lack a legally cognizable interest in the outcome. In re P.S. , 167 Vt. 63, 67 (1997). The actual controversy must be present at all stages of review, not just when the case was filed. Id. Here, the trial court ruled, and plaintiffs do not seriously dispute, that with the dismissal of the environmental court case the matter became moot because there is no pending "live" controversy between the parties on which the court may grant relief, unless the complaint fits within one of the exceptions to the mootness doctrine.

This Court has recognized two exceptions to the mootness doctrine. "A case is not moot when a situation is capable of repetition, yet evades review, or when negative collateral consequences are likely to result." State v. Condrick, 144 Vt. 362, 363 (1984). The first "exception applies only if: '(1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable expectation that the same complaining party

would be subjected to the same action again.' " P.S., 167 Vt. at 67-68 (quoting Weinstein v. Bradford, 423 U.S. 147, 149 (1975)). Plaintiffs contend that they satisfied both criteria because administrative orders necessarily become moot if appealed to the environmental court within fifteen days, and because - although the case was dismissed - there is a likelihood that plaintiff Ken Davis, as a logger who is part of the "regulated community," will be subject to another such enforcement action in a different case. As we have observed, however, the "mere possibility" that one might be subject to a future action is "not . . . sufficient to transform a nonjusticiable controversy into a justiciable one." In re Moriarty, 156 Vt. 160, 164 (1991).

Plaintiffs nevertheless seek to satisfy the exception by arguing that the public importance of the issues raised in their complaint obviates the need to establish the likelihood of repetition as to them. They characterize this as a general "public interest" exception, and cite Condrick, which involved an involuntary treatment order, and which noted that the so-called "public interest exception to the mootness doctrine has . . . been invoked in cases when the discharge from hospitalization occurs prior to appeal." 144 Vt. at 363. A similar argument was raised and rejected in Moriarty, however, where we explained as follows: "Moriarty . . . argues that others will find themselves in a similar position and the Court should therefore address the merits. This contention is without merit inasmuch as Vermont has not adopted a general public-interest exception to the mootness doctrine." 156 Vt. at 164. Accordingly, we are unpersuaded that plaintiffs have established a public-interest exception to the mootness doctrine premised upon their assertion that others in the future will be subject to allegedly punitive fines by ANR. The complaint was properly dismissed as moot.

Affirmed.

BY THE COURT:

____

James L. Morse, Associate Justice

____

Denise R. Johnson, Associate Justice

____

Marilyn S. Skoglund, Associate Justice