

No. 1-13-1105

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MICHAEL C. WHITTEN,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County
)	
v.)	No. 13 CH 04021
)	
JESSE WHITE, Illinois Secretary of State,)	Honorable
)	Rodolfo Garcia
Defendant-Appellant,)	Judge Presiding.
)	
and)	
)	
Department of Administrative Hearings of the Office of the)	
Secretary of State; Julie Hamos, Director, and the Illinois)	
Department of Healthcare and Family Services; Pamela)	
Lowry, Administrator, and the Division of Child Support)	
Enforcement of the Illinois Department of Healthcare and)	
Family Services; and Patricia J. Whitten-Saigh,)	
)	
Defendants.)	

JUSTICE EPSTEIN delivered the judgment of the court.
Presiding Justice Howse and Justice Lavin concurred in the judgment.

ORDER

¶ 1 *Held:* This interlocutory appeal became moot after the circuit court entered final judgment and lifted its stay that was the sole issue raised in this appeal. No

exception to the mootness doctrine applied. The motion to consider the interlocutory appeal under an exception to the mootness doctrine is denied. The appeal is dismissed.

¶ 2 Plaintiff Michael C. Whitten filed an administrative review action against several defendants, including defendant, Jesse White, Illinois Secretary of State (the Secretary). Among other requests for relief, plaintiff sought to have the court vacate the Secretary's final administrative decision which had suspended plaintiff's Illinois driver's license. Plaintiff claimed, *inter alia*, that the Secretary's decision violated plaintiff's due process rights.

¶ 3 On March 11, 2013, the circuit granted plaintiff's motion to stay the suspension of his driver's license. On April 8, 2013, pursuant to Supreme Court Rule 307(a) (eff. Feb. 26, 2010), the Secretary filed this interlocutory appeal of the circuit court's March 11, 2013 order staying enforcement of the Secretary's final administrative decision.

¶ 4 During the pendency of this appeal, on July 22, 2013, the circuit court entered its final judgment and lifted its stay, rendering this appeal moot. See, *e.g.*, *In re India B.*, 202 Ill. 2d 522, 542 (2002) (“A case on appeal is rendered moot where the issues that were presented in the trial court do not exist any longer because intervening events have rendered it impossible for the reviewing court to grant the complaining party effectual relief.”); *cf In re Adoption of Walgreen*, 186 Ill. 2d 362, 365 (1999) (“[W]hen an opinion on a question of law cannot affect the result as to the parties or controversy in the case before it, a court should not resolve the question merely for the sake of setting a precedent to govern potential future cases.”). However, on August 15, 2013, the Secretary filed a motion requesting that we consider the appeal under the public interest and capable-of-repetition-yet-evading-review exceptions to the mootness doctrine. Plaintiff did

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not file a response to the motion. On September 5, 2013, this court entered an order taking the motion with the case. We now deny the Secretary's motion and dismiss this appeal as moot.

¶ 5 The Illinois Supreme Court has recognized a public interest exception to the mootness doctrine. See, e.g., *In re Adoption of Walgreen*, 186 Ill. 2d 362, 365 (1999). “The public interest exception is applicable only if there is a clear showing that: (1) the question is of a substantial public nature; (2) an authoritative determination is needed for future guidance; and (3) the circumstances are likely to recur.” *In re Marriage of Peters-Farrell*, 216 Ill. 2d 287, 292 (2005); accord *In re Adoption of Walgreen*, 186 Ill. 2d at 365. “The exception is construed narrowly.” *Id.* A clear showing of *each* factor is required to bring a case within the terms of the public interest exception. *Id.* We invoke the public interest exception only on rare occasions. *People ex rel. Partee v. Murphy*, 133 Ill. 2d 402, 410 (1990); *Fisch v. Loews Cineplex Theatres, Inc.*, 365 Ill. App. 3d 537, 542 (2005). The instant case does not satisfy the criteria for the public interest exception to the mootness doctrine. In its interlocutory appeal, the Secretary did not ask this court to hold that, as a matter of law, a trial court can never issue a stay. Instead, he argued that plaintiff had failed to establish good cause for the stay and asked only that we reverse the stay in this particular case. The circuit court's decision to exercise its discretion and grant plaintiff's request for a stay applied only to plaintiff, was entered under the unusual circumstances present in this case, and has no precedential value. See *Id.* We conclude that the public interest exception is inapplicable.

¶ 6 The Secretary has also argued that another exception to the mootness doctrine applies here: the “capable-of-repetition-yet-evading-review” exception. “For that exception to apply,

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there must be a reasonable expectation that the same complaining party would be subject to the same action again and the action challenged must be too short in duration to be fully litigated prior to its cessation.” *In re India B.*, 202 Ill. 2d 522, 543 (2002). This exception, similar to the public interest exception is to be construed narrowly. *Id.* (citing *In re Adoption of Walgreen*, 186 Ill. 2d 362, 365 (1999)). The period of time between the circuit court order allowing a stay and the final judgment lifting the stay was approximately four and a half months. The Secretary concedes that this time period was “theoretically sufficient for this Court to determine an interlocutory appeal.” The Secretary argues, however, that the period was not “realistically” sufficient, “especially where the appellee delayed consideration by declining to file an appellee’s brief.” However, we note that it was the Secretary who requested, and was granted, both an extension of time to file the record and an extension of time to file its appellant brief. At no time did the Secretary request an expedited appeal. Supreme Court Rule 311(b), entitled “Discretionary Acceleration of Other Appeals,” provides that “[a]ny time after the docketing statement is filed in the reviewing court, the court, on its own motion, or on the motion of any party, for good cause shown, may place the case on an accelerated docket.” Supreme Court Rule 311(b) (eff. Feb. 26, 2010). Thus, the action challenged here was not “too short in duration to be fully litigated prior to its cessation.” *In re India B.*, 202 Ill. 2d at 543.

¶ 7 We are also not persuaded by the Secretary’s bare assertion that there is a reasonable expectation that he will be subject to the same action again. As noted earlier, the interlocutory appeal did not request this court hold that, as a matter of law, a circuit court could not issue a stay but, rather, that the circuit court in this case abused its discretion in granting this particular

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plaintiff's motion to stay. See *In re Alfred H.H.*, 233 Ill. 2d 345, 360 (2009) (concluding that the capable-of-repetition-yet-evading-review exception was inapplicable because party did not raise a constitutional argument or challenge the interpretation of the statute and only disputed whether the *specific* facts established during the hearing in that *specific* adjudication were sufficient and any future actions involving the same party would, presumably, be supported by different evidence). Here, even if the Secretary were subject to the same action, he could obtain review by filing a timely notice of appeal. See *In re J.T.*, 221 Ill. 2d 338, 350 (2006). The Secretary could also request that the appeal be put on an accelerated docket pursuant to Supreme Court Rule 311(b). Therefore, we do not believe this case satisfies the criteria for the “capable-of repetition-yet-evading-review” exception.

¶ 8 In sum, the issue raised in the interlocutory appeal is moot as a result of the circuit court's entry of final judgment. Neither the public interest exception or the “capable-of repetition-yet-evading-review” exception to the mootness doctrine applies here. We deny the Secretary's motion that we consider the interlocutory appeal under an exception to the mootness doctrine. We dismiss this appeal as moot.

¶ 9 Motion denied; appeal dismissed.