

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2017-242

JANUARY TERM, 2018

Robert W. Boule v. Lisa Menard,
Commissioner

} APPEALED FROM:

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} Superior Court, Windsor Unit,
} Civil Division

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} DOCKET NO. 325-6-16 Wrev

Trial Judge: Robert P. Gerety, Jr.

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

Plaintiff inmate appeals from the superior court's dismissal of his complaint for review of governmental action filed under Vermont Rule of Civil Procedure 75. We affirm.

In June 2016, after plaintiff unsuccessfully aggrieved through the administrative process his removal from kitchen duties at the Southeast State Correctional Facility in Windsor, Vermont, he filed a Rule 75 complaint with the superior court challenging the removal. The remedy he sought was reinstatement in the job and back pay amounting to \$80. After plaintiff was transferred to the Southern State Correctional Facility in Springfield, Vermont, in September 2016 while his case was pending, the State filed a motion to dismiss the complaint, arguing that it was moot because the court could not provide plaintiff with the remedy he was seeking. Plaintiff opposed the motion, noting his dependence on the lost pay and for the first time raising an issue about his alleged disability. The State responded that defendant had failed to raise any issue about an alleged disability during the administrative proceedings. The superior court granted the State's motion, ruling that plaintiff's action was moot because he could not be reinstated in his kitchen duties following his transfer to another prison and that money damages are unavailable in a Rule 75 action.

On appeal, plaintiff presents his version of the underlying facts and states that he was fired from his prison job for the wrong reasons. He also states that he has a disability, citing his high blood pressure and a bad rotator cuff. As the superior court determined, defendant's action is moot because it could not provide the relief he requested, insofar as he cannot get his job back at the former prison facility and lost wages are unavailable in a Rule 75 action. "A case is moot if the reviewing court can no longer grant effective relief." In re Moriarty, 156 Vt. 160, 163 (1991) (quotation omitted); see Houston v. Town of Waitsfield, 2007 VT 135, ¶ 5, 183 Vt. 543 (mem.) ("Even if a case originally presented an actual controversy in the trial court, the case must remain live throughout the appellate process for us to examine the issues."). "[T]he relief available under Rule 75 represents the modern equivalent of extraordinary relief by mandamus or certiorari," the purpose of which is either to mandate actions by public officials or to review questions of law. See Ahern v. Mackey, 2007 VT 27, ¶ 8, 181 Vt. 599 (mem.) (quotation omitted); see also

Reporter's Notes, V.R.C.P. 75 (noting distinction between "review under this rule" and "ordinary civil relief, such as an injunction, a declaratory judgment, or damages"). Regarding his alleged disability, plaintiff waived that issue by failing to raise it during the administrative grievance proceedings. See Pratt v. Pallito, 2017 VT 22, ¶ 16 ("[T]o properly preserve an issue, a party must present the issue to the administrative agency with specificity and clarity in a manner which gives the [agency] a fair opportunity to rule on it." (quotation omitted)).

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Marilyn S. Skoglund, Associate Justice

Harold E. Eaton, Jr., Associate Justice