STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0839

Michael Peter Henderson,
Appellant,

vs.

Minnesota Correctional Facility - Faribault,
Respondent.

Filed March 17, 2009
Affirmed
Minge, Judge

Rice County District Court
File No. 66-C0-05-001333

Michael P. Henderson, 8720 Clinton Avenue, Bloomington, MN 55240 (pro se appellant)

Lori Swanson, Attorney General, Margaret Jacot, Assistant Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101 (for respondent)

Considered and decided by Minge, Presiding Judge; Larkin, Judge; and Stauber, Judge.

U N P U B L I S H E D O P I N I O N

MINGE, Judge

Appellant challenges the district court's dismissal of his lawsuit as moot, its failure to rule on pending motions, and its refusal to award costs. Because (1) appellant's cause of action is moot; (2) appellant has not established that he is the "prevailing party"

for the purposes of awarding costs; and (3) when dismissing a case as moot, courts may disregard claims related to costs, we affirm.

FACTS

In 2005, appellant Michael Peter Henderson—then an inmate at MCF-Faribault—brought a lawsuit against respondents, alleging denial of reasonable access to the prison law library and seeking an injunction requiring adequate law library access. After filing his complaint, appellant filed numerous motions, including motions to add additional plaintiffs for class-action certification and for temporary relief. In August 2006, the district court responded to appellant's temporary-relief motion by denying most of his requests because appellant could not show "either irreparable harm or a likelihood that he would ultimately prevail on the merits." Yet, the district court ordered respondents to provide printed copies of several court-related documents that were stored on a computer disk previously seized from appellant and to "continue to provide [appellant] with reasonable access to the law library."

Because appellant indicated he needed more time to proceed with the lawsuit, the district court did not schedule further proceedings. When appellant was released from prison in March 2007, he still was in the midst of requesting discovery from respondents and had not asked for a hearing on his motions or that the underlying action be scheduled for court consideration.

After appellant was released from prison, respondent moved to dismiss appellant's case as moot. Prior to dismissal, in December 2007, appellant moved that he be awarded costs of $270.19. In March 2008, the district court granted respondent's motion to

dismiss appellant's lawsuit, finding that the lawsuit was moot because appellant was no longer in prison and thus lacked standing to challenge policies related to use of the prison law library. In dismissing the lawsuit, the district court acknowledged that appellant had outstanding motions to join other inmates as plaintiffs and to amend the complaint to add additional defendants and other relief and stated that "[those] motions [had] not been granted." The district court noted appellant's request for costs and his interest in continuing the lawsuit to recover costs but ruled that a moot case cannot be maintained merely to determine costs. This appeal follows.

D E C I S I O N

The issues are whether the district court erred (1) in dismissing appellant's case as moot; and (2) doing so without deciding the merits of the lawsuit and several outstanding motions, including a demand for costs. A determination of mootness is a question of law, which we review de novo. *In re Risk Level Determination of J.V.*, 741 N.W.2d 612, 614 (Minn. App. 2007), *review denied* (Minn. Feb. 19, 2008). Generally, when an event makes an award of effective relief impossible or a decision on the merits unnecessary, the case should be dismissed as moot. *In re Application of Minnegasco*, 565 N.W.2d 706, 710 (Minn. 1997). The mootness doctrine "implies a comparison between the relief demanded and the circumstances of the case at the time of decision in order to determine whether there is a live controversy that can be resolved." *Id.*

There are two recognized exceptions to the mootness doctrine: (1) if an issue is capable of repetition yet evading review; and (2) if collateral consequences may attach to the otherwise moot ruling. *In re McCaskill*, 603 N.W.2d 326, 327 (Minn. 1999). To fall

under the "capable of repetition, yet evading review" doctrine, a case must satisfy two elements: "(1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable expectation that the same complaining party would be subjected to the same action again." *Mertins v. Comm'r of Natural Res.*, 755 N.W.2d 329, 335 (Minn. App. 2008). To fall under the "collateral consequences" doctrine, there must be evidence showing that adverse collateral legal consequences have resulted or can be presumed to result from dismissal of the case. *McCaskill*, 603 N.W.2d at 329.

Appellant filed his lawsuit for injunctive relief to have greater access to the prison law library, but then he was released from prison. When appellant left prison, he no longer has access to the prison library and injunctive relief was not available. Appellant fails to recognize that his change of circumstances renders effective relief impossible. Neither of the two exceptions to mootness is applicable. The "capable of repetition, yet evading review" doctrine is inapplicable because appellant is out of prison. We decline to assume he is likely to be incarcerated again. Even if we did, we cannot assume that he would be subjected to similar restrictions in prison law library access. And the "collateral consequences" doctrine does not apply because appellant provided no evidence that the dismissal of his civil suit had resulted in adverse collateral consequences.

Appellant claims that his case cannot be moot because he filed several motions on which the district court had not ruled prior to dismissing his case. However, appellant provides no explanation for how any motion creates a live controversy, and we consider

the district court's acknowledgement of appellant's pending motions and its statement that "no such motions have been granted" to be an implicit denial of these motions. We note that appellant could have pressed this lawsuit during his incarceration and that there is no allegation that any delay in considering his claims is attributable to respondent or the district court.

Appellant also claims that the district court erred when it refused to award costs because he had been granted temporary relief in 2006 and that such success qualified him for costs as a "prevailing party" under Minn. Stat. § 549.02, subd. 1 (2008). It is true that the district court shall allow reasonable costs to a prevailing party in a district court action. *Benigni v. County of St. Louis*, 585 N.W.2d 51, 54 (Minn. 1998). However, the overwhelming majority of federal and state courts have determined that the potential award of costs is not a sufficient reason to require a decision in an otherwise moot case. *See, e.g.*, *Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 480, 110 S. Ct. 1249, 1255 (1990).

We further note that the district court has discretion in both determining which party is the prevailing party and awarding costs to that party. *Reichert v. Union Fid. Life Ins. Co.*, 360 N.W.2d 664, 668 (Minn. App. 1985). "In determining who qualifies as the prevailing party in an action, the general result should be considered, and inquiry made as to who has, in the view of the law, succeeded in the action." *Borchert v. Maloney*, 581 N.W.2d 838, 840 (Minn. 1998) (quotation omitted). Here, appellant's claim to be a prevailing party is weak. There was no final determination of his claims and the temporary relief granted him was minimal.

Because appellant's lawsuit was moot when he left prison, because the district court generally is not required to address issues related to costs prior to dismissing a lawsuit as moot, and because appellant's argument for considering himself a "prevailing party" is not persuasive, we conclude that the district court did not err in dismissing appellant's case and not addressing the issue of awarding costs prior to such dismissal.

Affirmed.

Dated: