

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

File Name: 19a0477n.06

Case No. 18-5766

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

FILED

Sep 12, 2019

DEBORAH S. HUNT, Clerk

JAMES THOMAS and DAVID HIXSON, on)
behalf of themselves and all others similarly)
situated,)

Plaintiffs-Appellees,)

v.)

BILL LEE, Governor of Tennessee, in his)
official capacity,)

Defendant,)

JEFF LONG, Commissioner for the)
Department of Safety and Homeland Security,)
in his official capacity,)

Defendant-Appellant)

ON APPEAL FROM THE UNITED
STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF
TENNESSEE

BEFORE: ROGERS, DONALD, and THAPAR, Circuit Judges.

BERNICE BOUIE DONALD, Circuit Judge. James Thomas and David Hixson are Tennessee residents whose driver's licenses were revoked pursuant to Tenn. Code Ann. § 40-24-105(b)(1) (2018) ("Section 105") for failure to timely pay litigation taxes, court costs, and fines assessed as a result of criminal convictions for each. Thomas and Hixson filed a lawsuit claiming that Section 105 violates their constitutional rights because it does not provide an exception for the indigent. On cross motions for summary judgment, the district court agreed with them on each

of their claims and 1) declared the law unconstitutional, 2) ordered reinstatement of all licenses that had been revoked based solely on an individual's inability to pay court debt, and 3) directed the state to cease further revocation of driver's licenses until a lawful procedure was implemented. The state appealed.

Since that appeal was filed, the state enacted a new law that amends Section 105 by, *inter alia*, providing an indigency exception. 2019 Tenn. Pub. Acts Ch. 438. We asked the parties to provide further briefing on the impact of this new law. The plaintiffs vigorously contend in their supplemental briefing that the new law provides them the relief they originally sought and thus moots the underlying litigation. Where a plaintiff prevails in invalidating a statute, but then on appeal withdraws its claim and concedes mootness, the issue is no longer live or justiciable. *Webster v. Reprod. Health Servs.*, 492 U.S. 490, 512 (1989) ("Plaintiffs are masters of their complaints and remain so at the appellate stage of a litigation."); *see also Remus Joint Venture v. McAnally*, 116 F.3d 180, 185 (6th Cir. 1997) ("Although this case has contained numerous complexities, our decision that no Article III case or controversy exists rests on a simple fact: plaintiffs voluntarily have abandoned an argument that was necessary for them to prevail in this federal court action."). Accordingly, this case is now moot.

The next question is what to do with the district court judgment. The defendants argue that, if this Court were to determine that no live issue remains, then they would still be subject to the district court's directives. They are incorrect. "When a claim is rendered moot while awaiting review by this Court, the judgment below should be vacated with directions to the District Court to dismiss the relevant portion of the complaint [with prejudice]." *Deakins v. Monaghan*, 484 U.S. 193, 200 (1988). As our Court has explained:

The idea is that when a party seeks relief from the merits of an adverse ruling, but is frustrated by the vagaries of circumstance from obtaining an appellate ruling, it

makes little sense to compel the losing party to live with the precedential and preclusive effects of the adverse ruling without having had a chance to appeal it.

Fialka-Feldman v. Oakland Univ. Bd. of Trs., 639 F.3d 711, 716 (6th Cir. 2011) (internal quotation marks omitted).

Accordingly, because the issues raised in this appeal and the underlying case have become moot, we **VACATE** the judgment of the district court and **REMAND** with instructions to dismiss the underlying litigation as moot.