

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

BUREAU OF CODES OF THE CITY OF	:	NO. 07-02,451
WILLIAMSPORT,	:	
Plaintiff	:	
	:	ADMINISTRATIVE AGENCY APPEAL
vs.	:	
	:	
STEPHANIE DAVIS,	:	
Defendant	:	

OPINION AND ORDER

Before the Court is an appeal from the October 4, 2007, decision of the Board of Health, which upheld the Bureau of Codes’ condemnation of certain residential property and their eviction, based thereon, of the tenant, Defendant herein. Defendant seeks a declaratory judgment that the Bureau of Codes is misapplying the International Property Maintenance Code (“IPMC”) and in so doing, depriving Defendant and others similarly situated of their “constitutionally protected property right[s] without due process of law”. She asks the Court to instruct the Bureau of Codes that prior notice of condemnation must be posted before a property can be placarded and the occupants ordered to vacate, that hearings following such evictions must be held within ten *calendar* days, not *business* days, and that an order to vacate should be enforced only during the period of time that the property is condemnable. The Bureau objects that Defendant’s request is moot as she has procured another residence and does not intend to return to the condemned property. Defendant argues, however, that the Court should apply the exception to the general rule on mootness.

As a general rule an actual case or controversy must exist at all stages of the judicial process, and a case once "actual" may become moot because of a change in facts An exception is made, however, for cases in which the issues are capable of repetition but likely to evade review if the general rule on mootness is applied Thus, an action will not be found moot when the challenged action is in its duration too short to permit full litigation and there is a reasonable expectation that the same complaining party will be subject to the same action again Where the same party will not be subject to the harm again and the action is not a class action, still, the case will not be found moot if the issues capable of repetition but likely to evade review are "substantial questions," or "questions of public importance."

In re Estate of Dorone, 502 A.2d 1271, 1274 (Pa. Super. 1985) (citations omitted). Defendant posits that a tenant usually finds another residence long before any Court has an opportunity to review the case, and that “this is clearly a continuing problem in the City of Williamsport”, and asks this Court to grant judgment in favor of Defendant in order to “require [the Bureau of Codes] to use the proper procedure”, posturing the issue as one of “public importance”. While it may very well be, the Court cannot *on the record before it* find either that the issue is capable of repetition but likely to evade review, or that it is an issue of public importance.

With respect to the first component, that the issue is capable of repetition, there is no evidence in the record that the Bureau of Codes will again fail to follow the IPMC in condemning a property and evicting the occupants.¹ With respect to the second, that the issue is likely to evade review, the Court simply notes Defendant’s ability to have requested an injunction at the time of the eviction. An allegation that the Bureau was not following the IPMC would have been immediately reviewed by the Court in that context and the relief sought, a reasonable time to find alternative housing, would have been available.

With respect to the issue of whether it is a matter of public importance, as stated earlier, while it may very well be a matter of public importance, Defendant merely relies on counsel’s assertions to that effect and has presented no evidence on which the Court can base a finding of such. The Court certainly means no disrespect to counsel by this, but rulings may not be based on the assertions of counsel, no matter how truthful or well-intended.

Accordingly, the Court does conclude that the matter is moot, and will enter the following:

¹ The Court views the issue in this manner, rather than as whether Defendant will again be evicted from a condemned residence, in order to address even the situation referred to by the Court in Dorone, *supra*: “where the same party will not be subject to the harm again and the action is not a class action, still, the case will not be found moot if the issues capable of repetition but likely to evade review are “substantial questions,” or “questions of public importance.”

ORDER

AND NOW, this 21st day of November 2008, for the foregoing reasons, Defendant's Appeal from the October 4, 2007, decision of the Board of Health is hereby DISMISSED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Sarah N. Steinbacher, Esq.
Jennifer L. Heverly, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson