

ANITA LaFORME,	:	IN THE COURT OF COMMON PLEAS OF
	:	LYCOMING COUNTY, PENNSYLVANIA
Appellee/Cross Appellant	:	
	:	
vs.	:	NO. 04-01,225
	:	
MONTGOMERY AREA	:	
SCHOOL DISTRICT	:	
	:	
Appellant/Cross Appellee	:	1925(a) OPINION

Date: September 15, 2005

**OPINION IN SUPPORT OF THE ORDER OF JULY 12, 2005 IN COMPLIANCE
WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE**

Anita LaForme has appealed this court’s July 12, 2005 order. In that order, the court granted LaForme’s local agency appeal and remanded the case to the Montgomery Area School Board to conduct a hearing regarding LaForme’s termination from her position as an instructional aid with the School District. The order was entered after the court determined that the Montgomery Area School Board had denied LaForme her due process rights by impermissibly commingling the prosecutorial and adjudicative functions when it considered documents that were not introduced into evidence at the time of the June 1, 2004 hearing before the School Board.

On August 22, 2005, LaForme filed her notice of cross appeal.¹ On August 23, 2005, this court issued an order in compliance with Pa.R.A.P. 1925(b) directing LaForme to file a

¹ On August 10, 2005, the Montgomery Area School District filed its notice of appeal regarding this court’s July 12, 2005 order. The Montgomery Area School District filed its statement of matters on September 6, 2005. A separate Pa.R.C.P. 1925(a) opinion will address the issues raised therein.

concise statement of matters complained of on appeal within fourteen days of notice of the order. On September 7, 2005, LaForme filed her statement of matters.

LaForme raises two issues in her statement of matters. First, LaForme asserts that the court erred in remanding the matter to the Montgomery Area School Board to conduct a hearing regarding her termination after the court determined that the School Board had violated her due process rights by commingling the prosecutorial and adjudicative functions. Second, LaForme asserts that the court erred in failing to reach a determination regarding her claim that her due process rights were violated by the Montgomery Area School District's failure to conduct a hearing prior to her termination. The court did not err in either respect.

The court did not err in remanding the case to the Montgomery Area School Board to conduct a hearing regarding LaForme's termination. The remedy available after a determination that there was a commingling of prosecutorial and adjudicative functions is to remand the case to the administrative body to hold a hearing consistent with the requirements of due process. *Pittsburgh Bd. of Pub. Ed. v. M.J.N.*, 524 A.2d 1385, 1390 (Pa. Cmwlth. 1987), *app. denied*, 541 A.2d 1392 (Pa. 1988). The court determined that the Montgomery Area School Board impermissibly commingled prosecutorial and adjudicative functions when it considered documents not introduced into evidence at the time of the June 1, 2004 hearing before the School Board. The court then ordered that the matter be remanded to the Montgomery Area School Board to conduct a hearing regarding LaForme's termination from her position as an instructional aid with the Montgomery Area School District. The court further ordered that the hearing be conducted in accordance with the court's July 12, 2005

opinion and the requirements of due process. Accordingly, the court ordered the appropriate remedy for the commingling violation.

The court did not err in declining to reach a determination on LaForme's claim that her due process rights were violated by the Montgomery Area School District's failure to conduct a hearing prior to her termination. In order for a court to reach the merits of an issue, the issue must be justiciable. To be justiciable, the issue may not be moot. Under the mootness doctrine, an actual case or controversy must exist at all stages of review. *Pap's A.M. v. City of Erie*, 812 A.2d 591, 600 (Pa. 2002). If no actual case or controversy exists, then a court is precluded from reaching a decision on the merits of the case. *Util. Workers Union, Local 69, AFL-CIO v. Pub. Util. Comm'n*, 859 A.2d 847, 849 (Pa. Cmwlth. 2004). There are three exceptions to the mootness doctrine: (1) the conduct at issue is likely to be repeated but will necessarily escape judicial review; (2) there is great public interest in the resolution of the controversy; (3) one party would suffer a substantial detriment if the controversy is not judicially resolved. *Id.* at 850.

The mootness doctrine precluded the court from reaching the merits of LaForme's claim that her due process rights were violated by the Montgomery Area School District's failure to conduct a hearing prior to her termination. One of the main controversies in this case was the contention that the Montgomery Area School Board denied LaForme an opportunity to have a fair hearing before a final decision regarding her termination was made. The court's determination that the Montgomery Area School Board commingled the prosecutorial and adjudicative functions ended this controversy. This determination found that LaForme was not provided such an opportunity, and the order remanding the matter to the School Board to

conduct a hearing provided the remedy and gave her the opportunity. Without the controversy, any determination the court made concerning the pre-termination hearing issue would have been an advisory opinion, and courts are not permitted to render advisory opinions. *See, In re Petition to Compel Cooperation with Child Abuse Investigation*, 875 A.2d 365, 369 (Pa. Super. 2005); *State Farm Mut. Auto. Ins. Co. v. Veltri*, 623 A.2d 849, 850 (Pa. Super. 1993). Accordingly, the court did not err in reaching the merits of this issue.

Therefore, LaForme's appeal should be denied and the court's July 12, 2005 order affirmed.

BY THE COURT,

William S. Kieser, Judge

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