IN THE SUPREME COURT OF MISSISSIPPI

NO. 95-CA-00470-SCT

IN THE INTEREST OF S.C., P.C. W.C., N.C. AND M.C., MINOR CHILDREN: E. C.

v.

YAZOO COUNTY DEPARTMENT OF HUMAN SERVICES

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-A

DATE OF JUDGMENT:	04/13/95
TRIAL JUDGE:	HON. HUDSON LLOYD THOMAS
COURT FROM WHICH APPEALED:	YAZOO COUNTY COURT
	YOUTH COURT DIVISION
ATTORNEY FOR APPELLANT:	TERRELL S. WILLIAMSON
ATTORNEYS FOR APPELLEE:	STANLEY ALEXANDER
	MIKE MOORE
NATURE OF THE CASE:	CIVIL - DOMESTIC RELATIONS
DISPOSITION:	DISMISSED AS MOOT - 1/30/97
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	5/29/97

BEFORE SULLIVAN, P.J., SMITH AND MILLS, JJ.

MILLS, JUSTICE, FOR THE COURT:

STATEMENT OF THE CASE

This is an appeal from proceedings of the County Court of Yazoo County, Mississippi, acting in its capacity as the Youth Court for that county (Youth Court). The mother, E.C. (Mother), seeks review and modification of a Youth Court order containing allegedly impermissible stipulations on the return of her children and failing to dismiss the case with prejudice.

The Youth Court issued an oral order on February 11, 1994. The order placed "preliminary " custody of the minor children of the Mother, S. C., P. C., W. C., N.C. and M. C. (Minor Children) with the

Yazoo County Department of Human Services (YDHS). The Youth Court held a shelter hearing on February 14, 1994. The Youth Court determined at the hearing that YDHS should continue to have custody of the Minor Children, that YDHS's custody was the only reasonable alternative, and that YDHS's custody of the Minor Children was in the children's best interest. The Youth Court cited neglect as the basis for its order. The next action of record in this case is the Mother's Motion for Release of Records filed on February 2, 1995. The Youth Court held a hearing on this motion on February 27, 1995, and ordered that counsel for the Mother be allowed to review and copy the records of the Youth Court and YDHS.

The Mother filed a Motion to Relinquish Custody on March 7, 1995. The Youth Court held a hearing on this motion on April 10, 1995. The Youth Court terminated YDHS's custody of the Minor Children. The Youth Court further ordered YDHS to supervise the Mother and Minor Children for ninety days and for YDHS to submit to the Court written reports about the Mother and Minor Children every two weeks. The Youth Court also ordered YDHS to furnish copies of these written reports to counsel for the Mother and the Youth Court prosecutor. Aggrieved, the Mother assigns as error the following issues:

> **1. Whether the lower court's failure to dismiss with prejudice the case against the Appellant, E. C., was an error of law requiring modification of the April 13, 1995, order?**
>
> **2. Whether the lower court's failure to order the Yazoo County Department of Human Services to return all the minor children to the Appellant, E.C., was an error of law requiring modification of the April 13, 1995, order?**
>
> **3. Whether the lower court's order that the Yazoo County Department of Human Services monitor the Appellant and her minor children for ninety days following the April 13, 1995, order was an error of law requiring modification of the April 13, 1995, order?**

In response, YDHS asserts and assigns the following issue to be decided:

> **Whether this appeal is moot?**

FACTS

On Friday, February 11, 1994, YDHS received an oral order, from the Youth Court allowing it to take custody of the Mother's Minor Children. The following Monday, February 14, 1994, the Youth Court held a shelter hearing about the Minor Children. The shelter hearing Order states:

> IT IS THEREFORE:
>
> ORDERED, ADJUDGED AND DECREED, that the Department of Human Services take said minors into custody until further order of this Court, same being necessary for the reason said minors are neglected and/or abused, it is in their best interest and there is no reasonable alternative to such custody.

(Emphasis in original.)

The order does not recite whether the Mother received any notice of the Monday, February 14, 1994, shelter hearing, which resulted in that order, nor does it even state that anyone made any attempt to provide the Mother with notice. Some of the Minor Children appear to have been placed with relatives after the February 14, 1994, shelter hearing. The two male Minor Children were placed with their putative father. From September 1994 through December 1994, some of the Minor Children had returned to the Mother's home and lived with her with the tacit consent of YDHS.

The Youth Court held no further hearings about the issue of custody in this case until April 10, 1995. The Mother noticed this hearing on her Motion to Relinquish Custody, filed on March 27, 1995. The Motion to Relinquish Custody sought to have the Minor Children returned to the Mother's custody, to have the Youth Court case dismissed with prejudice and to have the February 27, 1994, order expunged from the record of the Youth Court case.

At the hearing, the Youth Court prosecutor informed the Youth Court about the present location of the Minor Children. W.C. and P.C. were living with their putative father. M. C. was enrolled in the Youth Challenge Camp at Camp Shelby, Mississippi. N.C. was living with her cousin in Yazoo County. S.C. was living with his aunt in Rankin County.

The record in the Youth Court showed that no petition had been filed nor adjudicatory hearing held in the fourteen months since the February 14, 1994, order. At the hearing, the Youth Court prosecutor admitted error and conceded that deadlines for filing a petition and conducting an adjudicatory hearing had expired. The Youth Court prosecutor explained that he had no knowledge of this case until the Mother served him with her Motion to Release Records on February 1, 1995. YDHS's representative stated at the hearing that no petition had been filed in the case.

The Youth Court determined in the hearing that it would terminate YDHS's custody of the Minor Children. However, during the hearing an issue arose as to the right of the putative father of W.C. and P.C. to retain custody of the children after YDHS's custody was terminated by the Court. The Court held that it had no authority to order W. C. and P.C. be returned to the legal and physical custody of the Mother, but only the authority to terminate custody of YDHS. The Youth Court also ordered YDHS to supervise the Mother and the Minor Children for ninety days. The Youth Court ordered YDHS to submit written reports to it every two weeks during the ninety day supervision period. YDHS was also to submit copies of the reports to the attorney for the Mother and to the Youth Court Prosecutor. The Youth Court did not dismiss the case with prejudice. Aggrieved, the Mother appeals.

IS THIS APPEAL MOOT?

YDHS asserts that this appeal is moot, thus this Court should not reach the issues assigned by the Mother on appeal.

YDHS states that on April 13, 1995, the Youth Court of Yazoo County returned full legal and physical custody of the minor children in question to the Mother by way of an order. Furthermore, the Youth Court's request that the YDHS monitor the Mother and the Minor Children for ninety days following the April 13, 1995, order expired on or about July 13, 1995. Therefore, the issues on appeal are moot. This Court agrees with YDHS and finds that this appeal is moot.

A moot case is defined as occurring when "a Judgment upon some matter which when rendered for any cause cannot have any practical effect upon the existing controversy." Steven H. Gifis, Law Dictionary, Barron's Educational Systems, Inc., New York, 1975.

This Court has addressed the mootness issue many times, notably in the case of ***Yates v. Beasley*** 97 So. 676, 133 Miss. 301 (1923), when this Court addressed an injunction concerning employment of a teacher decided after completion of the school year there seems to have been no unnecessary delay in the progress of the cause either in the Court below or in this Court." ***Id.*** at 676.

> It is apparent without further statement of the case that it is utterly impossible for this court to enter any judgment in the cause which can be enforced. The questions involved are moot; they are dead questions. It is a principle of long standing in the courts of this country administering the common law that questions will not be adjudicated unless in so doing the rights of the parties can be fixed and enforced by proper final process. It is only real controversies which the courts will decide, not imaginary ones. Courts are instituted not alone to render but also to enforce their judgments. It would be a vain thing to render a judgment that in the very nature of things could not be enforced. ***Pafhausen v. State***, 94 Miss. 103, 47 So. 897 (1909); ***McDaniel v. Hurt***, 92 Miss. 197, 41 So. 381 (1906); ***McInnis v. Pace***, 78 Miss. 550, 20 So. 835 (1901).

> We are reminded that in ***McInnis v. Pace***, supra, although the questions were moot they were nevertheless decided. This is true, but in doing so the court departed from the long-established, sound rule. The declaring of principles of law in moot cases is neither binding on the parties nor on the courts. To do so simply amounts to the court giving advice about a matter without authority. No precedent is made for future cases.

Yates, 97 So. at 676.

Furthermore, in ***Sellier v. Board of Election Comm'rs of Harrison County,*** 164 So. 767, 174 Miss. 360 (1935), concerning enjoinder of an election already held, this Court, in sustaining a motion to dismiss, ruled:

> We pass the question whether the refusal of the circuit judge to issue the writ is an appealable order, as well as other questions raised, and go to appellees, contention that the questions involved are moot. There is no principle of law better established than that courts will not adjudicate moot questions; that they will only decide real controversies, nor imaginary ones, and that no judgment will be rendered which is unenforceable and therefore useless.
>
> It is at once apparent that it would be utterly impossible for this court to enter any judgment which could be enforced. The questions are dead questions.

Sellier, 164 So. at 768(citations omitted).

In the case of ***Shaw v. Shaw***, 603 So. 2d 287 (Miss. 1992), this Court, in addressing the issue of potential harm has concluded: ". . . a mere prospective danger of injury will not suffice to support a cause of action." ***Shaw***, 603 So.2d at 294(citations omitted).

More recently in ***In the Interest of C.J.: L.J. v. Marshall County Dept. of Human Services***, 652 So. 2d 196 (Miss. 1995), this Court dismissed as moot an action very similar to the case at bar. In ***L.J.***, the Marshall County Department of Human Services (MDHS) took a child into custody pursuant to an emergency temporary order issued by the Marshall County Youth Court. MDHS had received reports from the Union County Hospital that C.J., a minor, had been admitted with belt marks on his body. A sheltering hearing was set for March 9, 1993. At that hearing the appellant, orally moved to dismiss the action for failure to set the hearing within forty-eight hours of taking C.J. into custody, as required by state law. Miss. Code Ann. § 43-21-307 (1993). The Youth Court denied the motion to dismiss. The Youth Court's failure to dismiss the action in accordance with § 43-21-307 was one of the points upon which Ms. Jamison based her appeal.

Nevertheless, on March 21, 1995, this Court entered the following order:

> Came on this day for hearing and the Court, considering same, finds that the matter has been resolved and no justiciable issues remain to be heard and that the cause is moot.
>
> IT IS THEREFORE ORDERED AND ADJUDGED that this cause be and the same is hereby dismissed as moot.
>
> SO ORDERED this 21st day of March, 1995.

In the Interest of C.J.: L.J., 652 So. 2d at 196.

In the case at bar, just as in ***In the Interest of L.J.***, the Appellant's children have been returned to her, and YDHS is no longer monitoring the home of the Mother. The Mother is claiming that because the Youth Court did not dismiss the action in accordance with § 43-21-309 of the Mississippi Code, this Court should modify the April 13, 1995, Youth Court order. The similarities between the case at bar and ***In the Interest of L.J***. are amazing. Both cases were based upon procedural statutes contained within the Youth Court Act; both cases dealt with children who were taken into custody by the County Department of Human Services; and in both cases all the children had been returned to their respective parents well before the briefs to this Court were filed. Clearly, the case at bar must be handled in the same manner as ***In the Interest of L.J.*** Thus, this Court dismisses this case as moot.

CONCLUSION

The relief requested by the Mother in this case is that this Court modify the April 13, 1995, order to dismiss this case with prejudice. This action would have no practical effect since there is no longer a case pending before the Youth Court of Yazoo County as concerns these children. There simply is no justiciable issue present. Therefore, this case must be dismissed as moot.

DISMISSED AS MOOT.

LEE, C.J., PRATHER AND SULLIVAN, P.JJ., PITTMAN, BANKS, MCRAE, ROBERTS AND SMITH, JJ., CONCUR.