

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2007 CA 1418

MICHAEL THIBODEAUX

VERSUS

JAMES M. FIELD, CHAIRMAN, AND
LAWRENCE C. ST. BLANC, EXECUTIVE SECRETARY,
LOUISIANA PUBLIC SERVICE COMMISSION

Judgment Rendered: MAY - 2 2008



Appealed from the 19th Judicial District Court
in and for the Parish of East Baton Rouge
State of Louisiana
Suit Number 545,908

Honorable Timothy E. Kelley, Judge

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and Lawrence C. St. Blanc, Executive
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Commission

BEFORE: PARRO, KUHN, AND DOWNING, JJ.

Disposition: AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

Parro, J., concurs.

KUHN, J.

Plaintiff appeals a trial court judgment dismissing, as moot, his claims related to a public records request. For the following reasons, we affirm in part, reverse in part, and remand.

FACTUAL AND PROCEDURAL HISTORY

On June 23, 2006, Michael Thibodeaux submitted a public records request to the Louisiana Public Service Commission (the Commission). Therein, he sought the following documents:

[O]ne true copy of the final ... order as decided at the 5-25-06 B&E meeting held in Natchitoches, La.

[O]ne copy of all information and correspondences [sic] that the Commission relied upon for their determination.

[Docket] U-29526: Cleco Power LLC, ex parte. In re: Letter Application of Cleco Power, LLC for limited exemption from lower of cost or market pricing and competitive bidding rules for affiliate transactions, in connection with purchases of economy and emergency power from Acadia Power Station.

On June 26, 2006, the Commission responded to Mr. Thibodeaux's request, via e-mail, informing him that all of the documents filed in Docket U-29526, with the exception of the final order which had not been prepared yet, could be obtained free of charge from the Commission's website. The following day, Mr. Thibodeaux responded, via e-mail, indicating that this alternative was "not agreeable" to him and reiterating his request that he be provided with copies of the pertinent documents. Accordingly, the Commission sent Mr. Thibodeaux an invoice, dated June 27, 2006, setting forth the copying costs for all of the contents of the docket, as it then existed.

On July 12, 2006, Mr. Thibodeaux traveled to the Commission's office and paid the receptionist the amount due for the requested copies; however, due to a purported clerical oversight, the parties in charge of the records were not notified that payment had been received. As a result, copies of the documents were not

forwarded to Mr. Thibodeaux, thus prompting him to file the instant suit against James M. Field and Lawrence C. St. Blanc, a Commissioner and the Executive Secretary of the Commission, respectively. In his petition, Mr. Thibodeaux prayed that the defendants be ordered to provide the requested copies, and that they be fined and cast with costs and attorney's fees. Upon discovering that a mistake had been made on its part, the Commission furnished the copies Mr. Thibodeaux had requested.

Thereafter, the Commission¹ (on behalf of Mr. Field and Mr. St. Blanc) sought the dismissal of Mr. Thibodeaux's suit by filing a motion to dismiss for mootness or, alternatively, a motion for summary judgment. The Commission argued that since the document request had been fulfilled, there was no further relief the court could grant to Mr. Thibodeaux, and thus, the matter was clearly moot. Mr. Thibodeaux filed an opposition claiming that the matter was not moot, given his claim for the civil remedies provided by LSA-R.S. 44:35 "in the form of attorney's fees, costs and damages and civil penalties."

A hearing was conducted on January 22, 2007, after which the trial court rendered judgment granting the motion to dismiss for mootness, thereby premitting any ruling on the alternative motion for summary judgment. Thereafter, the trial court signed a judgment dismissing Mr. Thibodeaux's suit with prejudice. This appeal by Mr. Thibodeaux followed.

DISCUSSION

It is undisputed that, since filing his suit, Mr. Thibodeaux has received the public documents he had requested. The jurisprudence is well settled that courts will not decide abstract, hypothetical, or moot controversies, or render advisory opinions with respect to such controversies. **Cat's Meow, Inc. v. City of New**

¹ Although the petition names only James M. Field and Lawrence C. St. Blanc as defendants, the Commission appears in this lawsuit in its capacity as the Secretary of the Department of Public Service and the custodian of the public records at issue pursuant to LSA-R.S. 44:1(A)(3). See also LSA-R.S. 36:8(E)(1), 721, and 723.

Orleans Through Dept. of Finance, 1998-0601, p. 8 (La. 10/20/98) 720 So.2d 1186, 1193. An issue is moot when a judgment or decree on that issue has been deprived of practical significance or made abstract or purely academic. A case is moot when a rendered judgment or decree can serve no useful purpose and give no practical relief or effect. If the case is moot, then there is no subject matter on which the judgment of the court can operate. That is, jurisdiction, once established, may abate if the case becomes moot. **Cat's Meow, Inc.**, 1998-0601 at p. 8, 720 So.2d at 1193.

A controversy must normally exist at every stage of the proceeding, including the appellate stages. Thus, it is not enough that the requirements of justiciability are satisfied when the suit is initially filed: the requirements must remain throughout the course of litigation up to the moment of final disposition. **Cat's Meow, Inc.**, 1998-0601 at p. 9, 720 So.2d at 1193.

Because he has already received the requested documents, it is abundantly clear that Mr. Thibodeaux's injunctive and/or mandamus claim seeking a court ruling that the defendants provide him with the pertinent documents is now moot. Accordingly, we affirm the trial court judgment inasmuch as it grants the Commission's motion to dismiss, as moot, that particular request for relief.

There are, however, exceptions to the mootness doctrine: one of these exceptions is the collateral consequences exception. Under this exception, if, in addition to prospective relief, claims for compensatory relief are made, then the case may not be moot. In other words, although the primary subject of a dispute has become moot, the controversy is not moot if there are collateral consequences to one of the parties. The most obvious reason for denying mootness under the collateral consequences doctrine is when damages or other monetary relief has been claimed. The collateral consequences of the case or controversy give a party

a concrete interest in the outcome of the litigation and ensure that the suit is not moot. **Cat's Meow, Inc.**, 1998-0601 at pp. 12-13, 720 So.2d at 1196.

In this case, Mr. Thibodeaux sought not only injunctive and/or mandamus relief but also compensatory or other monetary relief pursuant to LSA-R.S. 44:35;² thus, the collateral consequences doctrine excepts these particular claims from being moot. See, e.g., Marler v. Reed, 1993-1772 (La.App. 1 Cir. 6/24/94), 638 So.2d 1164 (providing that a plaintiff was entitled to a contradictory hearing as to whether the defendant had responded to plaintiff's public records request in a timely manner). Therefore, we reverse the trial court judgment dismissing these particular claims by Mr. Thibodeaux and remand for further proceedings in connection with LSA-R.S. 44:35(D).

² LSA-R.S. 44:35 provides, in part:

A. Any person who has been denied the right to inspect or copy a record under the provisions of this Chapter, either by a final determination of the custodian or by the passage of five days, exclusive of Saturdays, Sundays, and legal public holidays, from the date of his request without receiving a final determination in writing by the custodian, may institute proceedings for the issuance of a writ of mandamus, injunctive or declaratory relief, together with attorney's fees, costs and damages as provided for by this Section, in the district court for the parish in which the office of the custodian is located.

B. In any suit filed under Subsection A above, the court has jurisdiction to enjoin the custodian from withholding records or to issue a writ of mandamus ordering the production of any records improperly withheld from the person seeking disclosure. The court shall determine the matter de novo and the burden is on the custodian to sustain his action. The court may view the documents in controversy in camera before reaching a decision. Any noncompliance with the order of the court may be punished as contempt of court.

* * * * *

D. If a person seeking the right to inspect or to receive a copy of a public record prevails in such suit, he shall be awarded reasonable attorney's fees and other costs of litigation. If such person prevails in part, the court may in its discretion award him reasonable attorney's fees or an appropriate portion thereof.

E. (1) If the court finds that the custodian arbitrarily or capriciously withheld the requested record or unreasonably or arbitrarily failed to respond to the request as required by R.S. 44:32, it may award the requester any actual damages proven by him to have resulted from the actions of the custodian except as hereinafter provided. In addition, if the court finds that the custodian unreasonably or arbitrarily failed to respond to the request as required by R.S. 44:32 it may award the requester civil penalties not to exceed one hundred dollars per day, exclusive of Saturdays, Sundays, and legal public holidays for each such day of such failure to give notification.

(2) The custodian shall be personally liable for the payment of any such damages, and shall be liable in solido with the public body for the payment of the requester's attorney fees and other costs of litigation, except where the custodian has withheld or denied production of the requested record or records on advice of the legal counsel representing the public body in which the office of such custodian is located, and in the event the custodian retains private legal counsel for his defense or for bringing suit against the requester in connection with the request for records, the court may award attorney fees to the custodian.

* * * * *

With regard to the issue of whether the Commission was arbitrary and capricious or unreasonable in failing to respond or supply the documents in a timely fashion, we decline to exercise our supervisory jurisdiction to consider the Commission's alternative motion for summary judgment, which was denied as moot.

CONCLUSION

For all of the foregoing reasons, the judgment of the trial court is affirmed insofar as it dismisses Mr. Thibodeaux's claim for injunctive and/or mandamus relief. Otherwise, it is reversed and this matter is hereby remanded to the trial court for further proceedings. The named defendants, James M. Field and Lawrence C. St. Blanc, a Commissioner and the Executive Secretary of the Public Service Commission, are cast with the costs of this appeal in the amount of \$660.75.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.