



State of Tennessee
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January 8, 2018

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RE: In the Matter of: City of Memphis and Memphis City Council
Docket No. 04.47-148176J

Enclosed is an initial order rendered in the above-styled cause of action.

Administrative Procedures Division
Tennessee Department of State

/aem
Enclosure

BEFORE THE TENNESSE HISTORICAL COMMISSION

**IN THE MATTER OF:
City of Memphis and Memphis City
Council (Petition for Declaratory Order)**

DOCKET NO. 04.47-148176J

NOTICE

ATTACHED IS AN ORDER OF DISMISSAL RENDERED BY AN ADMINISTRATIVE JUDGE WITH THE ADMINISTRATIVE PROCEDURES DIVISION.

THE ORDER IS NOT A FINAL ORDER BUT SHALL BECOME A FINAL ORDER UNLESS:

1. ANY PARTY FILES A WRITTEN APPEAL OR A PETITION FOR RECONSIDERATION, OR THE COMMISSION ON ITS OWN MOTION FILES WRITTEN NOTICE OF ITS INTENTION TO REVIEW THE ORDER, WITH THE ADMINISTRATIVE PROCEDURES DIVISION, NO LATER THAN JANUARY 23, 2018.

THE WRITTEN APPEAL AND/OR PETITION FOR RECONSIDERATION MUST BE FILED WITH THE ADMINISTRATIVE PROCEDURES DIVISION. THE ADDRESS OF THE ADMINISTRATIVE PROCEDURES DIVISION IS:

SECRETARY OF STATE
ADMINISTRATIVE PROCEDURES DIVISION
WILLIAM R. SNODGRASS TOWER
312 ROSA PARKS AVENUE, 8th FLOOR
NASHVILLE, TENNESSEE 37243-1102

IF YOU HAVE QUESTIONS, THE ADMINISTRATIVE PROCEDURES DIVISION CAN BE REACHED BY PHONE AT **(615) 741-7008**, OR FAX AT **(615) 741-4472**. PLEASE CONSULT APPENDIX A, AFFIXED TO THE ORDER OF DISMISSAL, FOR NOTICE OF APPEAL PROCEDURES.

**BEFORE THE STATE OF TENNESSEE
HISTORICAL COMMISSION**

IN THE MATTER OF:

**CITY OF MEMPHIS AND
MEMPHIS CITY COUNCIL,**

Petitioners,

v.

**WALTER LAW, JR., SIDNEY LAW,
BROOKS BRADLEY, THOMAS
JESSE BRADLEY, III AND KEVIN
BRADLEY,**

Respondent-Intervenors,

**SONS OF CONFEDERATE
VETERANS NATHAN BEDFORD
FORREST CAMP #215,**

Respondent-Intervenors.

APD No. 04.47-148176J

THC No. 17-0002

**PETITION FOR
DECLARATORY ORDER**

ORDER GRANTING MOTION TO DISMISS PETITION FOR DECLARATORY ORDER

On December 27, 2017, the Respondent-Intervenors filed a MOTION TO CONTINUE; IN THE ALTERNATIVE, MOTION TO DISMISS. As communicated to the parties, by email of December 28, 2017, the MOTION TO CONTINUE was denied. On January 3, 2018, the Petitioners filed a RESPONSE OF PETITIONERS TO MOTION OF INTERVENORS TO DISMISS.

Respondent-Intervenors' motion asserts that the AMENDED PETITION FOR DECLARATORY ORDER is moot because, in late December of 2017, the property upon which the Forrest statue was located was sold to a non-profit organization and the Forrest statue removed. The Petitioners' response argues that the motion fails to set forth an argument sufficient to support a dismissal. Petitioners also argue the Respondent-Intervenors' allegations in the motion concerning the legality of the 2017 removal of the statue, among other contemporaneous actions

taken by the Petitioners, establish the continued availability of “some sort of judicial relief to the prevailing party.”

This contested case proceeding concerns the issues raised by the AMENDED PETITION FOR DECLARATORY ORDER, which are paraphrased as follows:

1. Whether the Tennessee Heritage Act of 2013 (the 2013 Act) prohibits the Petitioners from relocating, removing, altering, or otherwise disturbing the Forrest Statue without a waiver from the Tennessee Historical Commission.

2. Whether the Tennessee Historical Commission has the authority, under the 2013 Act, to deny the Petitioners the right to relocate, remove, alter or otherwise disturb the Forrest Statue.

3. Whether the Petitioners preserved all their rights under the 2013 Act by filing a petition with the Tennessee Historical Commission before the effective date of the Tennessee Heritage Act of 2016.

Allegations regarding the actions taken that led to the statue being removed in December of 2017 are outside the scope of these proceedings. What remains of the instant motion, which is most properly treated as one for lack of subject matter jurisdiction, akin to a motion made under Tenn. R. Civ. P. 12.02(1)¹, is the question of whether this matter is mooted by the December, 2017 removal of the statue.

In Tennessee, it is a well-recognized principle of law that actions for declaratory relief must involve an actual controversy, which controversy “must remain alive throughout the course of the litigation, including the appeal process.” *Nonprofit Housing Corporation v. Tennessee Housing Development Agency*, No. M2014-01588-COA-R3-CV, 2015 WL 5096181, at *5 (Tenn. Ct. App. August 27, 2015) (quoting *Public Emps. For Env'tl. Responsibility v. Tenn. Water Quality Control Bd.*, No. M2008-01567- COA-R3-CV, 2009 WL 1635087, at *6 (Tenn. Ct. App. June 10, 2009)). When a case has become moot, subject matter jurisdiction over that

¹ Where the TENNESSEE UNIFORM ADMINISTRATIVE PROCEDURES ACT AND UNIFORM RULES OF PROCEDURE FOR HEARING CONTESTED CASES do not provide sufficient guidance on particular procedures, the TENNESSEE RULES OF CIVIL PROCEDURE apply. *See* TENN. COMP. R & REGS. 1360-04-01-.01(3).

case is lost. *Id.* (citing *State v. Rodgers*, 235 S.W.3d 92, 97 (Tenn. 2007)). “The central question in a mootness inquiry is whether changes in the circumstances existing at the beginning of the litigation have forestalled the need for meaningful relief.” *McIntyre v. Traughber*, 884 S.W.2d 134, 137 (Tenn. Ct. App. 1994) (citing *Federal Practice and Procedure*, § 3533.3, at 261).

It is without dispute that the Forrest statue was removed in December of 2017 from where it was located when the AMENDED PETITION FOR DECLARATORY ORDER was filed. The “changes in the circumstances existing at the beginning of [this] litigation” result in no redress being available to a prevailing party under the law sought to be construed, as it applies to this set of facts. *See, e.g., Badgett v. Broome*, 409 S.W.2d 354 (Tenn. 1966) (suit brought to enjoin a particular act determined to be moot once the act sought to be enjoined took place); *Nonprofit Housing Corporation*, 2015 WL 5096181 (declaratory judgment action determined to be moot because relief it may have brought was no longer available); *McIntyre*, 884 S.W.2d 134 (appeal concerning stipulations on a prisoner’s release on parole determined to be moot when entire sentence served and prisoner released).

Accordingly, the Respondent-Intervenors’ MOTION TO DISMISS is granted, the Petitioner’s AMENDED PETITION FOR DECLARATORY ORDER is hereby dismissed, and the hearing previously set for January 16, 2018, is cancelled.

It is so ORDERED, entered and effective this the 8TH day of JAN, 2018.



PHILLIP R. HILLIARD
ADMINISTRATIVE JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

APPENDIX A TO INITIAL ORDER

NOTICE OF APPEAL PROCEDURES

Review of Initial Order

This Order of Dismissal shall become a Final Order (reviewable as set forth below) fifteen (15) days after the entry date of this Order, unless either or both of the following actions are taken:

(1) A party files a petition for appeal to the agency (which, in this case, is the Tennessee Historical Commission), stating the basis of the appeal, or the agency on its own motion gives written notice of its intention to review the Order, within fifteen (15) days after the entry date of the Order. If this occurs, there is no Final Order until review by the agency and entry of a new Final Order or adoption and entry of the Order, in whole or in part, as the Final Order. A petition for appeal to the agency must be filed, within the proper time period, with the Administrative Procedures Division of the Office of the Secretary of State, 8th Floor, William R. Snodgrass Tower, 312 Rosa L. Parks Avenue, Nashville, Tennessee, 37243. (Telephone No. (615) 741-7008). See Tennessee Code Annotated, Section (T.C.A. §) 4-5-315.

(2) A party files a petition for reconsideration of this Order, stating the specific reasons why the Order was in error, within fifteen (15) days after the entry date of the Order. This petition must be filed with the Administrative Procedures Division at the above address. A petition for reconsideration is deemed denied if no action is taken within twenty (20) days of filing. A new fifteen (15) day period for the filing of an appeal to the agency (as set forth in paragraph (1) above) starts to run from the entry date of an order disposing of a petition for reconsideration, or from the twentieth day after filing of the petition if no order is issued. See T.C.A. §4-5-317.

A party may petition the agency for a stay of the Order of Dismissal within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

Review of Final Order

Within fifteen (15) days after the Order of Dismissal becomes a Final Order, a party may file, with the Administrative Procedures Division, a petition for reconsideration of the Final Order, in which petitioner shall state the specific reasons why the Final Order was in error. If no action is taken within twenty (20) days of filing of the petition, it is deemed denied. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Final Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

YOU WILL NOT RECEIVE FURTHER NOTICE OF THE ORDER OF DISMISSAL BECOMING A FINAL ORDER

A person who is aggrieved by a final decision in a contested case may seek judicial review of the Final Order by filing a petition for review in a Chancery Court having jurisdiction (generally, Davidson County Chancery Court) within sixty (60) days after the entry date of a Final Order or, if a petition for reconsideration is granted, within sixty (60) days of the entry date of the Final Order disposing of the petition. (However, the filing of a petition for reconsideration does not itself act to extend the sixty day period, if the petition is not granted.) A reviewing court also may order a stay of the Final Order upon appropriate terms. See T.C.A. §4-5-322 and §4-5-317.