

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLARK COUNTY SCHOOL DISTRICT,
A NEVADA POLITICAL SUBDIVISION,
Appellant,
vs.
CLARK COUNTY EDUCATION
ASSOCIATION AND EVA GRUBEN,
Respondents.

No. 43219

FILED

JUN 16 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL AND
DENYING MOTION TO STRIKE REPLY

This is an appeal from a district court order that partially vacated an arbitration award. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge. This matter arose from an employment arbitration concerning the dismissal of Eva Gruben, a Clark County School District teacher. The school district terminated Gruben in October 2001. The Clark County Education Association challenged Gruben's dismissal, and under the collective bargaining agreement between the parties, the matter proceeded to arbitration.

The arbitrator reinstated Gruben after concluding that the school district improperly dismissed her. Subsequently, the school district filed a motion in the district court to vacate the arbitration award. The school district successfully argued to the district court that if the arbitrator correctly applied the governing statutory provision, he would have concluded that the school district could have at least suspended Gruben. Accordingly, the district court partially vacated the arbitration award and remanded the matter "to the arbitrator solely for the purpose of reconsidering the appropriate remedy in lieu of dismissal based on the correct legal standard." The school district appealed.

NRS 38.247(1)(e) authorizes an appeal from an order "vacating an award without directing a rehearing." Because it appeared

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that the district court vacated the arbitration award and directed a rehearing, this court ordered the school district to show cause why this appeal should not be dismissed for lack of jurisdiction.


The school district responded, arguing that the remand by the district court could not have affected the substantive ruling of the district court and therefore was not a “rehearing” within the meaning of NRS 38.247. The Association filed its reply, in which it argued that this appeal is now moot. Specifically, the Association asserted that Gruben had resigned from her position with the school district. Accordingly, the Association argues that this appeal now seeks an advisory opinion on an abstract question of law. Alternatively, the Association argues that this appeal should be dismissed for lack of jurisdiction because of the reasons pointed out by this court.

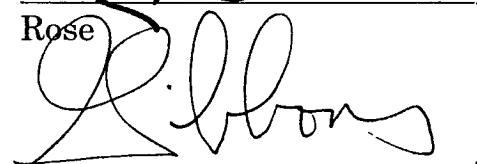
The school district countered by filing a motion to strike the Association’s reply. The school district argues that the Association’s reply goes beyond the scope of this court’s show cause order and that the Association should have raised the mootness question in a motion to dismiss. The school district did not address the merits of the mootness question in its motion. As the association properly brought the Mootness issue to this court’s attention, we deny the school district’s motion to strike the Association’s reply.

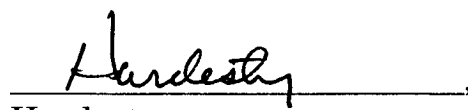
We directed the school district to address the mootness issue in a separate response. In reply, the school district contends that because a decision in this case will have a “lasting impact on a collective bargaining relationship,” this court should rule on the issue, rather than dismiss this appeal as moot.

Cases presenting real controversies at the time of their institution may become moot on appeal by some intervening event.¹ A case is moot if it seeks to determine an abstract question that does not rest upon existing facts or rights.² The duty of every judicial tribunal is to decide actual controversies by a judgment that can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles of law that cannot affect the matter in issue before it.³ We agree with respondents that Gruben's resignation has rendered this appeal moot. Any decision by this court could not affect Gruben's right to employment with the school district, and an actual controversy no longer exists. And, contrary to the school district's contention, this matter does not fall under the "capable of repetition, yet evading review" exception to the mootness doctrine. Accordingly, we dismiss this appeal as moot.

It is so ORDERED.


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

¹See NCAA v. University of Nevada, 97 Nev. 56, 58, 624 P.2d 10, 11 (1981).

²Id.

³Id. at 57, 624 P.2d at 10.

cc: Hon. Michelle Leavitt, District Judge
S. Scott Greenberg
C. W. Hoffman Jr.
Dyer, Lawrence, Penrose, Flaherty & Donaldson
Clark County Clerk