

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT**

Hillsborough Superior Court Northern District
300 Chestnut Street
Manchester NH 03101

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
<http://www.courts.state.nh.us>

July 16, 2015

**WILBUR A. GLAHN, III
MCLANE GRAF RAULERSON & MIDDLETON PA
900 ELM STREET
PO BOX 326
MANCHESTER NH 03105-0326**

Catholic Medical Center v. New Hampshire Department of Revenue

Case Name: **Administration**

Case Number: **216-2011-CV-00955 226-2011-CV-00850; 218-2011-CV-01394**

You are hereby notified that the Court on 7/14/15 has entered the following order:

ISSUES REGARDING REQUEST FOR DISMISSAL ON GROUNDS OF MOOTNESS, REQUEST TO VACATE ORDER OF APRIL 8, 2014 AND REQUEST FOR RECONSIDERATION -

Order made, a copy of which is enclosed herewith. (Mangones, J.)

W. Michael Scanlon
Clerk of Court

(534)

C: Alexander J. Walker, ESQ; Joshua M. Wyatt, ESQ; Justin T. Vartanian, ESQ; Laura Beardsley Lombardi, ESQ; Daniel E. Will, ESQ; Jason D. Gregoire, ESQ; Peter Taylor Beach, ESQ; Michael C. Harvell, ESQ

**THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT**

HILLSBOROUGH, SS.

NORTHERN DISTRICT

CATHOLIC MEDICAL CENTER

v.

N.H. DEPARTMENT OF REVENUE ADMINISTRATION
216-2011-CV-00955

ST. JOSEPH HOSPITAL

v.

N.H. DEPARTMENT OF REVENUE ADMINISTRATION
216-2011-CV-00850

EXETER HOSPITAL

v.

N.H. DEPARTMENT OF REVENUE ADMINISTRATION
218-2011-CV-01394 (ROCKINGHAM, SS)

ORDER

On April 8, 2014, the Court issued an order granting summary judgment in favor of the petitioners on petitioners' challenge to the constitutionality of the Medicaid Enhancement Tax. Respondent subsequently moved for reconsideration of that determination, and, also, moved to vacate the April 8, 2014 order on grounds of mootness and to vacate the order. Prior to ruling on either motion, the Court had stayed further proceedings pending settlement negotiations between the parties.

Petitioners Catholic Medical Center and Exeter Hospital have since settled all claims with the respondent and the Court has administratively closed the action as to those parties on April 28, 2015. Petitioner St. Joseph Hospital ("St. Joseph") was not a part of that settlement. However, St. Joseph has resolved the damages portion of this litigation in a separate, confidential, agreement with the respondent. Thus, the issues remaining in these matters would be the declaratory judgment sought by St. Joseph and the respondent's pending motion seeking dismissal of the action and the vacating of the April 8, 2014 order.

ISSUES REGARDING RESPONDENT'S REQUEST FOR DISMISSAL ON GROUNDS OF MOOTNESS

In response to this and other litigation challenging the constitutionality of the Medicaid Enhancement Tax, the New Hampshire legislature made several amendments to the Medicaid Enhancement Tax statute. Those changes took effect on July 1, 2014. Respondent N.H. Department of Revenue Administration argues that it is entitled to dismissal because the changes to RSA 84-A have rendered moot the sole legal issue remaining before the Court. "Generally a matter is moot when it no longer presents a justiciable controversy because issues involved have become academic or dead." N.H. Ass'n of Counties v. State, 158 N.H. 284, 292 (2009). "A challenge seeking only prospective or declaratory relief is generally mooted where intervening legislative activity renders the prior law inapplicable." Id. at 292.

The Court presumes that, in enacting the new version of RSA 84-A, the legislature had acted in good faith and had crafted a responsive mandate

intended to address the asserted infirmities of the prior legislation. See Londonderry Sch. Dist. SAU #12 v. State, 157 N.H. 734, 737 (2008). In the present action, St. Joseph does not seek declaratory relief on the amended legislation that had taken effect July 1, 2014. (Pet.'s Obj. Mot. Dismiss at 3 n.1.) Rather, St. Joseph asserts that entry of a determination in this matter will serve as useful guidance in its pending challenge to the amended statute filed in Hillsborough County Superior Court South. (Pet.'s Obj. Mot. Dismiss at 4.)

It bears noting that while trial court determinations might be considered in other trial court proceedings, such trial court determinations are generally not binding in the other trial court matters. As indicated on the web site of the New Hampshire Judicial Branch concerning its listing of various Superior Court orders: "The orders on this site are trial court orders that are not binding on other trial court justices or masters and are subject to appellate review by the New Hampshire Supreme Court." ¹

Further, the Superior Court cannot provide relief which essentially constitutes an advisory opinion on related litigation. See North Country Envtl. Servs. v. Town of Bethlehem, 150 N.H. 606, 619–20 (2004) (holding Superior Court's ruling on actions the town could take in the future were an improper exercise of jurisdiction); Piper v. Meredith, 109 N.H. 328, 330 (1969) ("The Superior Court has no jurisdiction to give advisory opinions."). In essence, St. Joseph's request would exceed the allowable purpose of a declaratory judgment. See Baer v. New Hampshire Dep't of Educ., 160 N.H. 727, 730–31 (2010)

¹ See <http://www.courts.state.nh.us/superior/orders/index.htm> (last visited 7-14-2015). Parenthetically, it may also bear noting that this Court's April 8, 2014 order is contained on that web site.

(finding an action for declaratory judgment "cannot constitute a request for advice as to future cases").

A "case remains justiciable only to the extent remedies remain available to [the petitioner.]" ATV Watch v. N.H. Dep't of Res. & Econ. Dev., 155 N.H. 434, 437 (2007). Because St. Joseph has resolved its damages claim in this matter with the respondent, and because there is no prospective declaratory relief remaining available, there appears to be no remedy the Court can provide St. Joseph. As such, the matter is found to be moot.

Nonetheless, a decision upon the merits of an otherwise moot action may be justified where there may be a pressing public interest involved. Sullivan v. Town of Hampton Bd. of Selectmen, 153 N.H. 690, 692 (2006); see also Proctor v. Butler, 117 N.H. 927, 930 (1977), *overruled in part on other grounds by In re Sanborn*, 130 N.H. 430 (1988). St. Joseph asserts that the pressing public interest exception applies here because a final decision on the merits would assist in resolving uncertainty in the law. As noted above, however, St. Joseph has opted to pursue a challenge to the new legislation in a separate case, and seeks that this Court issue a declaratory judgment on legislation that is no longer in effect. In as much as St. Joseph's claims concerning the amended statute are before a Court that has jurisdiction to resolve the matters concerning the amended Medicaid Enhancement Tax statute, the Court does not find that St. Joseph has established sufficient grounds for this Court to retain jurisdiction over otherwise moot matters. "Although we are mindful of the petitioners' claims that the new legislation presents new problems, it is precisely for this reason that the

controversy before this court is now moot. HB 616, as it relates to the original petition, is no longer in effect." Londonderry Sch. Dist. SAU #12, 157 N.H. at 737.

Accordingly, the respondent's motion to dismiss on grounds of mootness is granted.

ISSUES REGARDING RESPONDENT'S REQUEST TO VACATE ORDER OF APRIL 8, 2014

The N.H. Department of Revenue Administration has requested that the Court vacate its order of April 8, 2014 prior to dismissing the present matter on mootness. While the Court recognizes that its order will not go to final judgment because of dismissal of the action on grounds of mootness, the Court declines to vacate an order that had been otherwise duly entered by the Court.

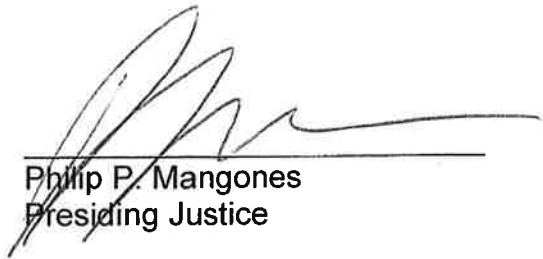
ISSUES OF RESPONDENT'S REQUEST FOR RECONSIDERATION

The N.H. Department of Revenue Administration had also sought reconsideration of this Court's April 8, 2014 order. Super. Ct. R. 12.(e). "A motion for reconsideration allows a party to present 'points of law or facts that the Court has overlooked or misapprehended.'" Barrows v. Boles, 141 N.H. 382, 397 (1996).

The Court has determined that the within action is moot for the reasons set forth above. Accordingly, the action has been dismissed. Respondent's request for reconsideration, therefore, has also been rendered moot.

SO ORDERED.

7-14-15
Date


Philip P. Mangones
Presiding Justice