

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2011 CA 1896

ALVIN FAIRBURN & ASSOCIATES, LLC AND
MCLIN & ASSOCIATES, INC.

VERSUS

MICHAEL GRIMMER, INDIVIDUALLY AND
AS LIVINGSTON PARISH PRESIDENT

Judgment rendered: May 2, 2012

On appeal from the
21st Judicial District Court
In and for the Parish of Livingston
State of Louisiana
Suit Number 134,242

Honorable Zorraine M. Waguespack, Judge

S. Bradley Phorer
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Baton Rouge, LA

Counsel for
Plaintiffs/Appellees
Alvin Fairburn & Associates,
LLC, and McLin & Associates,
Inc.

Harry J. Philips, Jr.
William H.L. Kaufman
Baton Rouge, LA

Counsel for
Defendant/Appellant
Michael Grimmer, individually
and as the former Livingston
Parish President

BEFORE: WHIPPLE, KUHN, AND GUIDRY, JJ.

Handwritten signatures in black ink, including what appears to be the signature of Michael Grimmer and others.

GUIDRY, J.

This matter was originally brought before the district court pursuant to a petition for mandamus in which the appellees, Alvin Fairburn & Associates, LLC and McLin & Associates, Inc., sought the issuance of an alternative writ of mandamus commanding then parish president, Michael Grimmer, to comply with resolution LPR No. 11-254, wherein the Livingston Parish Council directed Mr. Grimmer to execute the signing of a check to pay Alvin Fairburn & Associates, LLC and McLin & Associates, Inc. for professional engineering services the companies provided relative to the construction of bridges and roads throughout the parish. Following a hearing on the petition, the district court determined that the action sought was a ministerial duty, and therefore made the writ peremptory. Mr. Grimmer filed a suspensive appeal, but while the appeal was pending, an election was held on November 19, 2011, wherein Mr. Grimmer was defeated in his bid for re-election; thus, he no longer holds the office of Livingston Parish President.

On February 23, 2012, the appellees filed a motion to dismiss the pending appeal as moot, since the new Livingston Parish President executed and signed a check in payment to the appellees, which fact has been acknowledged by the appellant, Mr. Grimmer.¹

Although the appellant questions the authority of the Livingston Parish Council to pass the resolution authorizing the work of and payment to the appellees, this was only a defense asserted by the appellant and never a formal demand made by the appellant by petition for declaratory judgment or reconventional demand. Hence, there appears no basis for maintaining the appeal to render what would essentially be an advisory opinion.

¹ This court can take judicial notice of the facts regarding the election of a new parish president. See La. C.E. art. 201; State ex rel. J.R.B., 08-1428, p. 2 (La. App. 3d Cir. 3/4/09), 11 So. 3d 2, 3.

It is well settled that courts will not decide abstract, hypothetical or moot controversies, or render advisory opinions with respect to such controversies. 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, there is no subject matter on which the judgment of the court can operate. The justiciable controversy must normally exist at every stage of the proceeding, including appellate stages; and when the actual controversy lapses, any judicial pronouncement on the matter would be an impermissible advisory opinion. Joseph v. Ratcliff, 10-1342, p. 7 (La. App. 1st Cir. 3/25/11), 63 So. 3d 220, 225. As the parties do not dispute that the matter pending before this court has been rendered moot, we will dismiss the pending appeal. The parties are to equally bear their share of the costs of these proceedings.

APPEAL DISMISSED.