ORIGINAL

FILED
05/27/2025
Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA
Case Number: DA 24-0328

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 24-0328

FILED
MAY 27 2025
Bowen Greenwood
Clerk of Supreme Court
State of Montana

EQT CHAP LLC,

Permittee and Appellant,

v.

ORDER

ENVIRONMENTAL HEALTH SCIENCES,

Appellee.

On May 5, 2025, the parties to this appeal filed a Joint Notice of Development informing the Court that the administrative proceeding giving rise to the subpoena at issue in this appeal had been voluntarily dismissed. The parties explain that the subpoena was only issued in the administrative proceeding because discovery in the companion civil suit was stayed at the time. EQT is having the subpoena reissued pursuant to the civil suit, and the parties assure this Court that the same legal question will reach this Court in the same posture. They ask the Court to take notice of the withdrawal of the underlying administrative proceeding and to issue an opinion on the legal issue previously briefed and argued.

"[C]ourts lack jurisdiction to decide moot issues insofar as an actual 'case or controversy' no longer exists." *Greater Missoula Area Fedn. of Early Childhood Educators v. Child Start, Inc.*, 2009 MT 362, ¶ 23, 353 Mont. 201, 219 P.3d 881. With the dismissal of the administrative action which rendered the subpoena issue moot, the controversy changed from a tangible issue to an abstract one. The conflict of laws problem does not exist independent of the subpoena creating the issue, despite the parties' assurances that they will manufacture the exact same legal question. Our Court is limited to "those matters in which we can grant effective relief," *Serena Vista, L.L.C. v. State Dep't*

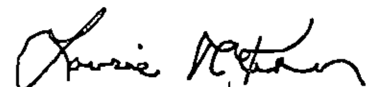
of Nat. Res. & Conservation, 2008 MT 65, ¶ 14, 342 Mont. 73, 179 P.3d 510, and no relief can be granted with respect to a subpoena issued in a case that no longer exists.

The parties also assert that despite the apparent mootness, the voluntary cessation exception applies. The voluntary cessation exception allows a case that would otherwise be moot to retain standing where "a defendant's challenged conduct is of indefinite duration, but is voluntarily terminated by the defendant prior to completion of appellate review." *Havre Daily News, LLC v. City of Havre*, 2006 MT 215, ¶ 34, 333 Mont. 331, 142 P.3d 864. It is designed to avoid litigation strategy wherein "a defendant will attempt to moot only a plaintiff's meritorious claims, thereby avoiding an undesirable judgment on the merits while vigorously contesting those cases in which he expects to prevail." *Havre Daily News*, ¶ 34 n.7. This exception plainly does not apply here as the defendant's challenged conduct is not the same act that was voluntarily ceased to manufacture mootness, nor is it of indefinite duration. The fact that the administrative proceeding dismissal was voluntary and resulted in cessation of a legal action does not render the exception applicable by that language alone. To proceed as the parties request would constitute an impermissible advisory opinion.

IT IS THEREFORE ORDERED that this case is DISMISSED as moot.

The Clerk is directed to provide copies of this Order to all counsel of record.

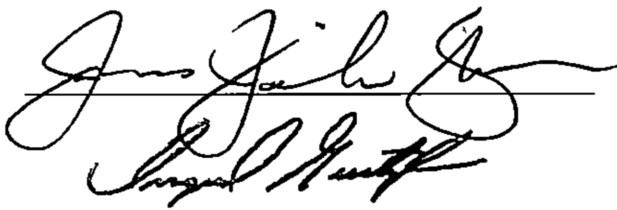
DATED this ____ day of May, 2025.



Justice

We Concur:

Chief Justice

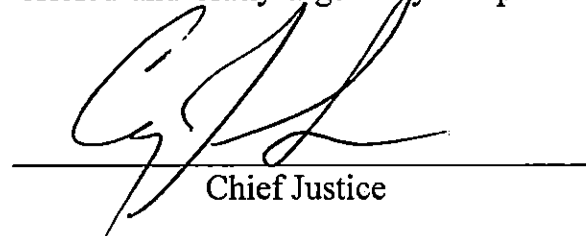


Justices

Chief Justice Cory J. Swanson, dissenting.

I dissent. *Havre* makes clear that when the challenged conduct has been shown likely to recur, the party asserting mootness has "a very hefty burden" to show it will not recur. *Havre,* ¶ 39. In such cases where the conduct has been shown likely to recur, "final judicial adjudication may provide useful guidance." *Havre,* ¶ 39.

Unlike in *Havre*, though, the parties here have filed a joint notice indicating an "identical" subpoena to the one at issue here is being served on EHS in Montana pursuant to the civil action that was previously stayed. "EHS will oppose this subpoena based on the same choice-of-law issue raised in opposition to the original subpoena and which is presently before this Court on appeal." Both parties to this case therefore believe the case is justiciable and have asked this Court to render its decision, which will answer the question certain to come back to this Court. The parties are not only "reasonabl[y] expect[ed]" to "be subject to the same action again," *Havre*, ¶ 34, it is guaranteed. I would address the issue which has already been fully briefed and orally argued by the parties before this Court.



Chief Justice