

IN THE SUPERIOR COURT OF MUSCOGEE COUNTY N OFFICE
STATE OF GEORGIA

2016 JAN 27 PM 4:15

JOHN T. DARR, in his official
capacity as Sheriff of Muscogee County,

Plaintiff,

v.

COLUMBUS, GEORGIA, a City, a public
corporation and a political subdivision of
the State of Georgia; TERESA P.
TOMLINSON, in her official capacity as
Mayor of Columbus, ISAAH HUGLEY,
in his official capacity as the City Manager
of Columbus, PAM HODGE, in her
official capacity as Finance Director of
Columbus, JERRY "POPS" BARNES, in
his official capacity as District 1
Councilor, GLEN DAVIS, in his official
capacity as District 2 Councilor, BRUCE
HUFF, in his official capacity as District
3 Councilor, EVELYN TURNER PUGH,
in her official capacity as District 4
Councilor, MIKE BAKER, in his official
capacity as District 5 Councilor, GARY
ALLEN, in his official capacity as District
6 Councilor, EVELYN "MIMI"
WOODSON, in her official capacity as
District 7 Councilor, TOM BUCK, in his
official capacity as District 8 Councilor,
JUDY THOMAS, in her official capacity
as District 9 at Large Councilor, and
BERRY "SKIP" HENDERSON, in his
official capacity as District 10 at Large
Councilor,

Defendants.

H. LINDA PIERCE
MUSCOGEE COUNTY
SUPERIOR COURT

CIVIL ACTION FILE
NO. SU-14-CV-3437-94

**DEFENDANTS' BRIEF IN SUPPORT OF
MOTION FOR PARTIAL SUMMARY JUDGMENT ON GROUNDS OF MOOTNESS**

COME NOW, Defendants in the above-styled action, and pursuant to O.C.G.A. § 9-11-56, request this Court to grant partial summary judgment to Defendants on Plaintiff's relief sought with respect to Columbus Consolidated Government's Fiscal Year 2015 (hereinafter "FY15") as any such claims are moot. The facts of this case, as well as the law, support Defendants' Motion. Defendants rely upon their Motion and the Statement of Undisputed Material Facts, filed contemporaneously herewith, and move this Court for an Order granting partial summary judgment as sought herein as follows:

INTRODUCTION

Sheriff Darr's Original Petition, Amended Petition, Second Amended Petition and Third Amended Petition for Writ of Mandamus and Injunctive Relief all seek to have this Court compel certain performance by the Defendants with respect to the budget process of the Columbus Consolidated Government for FY15. (*See generally* Petition for Writ of Mandamus Absolute and Injunctive Relief, ¶¶ 155-170; Amended Petition for Writ of Mandamus Absolute and Injunctive Relief ¶¶ 232-252; Second Amended Petition for Writ of Mandamus Absolute and Injunctive Relief ¶¶ 232-252; Third Amended Petition for Writ of Mandamus Absolute and Injunctive Relief ¶¶ 232-255). Defendants filed a Motion to Dismiss, and after the Court ruled on that Motion, the only remaining claims of Sheriff Darr include a mandamus, as well as a declaratory judgment questioning the constitutionality of two budget ordinances. The mandamus relief sought includes relief for FY15, a budget year that has completely ended and for which no relief can be afforded.

The Columbus Consolidated Government's fiscal year runs from July 1 through June 30 under its Charter section 7-400. *See* O.C.G.A. § 36-81-3 (providing the authority for local governments to establish and set their fiscal year by the enactment of local law). Accordingly,

the FY15 Budget year for which Plaintiff seeks relief ran from July 1, 2014 through June 30, 2015. See Charter, sec. 7-400, see also (Hodge Aff. ¶ 4-5). The final budget amendment incorporating all final changes for FY15 was entered by Council, signed by the Mayor and published to the public in November 2015. (Hodge Aff. ¶ 6). The final audit report for FY15 was issued on December 10, 2015. (Hodge Aff. ¶ 7) Indisputably, the FY15 budget is closed. (Hodge Aff. ¶ 8) Under the laws of Georgia, the relief requested for FY15 is clearly moot and non-justiciable. Accordingly, summary judgment and all mandamus claims related to FY15 should be granted.

STATEMENT OF UNDISPUTED MATERIAL FACTS

Defendants refer this Court to their Joint Statement of Undisputed Material Facts, filed contemporaneously herewith pursuant to O.C.G.A. § 9-11-56 and Uniform Superior Court Rule 6.5.

ARGUMENT AND CITATION OF AUTHORITY

The facts of this case and law demonstrate that any and all relief sought by the Sheriff with respect to FY15 is incapable of being afforded by virtue of the doctrine of mootness as the fiscal year has ended, an audit has been performed and that fiscal year is in all respects complete and closed. Georgia law is clear that a petition for writ of mandamus becomes moot when that which was requested in the writ has been done or completed. Board of Comm'rs of Richmond County v. Cooper, 259 Ga. 785 (1990). Because FY15 has ended and has been completely closed, the Sheriff's prayer that mandamus be issued compelling Defendants to perform certain duties with respect to FY15 is moot. Merry v. Williams, 281 Ga. 571, 572 (2007) (holding, "Because the year 2006 ended and Defendants performed the public duty of electing a new Mayor Pro Tempore for 2007, Merry's prayer that mandamus be issued compelling them to

perform that public duty is moot"). Furthermore, with respect to any declaration sought regarding FY15 the law is clear that such is improper by virtue of the fact that the courts of this state have stated that they will not be called upon to merely decide an abstract or theoretical question of law, or to give an advisory opinion. Lombard Corp. v. Collins, 224 Ga. App. 282, 283 (1997); Richardson v. Phillips, 302 Ga. App. 305 (2010) (noting that a case is considered moot when a determination is sought on a matter which, when rendered, cannot have any practical effect on the existing controversy or when the specific relief sought is no longer or not available).

A. Summary Judgment Standard

To prevail on motion for summary judgment pursuant to O.C.G.A. § 9-11-56, the moving party must demonstrate that there is no genuine issue of material fact and the undisputed facts warrant judgment as a matter of law. O.C.G.A. § 9-11-56 (c). A defendant may do this by either presenting evidence negating an essential element of the plaintiff's claims or establishing from the record an absence of evidence to support such claims. Oglethorpe Dev. Group v. Coleman, 271 Ga. 173 (1999) (citing Lau's Corp. v. Haskins, 261 Ga. 491 (1991) as the standard over which summary judgment was granted regarding a petition for mandamus). Furthermore, "[s]ummary judgment may be granted for all or part of a claim, counterclaim, cross-claim or action for declaratory judgment." Richard C. Ruskell, Davis and Schulman's: Georgia Practice and Procedure, §23:15 at 1305 (2015-2016 ed.); *see also* Crolley v. Haygood Contractor, 207 Ga. App. 434 (1993) (holding that partial summary judgment is a beneficial tool for the purpose of narrowing the issues for trial). Mootness is a defense that may be the basis for summary adjudication. *See generally* Daniels v. Price Communs. Wireless, 254 Ga. App. 559 (2002). As

is described *infra*, the undisputed material facts warrant judgment as a matter of law for the Plaintiff's claims for relief as they relate to FY15.

B. Plaintiff's claims for FY15 budget relief are barred by the doctrine of mootness.

Mandamus is an extraordinary remedy to compel a public officer to perform a required duty when there is no other adequate legal remedy. O.C.G.A. § 9-6-20. It is a discretionary remedy that courts may grant only when the petitioner has a clear legal right to the relief sought or the public official has committed a gross abuse of discretion. In general, mandamus relief is not available to compel officials to follow a general course of conduct, perform a discretionary act, or undo a past act. R.A.F. et al. v. Robinson, 286 Ga. 644 (2010). Furthermore, the courts have declared that once the public duty has occurred over which mandamus is sought, the "prayer that mandamus be issued compelling [a public officer] to perform that public duty is moot." Merry, 281 Ga. 571, 57; *see also* Bland Farms v. Ga. Dept. of Agriculture, 281 Ga. 192, 193 (2006) (stating that, *inter alia*, mandamus cannot undo a past or completed act.)

It has been stated by the appellate courts of this state that,

The role of the judiciary is to address justiciable cases. A controversy is justiciable when it is appropriate for judicial determination. It must be definite and concrete, touching the legal relations of parties having adverse legal interests, rather than being hypothetical, abstract, academic or moot. A controversy is 'justiciable' when there are interested parties asserting adverse claims upon an accrued state of facts. The courts do not concern themselves with the solution of academic problems **or the determination of dead issues.**

In re I. B., 219 Ga. App. 268 (1995) (emphases added). Mootness is a question of court policy based on the theory that courts do not give opinions on abstract propositions of law that do not involve an actual controversy between parties. Hopkins v. Hambry Corp., 273 Ga. 19 (2000). The existence of an actual controversy is fundamental to a decision on the merits by the court. Bowers v. Bd. of Regents, 259 Ga. 221 (1989); Board of Com'rs of Richmond County v. Cooper,

259 Ga. 785 (1990). A trial court should not adjudicate portions of claims within a complaint that have become moot, as doing so would amount to trial courts making advisory opinions or rendering abstract decisions. *See generally* Scoggins v. Collins, 288 Ga. 26 (2010); Crittenton v. Southland Owners Ass'n, 312 Ga. App. 521, 523-24 (2011) (where plaintiffs sought to have the trial court validate a *past* event, plaintiffs were not entitled to relief requested, "as it would be nothing more than an advisory opinion from the trial court."); Richardson v. Phillips, 302 Ga. App. 305, 310-11 (2010) (finding that a claim was moot where the petitioner "simply aimed to have the trial court decide the propriety of past conduct," which would amount to nothing more than an advisory opinion from the trial court); *see also* Butler v. Ala. Judicial Inquiry Comm'n, 261 F.3d 1154 (2001) (noting that moot claims of case were due for dismissal where parties were ordered to confer and could not agree to voluntary dismissal).

Two cases illustrative of the mootness doctrine's application to the facts at bar are Brown v. Wright, 231 Ga. 686 (1974) and Merry v. Williams, 281 Ga. 571, 572 (2007). In Brown, the citizens and taxpayers of Fulton County filed a petition attacking the validity of an act passed by the Georgia General Assembly allowing the collection and distribution of certain tax monies for and during the year of 1973 for the construction and maintenance of county roads. Brown, 231 at 686. The taxpayers sought both declaratory and injunctive relief regarding the act. Id. Prior to the trial court deciding the merits of the case, the State Revenue Commissioner completed his duties under the act at issue for the fiscal year (which ran from July 1, 1973 – July 1, 1974) and had made appropriations required under the act as well. Id. at 687-688. After the trial court decided the act was unconstitutional and that the taxpayers and citizens were entitled to the injunctive relief sought, an appeal ensued. Id. at 686. On appeal, the Supreme Court reversed the trial court. The Supreme Court held that the issues pertaining to the funds for the fiscal year

of July 1, 1973 – July 1, 1974 were moot since the State Revenue Commissioner had already collected taxes and made appropriations under the act before the trial court ruled. Id. at 688. The Court pointed out that with respect to the 1973 funds, all of the relief sought (both equitable and injunctive) no longer concerned a viable issue since no relief could in fact be afforded in that regard. Id. Therefore, those issues were moot and the trial court was reversed. Id.

The Merry case concerned the election of a commissioner to the office of Mayor Pro Tempore. Merry, 281 Ga. at 571. During the January 2006 election cycle several votes took place and each failed for lack of the requisite number of votes to elect a Mayor Pro Tempore. Id. At 571-572. A citizen and taxpayer filed a petition for mandamus, declaratory relief and quo warranto. Id. During the pendency of the case, another election cycle took place in January 2007 and a Mayor Pro Tempore was elected with the requisite number of votes. Id. The defendants argued that the completion of a new election cycle and election of a Mayor Pro Tempore for the year of 2007 rendered moot any claims for mandamus and quo warranto regarding the year of 2006. Id. The Supreme Court of Georgia agreed holding that because the 2006 year had ended and there was no public duty left to be performed with respect to that year, the issues of mandamus and quo warranto were in fact moot. Id. In essence, because no relief could be afforded under those claims, like in Brown, they were dead for all intents and purposes and no longer justiciable.

Here, as was the case in Brown and Merry, there is no controversy left to be decided with respect to budget year FY15 operation of law due to the closure of the local government fiscal year and budget by. Columbus Consolidated Government's fiscal year closed on June 30, 2015 and with the entry of the final budget amendment in November of 2015 and issuance of the

FY15 audit report on December 10, 2015 no relief of any kind can be afforded to the Sheriff's Office for that fiscal year.

The FY15 budget is, therefore, not capable of reoccurring, its time has come and gone, and any claims related to it are moot. Brown v. Wright, 231 Ga. 686 (1974) (holding injunctive relief claims regarding taxes moot due to the fiscal year's closure). The fiscal year of 2015 is gone and such budget and budget process can be neither reopened, repeated nor compelled. FY15 happened once and will never reoccur. When the time has passed for the discharge of the official duty sought to be compelled, mandamus will be denied, as it is not a proper remedy to compel the "undoing of acts already done or correction of wrongs". Hilton Constr. Co. v. Rockdale County Bd. of Educ., 245 Ga. 533, 540 (1980).

CONCLUSION

By virtue of the foregoing arguments and citation of authority, this Court should GRANT partial summary judgment by summarily adjudicating all claims for relief sought which is based on, or requested to alter or affect the CCG budget in any manner, for FY15 in these Defendants' favor, given that they are **MOOT**.

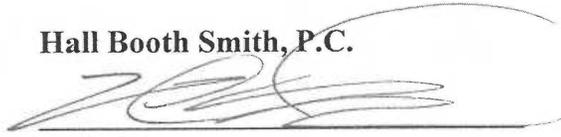
Respectfully submitted this 27 day of January 2016.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have served a copy of the above and foregoing **DEFENDANTS' BRIEF IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT** upon all counsel listed below by depositing a true copy of same in the United States Mail, in a properly addressed envelope with adequate postage thereon.

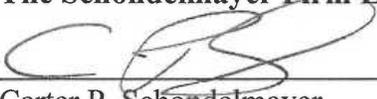
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This 22 day of January, 2016.

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