

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALZA CORPORATION AND MATRIX-
ORACLE,
Appellants,
vs.
KIMBERLY HOUSTON,
Respondent.

No. 44032

FILED

AUG 02 2006

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

ORDER DISMISSING APPEAL

This is an appeal from a district court order denying a petition for a writ of mandamus in an administrative matter.¹ Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

The underlying matter involves a dispute between respondent Kimberly Houston and appellants Alza Corporation and Matrix-Oracle Company, Houston's employer and the employer's insurer, respectively, regarding Houston's workers' compensation claim. Houston's neurosurgeon charged the parties \$2000 per hour to take his deposition for use in the dispute, and an appeals officer, noting that Houston had agreed to pay one-half of the neurosurgeon's fees, refused to reduce his charges.

Appellants subsequently petitioned the district court for a writ of mandamus, seeking an order directing the appeals officer to limit the

¹Pursuant to NRAP 34(f), we have determined that oral argument is not warranted in this case.

neurosurgeon's hourly fees. The district court denied their petition. Alza Corporation and Matrix appeal.

In their opening brief, appellants indicate that, after the district court denied their petition, they were forced to proceed with the deposition at the requested rate, as Houston's administrative appeal was proceeding. As appellants have paid the contested amount and the deposition has been taken, Houston argues that this appeal is moot.

Normally, a controversy must be live through all stages of the proceeding.² “[T]he duty of every judicial tribunal is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles of law which cannot affect the matter in issue before it.”³ As a result, this court has long recognized that cases presenting live controversies at the time of their inception may become moot by the occurrence of subsequent events. Further, a party who voluntarily pays a judgment may waive its right to appeal, thereby rendering the appeal moot.⁴

The “payment of a judgment only waives the right to appeal or renders the matter moot[, however,] when the payment is intended to

²University Sys. v. Nevadans for Sound Gov't, 120 Nev. 712, 720, 100 P.3d 179, 186 (2004).

³Id. (quoting NCAA v. University of Nevada, 97 Nev. 56, 57, 624 P.2d 10, 10 (1981)).

⁴Wheeler Springs Plaza, LLC v. Beemon, 119 Nev. 260, 265, 71 P.3d 1258, 1261 (2003).

compromise or settle the matter.”⁵ In addition, recognized exceptions to the mootness doctrine allow this court to consider an otherwise moot issue if the controversy is one of substantial public importance, or when the matter is capable of repetition, yet evading review.⁶ Appellants argue that this matter presents a live controversy, or in the alternative, that an exception to the mootness doctrine applies.

With regard to their first argument, appellants point out that they paid the neurosurgeon under protest and have submitted copies of their correspondence letters and checks as proof. Appellants note that the relief they request is an order reversing the district court’s order and remanding this matter with instructions that the court grant a writ of mandamus compelling the appeals officer to reduce the neurosurgeon’s fee. They also request this court to issue an opinion interpreting NRS 616C.350 to require appeals officers to prohibit testifying physicians from charging more than the appropriate amount under the statute and corresponding regulations. But while appellants’ payment of the fee in protest was clearly not intended to compromise or settle the matter, even

⁵Id.

⁶See University Sys., 120 Nev. at 720, 100 P.3d at 186; McKay v. Bergstedt, 106 Nev. 808, 801 P.2d 617 (1990) (deciding a matter of substantial public importance even when no relief could be granted because appellant died during the pendency of the appeal); Bd. of Cty. Comm’rs. v. White, 102 Nev. 587, 589, 729 P.2d 1347, 1349 (1986) (concluding that “the mootness doctrine must yield in the public interest to the more pressing expedient of statutory interpretation”); State of Nevada v. Glusman, 98 Nev. 412, 418, 651 P.2d 639, 643 (1982) (recognizing that it is within this court’s inherent discretion to consider issues of substantial public importance which are likely to recur, in spite of any intervening events which have rendered the matters moot).

if the payment could be analogized to the payment of a “judgment,”⁷ it appears that any order from this court ultimately requiring the appeals officer to reduce the fee charged will have no immediate effect on appellants’ ability to recover the fee paid, as the neurosurgeon is not a party to these proceedings. Thus, as any opinion this court might issue on the subject cannot affect the fee dispute, this appeal is moot.

Regarding their second argument, appellants appear to assert that this matter falls within either, or both, the public interest or the capable of repetition, yet evading review exception to the mootness doctrine. This matter, which involves a private dispute, however, does not present the type of public interest warranting this court’s recognition of that exception.⁸ Further, although appellants point to a district court order approving a similar appeals officer decision in a different case,⁹ suggesting that this matter is capable of repetition, there is no indication that the parties will always be required to pay for deposition testimony

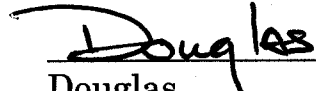
⁷See Wheeler Springs Plaza, 119 Nev. at 265, 71 P.3d at 1261.


⁸See, e.g., In re Andrea F., 802 N.E.2d 782, 787 (Ill. 2003) (considering the following factors in determining whether public policy grounds will allow a court to determine an issue in a case that has otherwise been rendered moot by the occurrence of subsequent events: (1) whether the issue is of a public, rather than a private, nature; (2) whether authoritative adjudication of the issue will provide desirable future guidance to public officials; and (3) whether there is a likelihood that the issue will recur in the future); accord First Nat. Bank in Lenox v. Heimke, 407 N.W.2d 344, 346 (Iowa 1987); Koenig v. Southeast Community College, 438 N.W.2d 791, 795 (Neb. 1989); Lynden Transport, Inc. v. State, 768 P.2d 475, 476 (Wash. 1989).


⁹PACT v. Perry, District Court Case No. CV01-00160 (Order Denying Petition for Judicial Review, August 21, 2002).

before the matter comes before this court on appeal. Consequently, this matter does not fall within the capable of repetition, yet evading review exception to the mootness doctrine. Accordingly, as it is moot, we

ORDER this appeal DISMISSED.¹⁰

 _____, J.
Douglas

 _____, J.
Becker

 _____, J.
Parraguirre

cc: Hon. Connie J. Steinheimer, District Judge
Leonard I. Gang, Settlement Judge
Thorndal Armstrong Delk Balkenbush & Eisinger/Reno
Anderson & Gruenewald
Washoe District Court Clerk

¹⁰In light of this order, we do not reach the parties' arguments regarding the merits of this appeal.