

NOTICE: Summary decisions issued by the Appeals Court pursuant to M.A.C. Rule 23.0, as appearing in 97 Mass. App. Ct. 1017 (2020) (formerly known as rule 1:28, as amended by 73 Mass. App. Ct. 1001 [2009]), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 23.0 or rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

19-P-1309

ANTHONY MICHAEL BRANCH

vs.

DEPARTMENT OF REVENUE CHILD SUPPORT ENFORCEMENT.

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

The plaintiff filed this action contending that the child support enforcement division of the Department of Revenue (DOR) violated his statutory and constitutional rights by failing to provide him with adequate notice and a hearing before suspending his driver's license for the failure to pay child support. In his complaint, the plaintiff sought a declaration of his rights, the reinstatement of his license, a temporary preliminary injunction enjoining DOR from initiating any further enforcement action against him during the pendency of the proceedings, and court costs. After a judge of the Superior Court granted the plaintiff's request for the preliminary injunction, and ordered DOR to reinstate the plaintiff's license, DOR moved for summary judgment. The judge, concluding the matter was moot, granted summary judgment in DOR's favor. We affirm.

Background. We summarize the pertinent facts in the light most favorable to the plaintiff, the nonmoving party. See Godfrey v. Globe Newspaper Co., 457 Mass. 113, 119 (2010). On December 1, 2016, the registry of motor vehicles (RMV) issued a letter to the plaintiff notifying him that his driver's license would be suspended for the nonpayment of child support unless DOR directed the RMV within ten days not to suspend the license. This was the first notice the plaintiff received that his driver's license was at risk of suspension, which DOR concedes was negligent on its part and violated G. L. c. 119A, § 6 (b) (2), 16 (c).¹ The plaintiff received this notice on or about December 7, 2016, and attempted to contact DOR to prevent the suspension of his license. The plaintiff left several voicemail messages for employees at DOR, but was unsuccessful in his attempt to stop the suspension. The plaintiff's driver's license was suspended on December 11, 2016.

On December 14, 2016, the plaintiff filed a complaint for modification of child support in the Plymouth division of the Probate and Family Court Department. In his complaint, the

¹ On October 17, 2016, DOR attempted to send a letter to the plaintiff notifying him that his driver's license was at risk of suspension unless he cured his child support arrearages, but the letter was erroneously addressed to a post office box that did not belong to the plaintiff at the time. The letter was returned to DOR as "not deliverable," and no further attempts were made by DOR to send notice to the plaintiff until December 1, 2016.

plaintiff asserted that his ability to pay child support had substantially decreased because he was unemployed and was unable to find employment, in part because DOR had suspended his driver's license. On January 3, 2017, a judge reduced the plaintiff's child support payments temporarily, and ordered DOR "to take the necessary steps to remove its suspension of [the plaintiff's] Massachusetts driver's license."² Following that order, the plaintiff's driver's license was not automatically reinstated. Rather, the RMV required a reinstatement fee of \$100 to be paid by the plaintiff before he would be permitted to legally operate a vehicle.

On April 7, 2017, the plaintiff filed the present action in the Superior Court alleging violations of G. L. c. 119A, § 6 (b) (2), 16 (c), as well as his procedural due process rights under the Massachusetts Declaration of Rights and the Fourteenth Amendment to the United States Constitution. As noted supra, in his demand for relief, the plaintiff sought: (1) a declaration that DOR committed such violations, (2) the reinstatement of his driver's license, (3) a preliminary injunction prohibiting DOR from imposing any further enforcement actions against him while the case was pending, and (4) any court costs that he incurred. After a hearing on the plaintiff's request for a preliminary

² The judge preserved the \$6,656.20 in arrears owed by the plaintiff.

injunction, at which DOR did not appear, the judge granted the preliminary injunction, and ordered DOR to reinstate the plaintiff's driver's license and to waive the \$100 reinstatement fee. In accordance with that order, the plaintiff's driver's license was reinstated, and the reinstatement fee was waived by the RMV.³

On December 28, 2018, DOR moved for summary judgment, asserting that, since the plaintiff had already obtained all the relief he sought, the matter was moot. Following a hearing, where the plaintiff acknowledged that all of his court costs had been waived, the judge concluded that the harm complained of by the plaintiff had been cured "prior to filing suit," and as a result, the matter was moot.⁴ He accordingly allowed DOR's motion, and entered summary judgment in its favor. This appeal followed.

Discussion. "Summary judgment is appropriate where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law." Godfrey, 457 Mass. at

³ DOR did not have the authority to waive the RMV's reinstatement fee on its own, but at DOR's request, the RMV agreed to waive the fee.

⁴ At the hearing, the plaintiff also acknowledged that his driver's license had been reinstated, and he conceded that his request for a temporary preliminary injunction was rendered moot at that point. Where the complained-of harm was cured before or during these proceedings, any error in the judge's endorsement was inconsequential.

118-119. "We review a grant of summary judgment de novo."
Maroney v. Planning Bd. of Haverhill, 97 Mass. App. Ct. 678, 682
(2020), quoting Jenkins v. Bakst, 95 Mass. App. Ct. 654, 656-657
(2019).

Here, at the time of the summary judgment motion, the plaintiff had received all the relief to which he was entitled. His driver's license had been reinstated at no cost to him, his preliminary injunction had been granted, and since the plaintiff had not incurred any court costs, there was nothing else for him to recover. Consequently, the matter was moot. See Lawyers' Comm. for Civ. Rights & Economic Justice v. Court Adm'r of the Trial Court, 478 Mass. 1010, 1011 (2017) (where no further effective relief can be granted, matter is moot); McCants v. Clerk of Suffolk Superior Court for Criminal Business, 465 Mass. 1007, 1007-1008 (2013) (where petitioner received relief sought, petition properly dismissed as moot); Layne v. Superintendent, Mass. Correctional Inst., Cedar Junction, 406 Mass. 156, 160 (1989) (where alleged violations cured at time plaintiffs sought to present case on merits, matter was moot as to any continuing wrong).

"Courts generally 'decline to hear moot cases.'" M.C. v. Commissioner of Correction, 399 Mass. 909, 911 (1987), quoting Lockhart v. Attorney Gen., 390 Mass. 780, 782-783 (1984). The plaintiff contends that this case is one that is

"capable of repetition, yet evading review," and therefore should have been decided despite its mootness. Id. We are not persuaded. The claims raised by the plaintiff were isolated to him and his circumstances. Indeed, DOR acknowledges that it failed to provide the plaintiff with the requisite notice because it inadvertently misaddressed the initial letter notifying him that his license was at risk of suspension.⁵ That error has since been corrected, and there is nothing to suggest that it is likely to repeat itself with frequency. See Stokes v. Superintendent, Mass. Correctional Inst., Walpole, 389 Mass. 883, 887 (1983) (case not excepted from canon of mootness where "no strong likelihood that the same dispute will recur between the same parties"). Nevertheless, we are confident that, if this distinct issue were to arise again, appellate review could be obtained before the issue becomes moot.⁶ Compare Lawyers' Comm. for Civ. Rights & Economic Justice, 478 Mass. at 1011 (even where issue is capable of repetition, courts decline

⁵ The plaintiff believes that his former wife, who is a State employee, played a part in changing his address in DOR's system in order to prevent him from receiving the notice. Even assuming this were true, it further supports our conclusion that the issues in this case are specific to the plaintiff and are unlikely to recur. See M.C., 399 Mass. at 911-912.

⁶ Especially in the circumstances here, where the plaintiff has raised issues of constitutional dimension, "[w]e have been particularly reluctant to decide an issue in a moot case." M.C., 399 Mass. at 912. See Lockhart, 390 Mass. at 784.

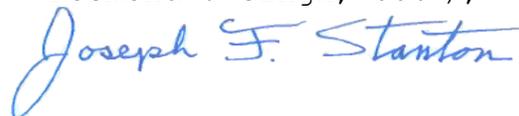
to decide moot issue if "it will not necessarily evade review in the ordinary course of events").

Finally, the plaintiff contends that he was nevertheless entitled to a declaration of his rights pursuant to G. L. c. 231A, § 1. However, "declaratory relief is reserved for real controversies, and is not a vehicle for resolving abstract, hypothetical, or otherwise moot questions." Libertarian Ass'n of Mass. v. Secretary of the Commonwealth, 462 Mass. 538, 547 (2012). At the time of the motion, DOR had cured any violations alleged by the plaintiff. As a result, "[t]he matter was moot as to any continuing wrong," and declaratory relief was not warranted. Layne, 406 Mass. at 160. "In general, our courts will not adjudicate a dispute merely because a party is interested in what answer the courts will give." Maroney, 97 Mass. App. Ct. at 683. Although as the plaintiff points out, disputes of fact remain such as the date the plaintiff's license was reinstated, none is material. For all these reasons,

summary judgment was appropriate.⁷ See M.C., 399 Mass. at 911.

Judgment affirmed.

By the Court (Sullivan,
Desmond & Singh, JJ.⁸),



Clerk

Entered: April 30, 2021.

⁷ We have considered the plaintiff's remaining arguments, but find nothing in them requiring discussion. See Commonwealth v. Domanski, 332 Mass. 66, 78 (1954).

⁸ The panelists are listed in order of seniority.