

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

DAMEN AGUILA, MARIO LANZA
DYER, and JAMIE SCARBOROUGH

Plaintiffs,

v.

MUNICIPALITY OF ANCHORAGE,

Defendant.

Case No. 3AN-25-04570CI

ORDER DENYING MOTION TO DISMISS

Defendant, Municipality of Anchorage, moves to dismiss the case as moot.¹ The Defendant claims that since the encampment has been abated, there is no longer a live dispute among the parties.² The Court denied the Plaintiffs' request for a temporary restraining order or a preliminary injunction on February 11, 2025.³ Plaintiffs oppose this motion to dismiss, arguing there is still an active controversy regarding the constitutionality of the "prohibited camping" laws.⁴

Background

On January 31, 2025, the Municipality of Anchorage posted notices of abatement ("the Notice") at an encampment on the east side of Arctic Boulevard, north of West Fireweed Lane ("the Arctic-Fireweed encampment").⁵ This Notice gave Plaintiffs ten

¹ Motion to Dismiss at 1.

² *Id.*

³ *Id.* at 2.

⁴ Opposition to Municipality's Motion to Dismiss at 1.

⁵ Memorandum in Support of Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction at 3, 7.

days to move their belongings.⁶ Any belongings that were not removed after the ten days would be categorized as waste and would be disposed of.⁷ Personal property that the Plaintiffs wish to have stored would be stored by the Municipality for thirty days after the notice date.⁸ In the Notice, the Municipality cited to Anchorage Municipal Code (AMC) 15.20.020B.15., 25.10.060, 25.70.040, and Anchorage Municipal Code of Regulations (AMCR) 25.10.001 as the basis for abatement.⁹

The Court denied the *Motion for Temporary Restraining Order and Preliminary Injunction* on February 13, 2025.¹⁰

Legal Standard

Issues of standing and mootness are resolved using independent judgment as a question of law.¹¹ A claim becomes moot when there is “no longer a present, live controversy.”¹² A moot claim can still be heard by the Court if it falls under the public interest exception.¹³ In order for a moot issue to fall under this exception, the Court must consider three factors: “(1) whether the disputed issues are capable of repetition, (2) whether the mootness doctrine, if applied, may cause review of the issues to be repeatedly circumvented, and (3) whether the issues presented are so important to the public interest as to justify overriding the mootness doctrine.”¹⁴

⁶ *Id.* at 7.

⁷ Plaintiffs’ Exhibit 3.

⁸ *Id.*

⁹ *Id.*

¹⁰ Order Denying Plaintiffs’ Motion for Preliminary Injunction at 9.

¹¹ *Young v. State*, 502 P.3d 964, 969 (Alaska 2022).

¹² *Id.* (citing *Fairbanks Fire Fighters Ass’n, Local 1324 v. City of Fairbanks*, 48 P.3d 1165, 1167 (Alaska 2002) (citations omitted)).

¹³ *Id.* at 970.

¹⁴ *Id.* (citing *Fairbanks Fire Fighters Ass’n, Local 1324*, 48 P.3d at 1168 (citations omitted)).

For the first element, the Court typically refuses to apply the public interest exception to any unusual factual circumstances, as they are unlikely to repeat.¹⁵ Even if there is a possibility that the issue is capable of repetition does not mean that it is likely to repeat.¹⁶

The second factor looks to see if the application of the mootness doctrine “will repeatedly circumvent judicial review of this issue.”¹⁷ The Court in *Young* decided that the State’s decision to cease the challenged conduct after the suit was filed did not go to the second factor, as nothing suggests that the State will do this again.¹⁸

The third factor asks whether there is a public interest that is so important that stems from the issues that it would justify overriding the mootness doctrine.¹⁹

In *Ahtna Tene Nene*, the Court refused to address a moot issue under the public interest exception as the initial requested relief was initially very narrow, compared to the later requests to make judgments regarding the constitutionality of a community harvest system, which was unrelated to any factual dispute.²⁰ In contrast, in *Kodiak Seafood Processors*, the Court stated that since the State “has not disavowed this type of [conduct],” the issue is capable of repetition.²¹

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 971.

²⁰ *Ahtna Tene Nene v. State, Dept. of Fish & Game*, 288 P.3d 452, 459 (Alaska 2012).

²¹ *Kodiak Seafood Processors Ass'n v. State*, 900 P.2d 1191, 1196 (Alaska 1995).

The Court in *Blythe* ruled on the mootness of a transfer of a child from one home placement to another.²² The Court found that since foster care placements are temporary and brief, the issue is likely to evade review.²³

I. *Smith Case*

In the *Smith* case, the Supreme Court of Alaska remanded the case for consideration of constitutional challenges to an abatement that were raised on appeal.²⁴ Under AMC 15.20.020(B), an appeal process is created for campsite abatements.²⁵ The Court did not find that a notice of abatement supported the conclusion “that only the legal sufficiency of the notice may be appealed.”²⁶ The Court concluded that the notice does not restrict the subject matter of the appeal, but rather acts as the timer for the 30 day period for appeal.²⁷ The Court held that there is nothing in the ordinance or the notice that “purports to restrict the right to appeal the notice’s legal sufficiency.”²⁸ The Court found that the Superior Court has the jurisdiction not only to consider the legality of the campsite, the property disposal on the campsite, but also the due process issues.²⁹ The Court held that if the “existing administrative record is inadequate for purposes of meaningful appellate review, our cases illustrate some of the options for dealing with that inadequacy, including (1) ordering the Municipality to supplement the record, (2) remanding the case to the Municipality for

²² *Blythe P. v. Dep’t. of Health & Social Services, Office of Children’s Services*, 524 P.3d 238, 241 (Alaska 2023).

²³ *Id.* at 244.

²⁴ *Smith v. Muni. of Anchorage*, No. 7763 at 1. (Alaska 2025).

²⁵ *Id.* at

²⁶ *Id.* at 7.

²⁷ *Id.* at 8.

²⁸ *Id.* at 9.

²⁹ *Id.* at 13.

further proceedings, and (3) conducting a trial de novo.”³⁰ The Court emphasized that even if an abatement is not stayed, “it does not restrict the right to appeal from the abatement decision itself.”³¹

II. *Lila*

The *Lila* case dealt with a woman who was detained at a psychiatric hospital awaiting an evaluation for a mental health commitment.³² She had a severe head lice infestation, which resulted in the Superior Court issuing an order allowing staff to shave her head.³³ This was done without her consent.³⁴ The Court grappled whether if the issue was moot, as the shaving was complete and the case presented a specific set of facts that were unlikely to repeat.³⁵ Although the shaving was already done and irreversible, for involuntary commitment appeals the Supreme Court stated that “a case need not be capable of being repeated identically in order for the public interest exception to apply.”³⁶ The Court ruled that because of the importance of protecting rights of anyone detained at a psychiatric hospital, the issue fell under the public interest exception to mootness.³⁷

//

//

//

//

³⁰ *Id.* at 18.

³¹ *Id.* at 9.

³² *Lila B.*, No. S-18662, No. 7763 at 1 (Alaska 2025).

³³ *Id.*

³⁴ *Id.* at 1-2.

³⁵ *Id.* at 3.

³⁶ *Id.* (citing *In re Naomi B.*, 435 P.3d 918, 927 (Alaska 2019) (citations omitted)).

³⁷ *Id.*

Discussion

I. Is the Present Claim Moot?

First, the Court must determine whether or not the claim is actually moot.³⁸ Defendant claims that since the abatement has been completed, there is no live controversy.³⁹ Plaintiffs claim that the actual controversy is the validity of the prohibited camping laws that the Municipality used to support the abatement.⁴⁰ Plaintiffs claim that since the Municipality “would not instruct Plaintiffs on where they could legally go, and because the Municipality continues to rely on these laws to abate encampments throughout the city, Plaintiffs remain in an adverse posture to the Municipality over this legal issue.”⁴¹ Plaintiffs claim that a declaration on the constitutionality of the laws will provide meaningful relief to the Plaintiffs, as they are currently in a legal limbo as to where they can go.⁴²

In *Alaska Community Action on Toxics*, the Court found that the issue was moot as the disputed permits were expired.⁴³ The relief sought was the rescission of the permit, but the permit was expired by 2012, long before the appeals court looked at this case in 2014, therefore the Court could not provide the requested remedy.⁴⁴

³⁸ See *Young*, 502 P.3d at 969.

³⁹ Motion to Dismiss at 5.

⁴⁰ Opposition to Defendant’s Motion to Dismiss at 8.

⁴¹ *Id.* at 9.

⁴² *Id.*

⁴³ *Alaska Community Action on Toxics v. Hartig*, 321 P.3d 360, 366 (Alaska 2014).

⁴⁴ *Id.* at 367.

The Court in *Young* found that the issue was moot after the State ceased its conduct.⁴⁵ Conversely, in the current case, the State did not willingly cease its conduct before any substantial steps were taken.

The case at hand is most similar to *Alaska Community Action*, as the conduct was already performed and was exhausted during the course of proceedings.⁴⁶ The abatement has already occurred and cannot be undone, the issue of whether or not the abatement should be allowed is exhausted.⁴⁷

Looking at the Complaint, the Plaintiffs contend that the practice of abatement violated their rights under the Alaska Constitution.⁴⁸ The Plaintiffs claim violations of due process, unreasonable search and seizure, privacy, and public health and welfare.⁴⁹ Following the recent decision in *Smith*, the Court has noted that even if an abatement is not stayed, a successful appeal could “restore to the individual the right to camp in the area.”⁵⁰ Furthermore, the *Smith* Court emphasized the right to a proper appeal, despite the status of the abatement during the appeals process.⁵¹ Following this, the Court is within its discretion to continue to hear the current case, in order to allow the parties their full proper appeal and because there is an available remedy.

//

//

⁴⁵ *Young*, 502 P.3d at 970.

⁴⁶ See *Alaska Community Action on Toxics*, 321 P.3d at 366.

⁴⁷ Motion to Dismiss at 5.

⁴⁸ Complaint at 4.

⁴⁹ *Id.*

⁵⁰ *Gregory Smith*, No. 7767 at 9.

⁵¹ *Id.*

II. *If Moot, Does the Public Interest Exception Apply?*

Plaintiffs claim that even if the case is moot, since the Municipality has not disavowed to stop abatements, that this action is capable of repetition.⁵² The Plaintiffs argue that since this is not a defunct policy, the Municipality will continue to act under these regulations.⁵³ Differing from *Ahtna Tene Nene*, the Plaintiffs aren't bringing a new action about an unrelated policy, but are asking the Court to litigate the same Municipality Codes pleaded in the Complaint.⁵⁴ Nor is this case about a defunct policy, like in *Alaska Community Action on Toxics*.⁵⁵

Furthermore, Plaintiffs are concerned that if this is not litigated today, the action will be repeated and will avoid review due to the brief nature of abatements.⁵⁶ Abatements are temporary, only taking two weeks from the date of first notice of the abatement to the actual abatement.⁵⁷ This temporary, brief action is substantially similar to the foster care placements in *Blythe*.⁵⁸ The Defendants argue that the history of the case shows that the Court is well positioned to hear these matters in less than five days.⁵⁹ Since this was not the normal turn around for a case and the Court had to work in an expeditious manner to get that order out, the issue of constitutionality of the Municipal Code is likely to evade review if the Court was to accept this argument.

⁵² Opposition to Defendant's Motion to Dismiss at 11.

⁵³ *Id.* at 11-12.

⁵⁴ Opposition to Defendant's Motion to Dismiss at 10.

⁵⁵ *Alaska Community Action on Toxics*, 321 P.3d at 366.

⁵⁶ Opposition to Defendant's Motion to Dismiss at 14.

⁵⁷ *Id.* at 15.

⁵⁸ *Blythe P.*, 524 P.3d at 244.

⁵⁹ Motion to Dismiss at 7.

Lastly, the Plaintiffs claim that the public has a vested interest in the fundamental rights of Alaskans and in ensuring that the Alaska government is acting within a constitutionally permissible scope.⁶⁰ In *Kodiak Seafood Processors Ass'n*, the Court stated that since the issue was the scope of the Commissioner's power, it was an issue of public interest.⁶¹ Similarly, this is an issue about the scope of the Municipality's power, which the public has an interest in.⁶²

Following *Lila*, even if the issue is deemed moot, it is capable of repetition, even if under non-identical circumstances, making it a public interest issue.⁶³ Abatements are clearly subject to repetition as there are multiple cases currently dealing with abatements.⁶⁴ Therefore, even if a reviewing Court finds that the issues within the case are moot, this case clearly falls under the public interest exception.

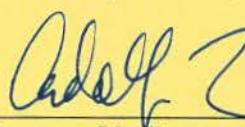
Conclusion

For the aforementioned reasons, the *Motion to Dismiss* is **DENIED**. The Court poses the question to the parties asking if this case should be merged with the *Smith* case recently remanded to Judge Walker, or if the parties believe the cases should proceed separately. Counsel should confer and report back to the Court.

DATED at Anchorage, Alaska this 18th day of June, 2025.

I certify that on 6/18/25 a copy
of the following was mailed/mailed to each
of the following at their address of record.

E. Glatt, R. Bottren, H. Valley, Z. Schwartz


ADOLF V. ZEMAN
Superior Court Judge

W. Langholtz & T. Busen

⁶⁰ Opposition to Defendant's Motion to Dismiss at 17.

⁶¹ *Kodiak Seafood Processors Ass'n*, 900 P.2d at 1196.

⁶² See Opposition to Defendant's Motion to Dismiss at 18.

⁶³ See *Lila*, No. 7763 at 6.

⁶⁴ See generally *Gregory Smith*, No. 7767.