

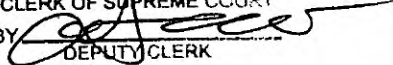
IN THE SUPREME COURT OF THE STATE OF NEVADA

SAMANTHA INC. D/B/A SAMANTHA'S  
REMEDIES, A NEVADA  
CORPORATION,  
Appellant,  
vs.  
THE STATE OF NEVADA  
DEPARTMENT OF HEALTH AND  
HUMAN SERVICES, DIVISION OF  
PUBLIC AND BEHAVIORAL HEALTH  
MEDICAL MARIJUANA  
ESTABLISHMENT PROGRAM; AND  
THE STATE OF NEVADA  
DEPARTMENT OF TAXATION,  
Respondents.

No. 86544

**FILED**

JAN 03 2025

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from a district court summary judgment in a licensing dispute. Eighth Judicial District Court, Clark County; Timothy C. Williams, Judge.

In 2014, Appellant Samantha Inc. sought a Las Vegas marijuana establishment license from Respondent State of Nevada Department of Health and Human Services, Division of Public and Behavioral Health Medical Marijuana Establishment Program. Samantha's application score of 163.26 did not earn it a license. Samantha petitioned for judicial review, alleging several sections of its application were scored improperly. In 2016, the district court granted the petition and the Department rescored Samantha's application, with Samantha earning an even lower score of 139. On appeal in the 2016 case, we vacated the district court's order because the district court lacked jurisdiction to hear

the petition for judicial review. *State Dep't of Health & Hum. Servs. v. Samantha Inc.*, 133 Nev. 809, 816, 407 P.3d 327, 332 (2017).

Samantha then filed the underlying case seeking injunctive, mandamus, or other equitable relief to compel the Department to again rescore Samantha's application, and to grant Samantha a marijuana establishment license. The district court granted summary judgment for the Department because Samantha had already received a rescore of its application in 2016, rendering the case moot. This appeal followed.

We review a district court's grant of summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). "The question of mootness is one of justiciability." *Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010). "Thus, a controversy must be present through all stages of the proceeding . . . , and even though a case may present a live controversy at its beginning, subsequent events may render the case moot." *Id.* (internal citations omitted).

First, we address Samantha's contention that the 2016 rescore is a legal nullity because this court vacated the district court's order granting the rescore. We have not addressed a case where a party has complied with a court order then had the order vacated, so we turn to our sister courts for guidance. The California Supreme Court dismissed an appeal as moot under similar circumstances in *Leet v. Board of Supervisors*, 47 P. 595, 595 (Cal. 1897). In *Leet*, a party sought a liquor license from the county, was denied, and then obtained a writ of mandamus from the trial court. *Id.* The county issued the license, then appealed the writ. *Id.* The California Supreme Court dismissed the appeal because the judgment of the trial court had already been fulfilled. *Id.* *Leet* is persuasive here. The Department's rescore fulfilled the district court's 2016 order. In vacating

the district court's order, nothing was taken from Samantha. Therefore, Samantha has already received the remedy it is requesting here, a rescore of its application.

Second, we address Samantha's assertion that even if the 2016 rescore is not a legal nullity, the rescore was arbitrary and capricious, and Samantha still has not received a fair rescore. "[A]rbitrariness or capriciousness of governmental action in denying a license application, is most often found in an apparent absence of any grounds or reasons for the decision." *City Council of Reno v. Irvine*, 102 Nev. 277, 280, 721 P.2d 371, 372-73 (1986). The Department provided written justification for all points allocated to Samantha in every section of its 2016 application. To the extent Samantha asserts some of the 2014 graders were involved in the 2016 rescore, and thus were biased, we conclude this assertion is belied by the record. A deposition of a 2016 grader stated the rescore was carried out fairly and in accordance with the district court order and the 2016 graders were not influenced by any knowledge they had from Samantha's 2014 application. The fact Samantha's score dropped in several sections also does not demonstrate an arbitrary or capricious decision as the Department provided justification for its scores. Thus, we conclude Samantha has received its requested remedy of a fair rescore, which still did not earn it a license.

Even if Samantha did not receive its requested remedy, the case is still moot because there are no remedies which are likely to redress Samantha's harm. There are currently no medical marijuana licenses available in Las Vegas. Samantha instead argues it should be granted rights to a medical marijuana establishment license from elsewhere, or an adult use cannabis license.

As to Samantha's request for rights to a medical marijuana establishment license, the Legislature has prohibited the issuance or renewal of medical marijuana establishment licenses, favoring adult use cannabis establishment licenses. NRS 678B.215. This intervening legislative change has effectively eliminated one of Samantha's requested remedies, mooting the case.

Alternatively, Samantha requests rights to an adult use cannabis establishment license. Even were we to grant Samantha rights to such a license, actual receipt of the license would hinge on multiple uncertainties. "[I]t must be 'likely,' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision.'" *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992) (quoting *Simon v. E. Ky. Welfare Rts. Org.*, 426 U.S. 26, 38, 42 (1976)). First, the Cannabis Control Board—which now regulates marijuana in Nevada, and is not a party to this case—would have to exercise its discretion and find more adult use cannabis establishments are necessary to serve Nevada. NRS 678B.300; NCCR 5.020. The Board would then have to open a limited application window, score, and rank applications. NRS 678B.300; NCCR 5.020. Samantha's score would then have to be sufficient to earn it an application. NRS 678B.300; NCCR 5.020. Nothing in the record points to a likelihood of this occurring, and it would be speculative to conclude that granting Samantha rights to an adult use cannabis establishment license would redress its alleged harm.

Because Samantha's claims are moot, and it lacks remedies, we need not reach the issue of whether Samantha was required to join current medical marijuana license holders as parties. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Herndon

  
\_\_\_\_\_, J.  
Lee

  
\_\_\_\_\_, J.  
Bell

cc: Hon. Timothy C. Williams, District Judge  
James A. Kohl, Settlement Judge  
Flangas Civil Law Firm, Ltd.  
Lemons, Grundy & Eisenberg  
Attorney General/Carson City  
Eighth Judicial District Court Clerk