

NO. 2010-CA-01745

IN THE MISSISSIPPI SUPREME COURT

LAFAYETTE COUNTY BOARD OF SUPERVISORS

Appellant

V.

THIRD CIRCUIT DRUG COURT

Appellee

ON APPEAL FROM THE CIRCUIT COURT
OF LAFAYETTE COUNTY, MISSISSIPPI

SUPPLEMENTAL BRIEF OF APPELLANT

ORAL ARGUMENT REQUESTED

DAVID D. O'DONNELL, MSB [REDACTED]
CLAYTON O'DONNELL, PLLC
1300 ACCESS ROAD, SUITE 200
POST OFFICE DRAWER 676
OXFORD, MISSISSIPPI 38655
Telephone: (662) 234-0900
Facsimile: (662) 234-3557

Attorney for Appellant

**I. WHETHER THIS APPEAL IS MOOT BASED ON
UNION COUNTY'S HAVING REPLACED LAFAYETTE COUNTY
AS THE "LEAD COUNTY" FOR THE THIRD CIRCUIT DRUG COURT**

Lafayette County acknowledges that the Third Circuit Drug Court has transferred the so-called "lead county" functions to Union County since the issuance of its order compelling the County to provide fiscal and personnel management support for the Drug Court under threat of contempt. This fact raises the very real issue of whether this action has essentially rendered this appeal moot. This Court has previously ruled that "cases in which an actual controversy existed at trial but the controversy has expired at the time of review, become moot." Monaghan v. Blue Bell, Inc., 393 So.2d 466 (Miss. 1980); See also Alford v. Mississippi Division of Medicaid, 30 So.3d 1212, 1214 (Miss. 2010). The general rule, in such cases, is that this Court will not adjudicate moot questions. See Allred v. Webb, 641 So.2d 1218, 1220 (Miss. 1994). Lafayette County acknowledges that, under the general rule, this appeal has been rendered moot by the transfer of administrative functions of the Third Circuit Drug Court from Lafayette County to Union County.

Lafayette County believes that an exception to the general rule potentially applies in this case, namely the "public interest" exception. See Alford, 30 So.3d at 1214. Under the "public interest" exception to the mootness doctrine, when issues raised in an appeal involve matters affecting the public interest which transcend the private interests at stake in the litigation, the appeal will not be dismissed even though the controversy has expired at the time of review. "When the question concerns a matter of such nature that it would be extremely detrimental to the public interest that there should be a failure by the dismissal to declare and enforce a rule for future conduct," the public interest exception applies. See Alford, 30 So.3d at 1214; See also J.E.W. v. T.G.S., 935 So.2d 954 (Miss. 2006); Sartin v. Barlow ex. rel. Smith, 16 So.2d 372, 377 (Miss. 1944). Like the procedural facts before this Court in Allred v. Webb, 641 So.2d 1218 (Miss. 1994), the present case is not a "mere private dispute" but rather involves matters of public concern regarding the proper administration of drug court operations and the scope of a Drug Court's (as a drug

intervention program) “inherent powers”. Therefore, although the Drug Court’s transfer of its administrative, record keeping and financial management functions to Union County as the so-called “lead county” ends Lafayette County’s direct interest in the ultimate resolution of the issues presented in this appeal, the “public interest” aspects inherent in the same issues would justify this Court’s consideration of this appeal as a matter of discretion.

II. THE APPLICABILITY OF MISSISSIPPI CODE ANNOTATED § 9-23-9(3)

Effective July 1, 2003, the Mississippi Legislature enacted the “Alyce Griffin Clarke Drug Court Act,” thereby establishing guidelines for the creation and organization of programs for “local drug court alternative orders” in the chancery, circuit, county, youth, municipal, and justice courts upon certification of such programs by the Administrative Office of Courts. Although the ultimate administrative oversight of such programs are vested in the Administrative Office of Courts, the Drug Court Act created the “State Drug Courts Advisory Committee” which functions under the auspices of the Administrative Office of Courts. See Miss. Code Ann. § 9-23-9. The Committee was established to: (1) develop plans and models for monitoring all aspects of drug court operations, (2) provide recommendations for improvements to Drug Court policies and procedures, and (3) act as “arbiter of disputes arising out of the operation of drug courts...and make recommendations to improve the drug courts.” Miss. Code Ann. § 9-23-9. Significantly, the Drug Court Act does not further define either the scope of the Committee’s “arbiter” authority or the manner in which the Committee would act as “arbiter” of drug court related disputes.

The Drug Court Rules reasonably promulgated by the Committee do clarify the nature of the matters as to which the Committee functions as “arbiter.” These matters are limited to disputes arising out of the denial or revocation of certification of drug court programs by the Administrative Office of Courts. For example, sections 9 through 12 of the Rules delineate the hearing and appeal procedures to be followed in the event a drug court program applicant or an existing drug court program objects to the Administrative Office of Courts’ denial of an application or revocation of an existing certification. The Rules do not envision

hearings involving any other issues and certainly do not envision the Committee's authority to resolve "disputes" between two separate branches of state government regarding the administration of local drug court programs. More to the point, neither Miss. Code Ann. § 9-23-9, nor the Drug Court Rules contemplate that the Committee would retain the power to determine the authority of a Drug Court Judge to issue administrative orders requiring a separate branch of government to provide fiscal and personnel management support for drug court operations under threat of contempt.

Accordingly, it is Lafayette County's position that the Committee does not have the jurisdiction to resolve the issues raised in this appeal which regard the authority and discretion of a drug court to require a county government to provide fiscal and personnel management support for drug court operations in a manner which is directly contrary to the Drug Court Rules and Fiscal Policy promulgated by the Committee which require the local drug court program to itself administer as a matter of certification requirements.

Respectfully submitted this, the 5th day of August, 2011.

CLAYTON O'DONNELL, PLLC
1300 Access Road, Suite 200
Post Office Drawer 676
Oxford, Mississippi 38655
Telephone: (662) 234-0900
Facsimile: (662) 234-3557

s/David D. O'Donnell

DAVID D. O'DONNELL, MSB. [REDACTED]

CERTIFICATE OF SERVICE

I, David D. O'Donnell, of Clayton O'Donnell, PLLC, do hereby certify that I have caused this day to be mailed, by United States Mail, postage prepaid, a true and correct copy of the above and foregoing to:

Honorable Andrew K. Howorth
Third Circuit Drug Court
1 Courthouse Square
Oxford, MS 38655

Attorney General Jim Hood
Scott Stuart
Elizabeth Ruby Carr
Office of the Attorney General
P O Box 220
Jackson, MS 39205-0220

THIS, the 5th day of August, 2011.

s/David D. O'Donnell

DAVID D. O'DONNELL, MSB # [REDACTED]