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BRIAN FITZGERALD ET AL. *v.* CITY OF BRIDGEPORT ET AL.
(AC 45114)

Bright, C. J., and Suarez and Clark, Js.

Syllabus

The plaintiffs, various members of the Bridgeport Police Department, sought injunctive relief and a declaratory judgment that certain defendants, the city of Bridgeport, G, the mayor of Bridgeport, D, the personnel director of the city, and P, the chief of police of the city, failed to follow the civil service provisions of the Bridgeport City Charter in appointing the defendant R to the position of assistant police chief. Following a bench trial, the trial court granted the plaintiffs' request for declaratory relief, finding that the city, G, and P, failed to adhere to the city charter and to the rules of the defendant Bridgeport Civil Service Commission in appointing R to the position. The trial court declined to grant any injunctive relief. On appeal to this court, the defendants claimed, inter alia, that the trial court erred in concluding that D had not followed proper civil service procedures pursuant to the city charter before R was appointed to the assistant police chief position. Following oral arguments in this appeal, R voluntarily retired from the police department. In light of R ceasing to serve in the position at issue, the defendants now claimed that the appeal was moot and that vacatur of the trial court's judgment was warranted. *Held* that the defendants' appeal was dismissed as moot and the trial court's judgment was vacated: in light of the relief requested in this appeal, R's retirement made it impossible for this court to grant any practical relief; moreover, contrary to the plaintiffs' claim that the case was not moot because the trial court's ruling was not conditioned in any manner on R's occupancy of the position, the plaintiffs confined their request for relief to declaratory and injunctive relief, the trial court's declaratory judgment was limited to a declaration that the city, G and P failed to adhere to the city charter and to the rules of the commission when appointing R to the position of assistant police chief, the plaintiffs did not cross-appeal the court's denial of injunctive relief or the scope of the declaratory judgment, and an opinion from this court reviewing the trial court's judgment declaring unlawful R's appointment would amount to an advisory opinion, which this court does not render; moreover, vacation of the judgment was appropriate under the circumstances of this case because the defendants did not cause the appeal to be moot, as R voluntarily retired from the position at issue, and the trial court, in its decision, interpreted various city charter provisions in a way that might require the city and its public officials to undertake new and potentially functionally impossible measures to fill vacancies and to certify lists for noncompetitive positions, and, thus, the equities of this case warranted vacating the court's judgment to prevent it from spawning potential legal consequences and to preserve the rights of all parties.

Argued October 12, 2022—officially released April 18, 2023

Procedural History

Action seeking, inter alia, a declaratory judgment that the named defendant et al. failed to follow certain civil service provisions in appointing the defendant Rebecca Garcia to the position of assistant police chief, brought to the Superior Court in the judicial district of Stamford-Norwalk and tried to the court, *Stevens*, *J.*; judgment declaring that the named defendant et al. failed to adhere to the charter and the rules of the defendant Bridgeport Civil Service Commission in appointing the defendant Rebecca Garcia to the position of assistant

police chief, from which the defendants appealed to this court. *Appeal dismissed*; *judgment vacated.*

James J. Healy, with whom, on the brief, was *John P. Bohannon, Jr.*, deputy city attorney, for the appellants (defendants).

Thomas W. Bucci, for the appellees (plaintiffs).

Opinion

CLARK, J. The plaintiffs, Brian Fitzgerald, Steven Lougal, and Roderick G. Porter, captains in the Bridgeport Police Department (police department), and Anthony S. Armeno, deputy chief of the police department, commenced this action against the city of Bridgeport (city) and five other defendants,[1] seeking injunctive relief and a declaratory judgment that the defendants failed to follow the civil service provisions of the Bridgeport City Charter (city charter) in appointing Captain Rebeca Garcia to the position of assistant police chief of the police department.[2] Following a bench trial, the trial court granted the plaintiffs' request for declaratory relief and declared that the city, Mayor Joseph Ganim, and Chief of Police A.J. Perez failed to adhere to the city charter and rules of the Bridgeport Civil Service Commission (commission) when appointing Garcia to the assistant police chief position on December 18, 2019. The court declined to grant the plaintiffs any injunctive relief.

On appeal, the defendants claim, among other things, that the court erred in concluding that David J. Dunn, the city's personnel director, had not conducted a "proper noncompetitive examination" pursuant to § 211 of the city charter before Garcia was appointed to the assistant police chief position. After oral arguments in this appeal, however, Garcia ceased serving in the assistant police chief position due to her retirement from the police department. In light of this development, the defendants now claim that the appeal is moot and that vacatur of the trial court's judgment is warranted. We agree with the defendants, dismiss the appeal as moot, and vacate the judgment of the trial court.[3]

We begin by setting forth the legal principles at play. "[M]ootness implicates [this] court's subject matter jurisdiction and is thus a threshold matter for us to resolve before we may reach the merits of an appeal." (Internal quotation marks omitted.) *CT Freedom Alliance, LLC* v. *Dept. of Education*, 346 Conn. 1, 12, 287 A.3d 557 (2023). "It is a well-settled general rule that the existence of an actual controversy is an essential requisite to appellate jurisdiction; it is not the province of appellate courts to decide moot questions, disconnected from the granting of actual relief or from the determination of which no practical relief can follow." (Internal quotation marks omitted.) *Feehan* v. *Marcone*, 331 Conn. 436, 486, 204 A.3d 666, cert. denied, U.S. , 140 S. Ct. 144, 205 L. Ed. 2d 35 (2019). "An actual controversy must exist not only at the time the appeal is taken, but also throughout the pendency of the appeal." (Internal quotation marks omitted.) *Connecticut Coalition Against Millstone* v. *Rocque*, 267 Conn. 116, 125–26, 836 A.2d 414 (2003).

The plaintiffs disagree with the defendants that this appeal has been rendered moot by Garcia's retirement. Specifically, the plaintiffs argue that the case is not moot because the "[t]he court's ruling was not conditioned in any manner on . . . Garcia's occupancy of the position." They maintain that "[t]he sanctity of the civil service system was the paramount issue in the litigation" and that the "court ruled on the manner in which . . . Garcia was appointed to the position."[4]

Although that may be true, the plaintiffs' argument overlooks an important jurisdictional requirement. "An essential prerequisite to the court's jurisdiction over a declaratory judgment action is that 'the determination of the controversy must be capable of resulting in practical relief to the complainant.' " *State Marshal Assn. of Connecticut, Inc.* v. *Johnson*, 198 Conn. App. 392, 421, 234 A.3d 111 (2020). "When, during the pendency of an appeal, events have occurred that preclude an appellate court from granting any practical relief through its disposition of the merits, a case has become moot." (Internal quotation marks omitted.) *In re Emma F.*, 315 Conn. 414, 423–24, 107 A.3d 947 (2015).

In their operative complaint, the plaintiffs confined their request for relief to declaratory and prospective injunctive relief. After alleging that the city, the commission, Ganim, Perez, and Dunn failed to follow both the city charter and the rules of the commission in appointing Garcia to said position, the plaintiffs prayed for relief "barring . . . Garcia from serving in the position of assistant police chief until further order of the court" and "declaring . . . the appointment of . . . Garcia to the position of assistant police chief . . . null and void. . . ."[5] They did not seek damages or any other relief beyond declaratory and injunctive relief. Moreover, the court denied the plaintiffs' request for injunctive relief on the ground that "such relief is only available through a quo warranto action under General Statutes § 52-491, and none of the plaintiffs have asserted the requisite qualifications to assert a quo warranto claim." Although the plaintiffs sought broad declarations, including a declaration mandating that the assistant chief of police position be filled pursuant to the classified service provision of the city charter; see footnote 5 of this opinion; no such order was entered by the trial court. Rather, the court's declaratory judgment was limited to a declaration that the city, Ganim, and Perez failed to adhere to the city charter and the rules of the commission when appointing Garcia to the position of assistant police chief. The plaintiffs did not cross-appeal the court's denial of injunctive relief or the scope of the court's declaratory judgment.

In light of the nature of the relief at issue in this appeal, Garcia's retirement makes it impossible for this court to grant any practical relief to the plaintiffs. An opinion from this court reviewing the trial court's judg-

ment declaring unlawful Garcia's appointment would amount to an advisory opinion. It is well established, however, that this court does "not render advisory opinions. . . . [W]here the question presented is purely academic, we must refuse to entertain the appeal." (Internal quotation marks omitted.) *Redding Life Care, LLC* v. *Redding*, 331 Conn. 711, 737, 207 A.3d 493 (2019). We, therefore, conclude that this appeal has become moot and must be dismissed.

That brings us to the question of vacatur. The equitable remedy of vacatur is rooted in this court's supervisory authority; *State* v. *Charlotte Hungerford Hospital*, 308 Conn. 140, 143, 60 A.3d 946 (2013); and is commonly employed in circumstances when a judgment, unreviewable because of mootness, is likely to spawn legal consequences. See *Private Healthcare Systems, Inc.* v. *Torres*, 278 Conn. 291, 303, 898 A.2d 768 (2006). Our courts generally have followed the federal courts' approach in determining when vacatur is appropriate; see *In re Emma F.*, supra, 315 Conn. 430; and our Supreme Court's decision in *State* v. *Charlotte Hungerford Hospital*, supra, 308 Conn. 143–44, sheds some light on that approach. In *Charlotte Hungerford Hospital*, the defendant hospital appealed from a judgment of the trial court requiring it to comply with a subpoena duces tecum issued by the claims commissioner. Id., 142. This court affirmed the trial court's judgment, and the hospital filed a petition for certification to appeal with our Supreme Court, which was granted. Id. After the certification petition was granted, the underlying case was settled and the state no longer sought to enforce the subpoena. Id. Our Supreme Court concluded that those events rendered the appeal moot and, sua sponte, dismissed the appeal. Id.

Our Supreme Court also vacated the judgments of this court and the trial court. Id., 143. The court determined that vacatur was appropriate because the hospital "was not responsible for the mootness of its . . . appeal" and because the judgments, which were now unreviewable, "may have preclusive effects against the hospital in subsequent litigation." Id. In reaching this conclusion, our Supreme Court looked to United States Supreme Court case law, which explains that vacatur of a mooted case " 'clears the path for future relitigation of the issues between the parties and eliminates a judgment, review of which was prevented through happenstance.' " Id., 143, quoting *United States* v. *Munsingwear, Inc.*, 340 U.S. 36, 40, 71 S. Ct. 104, 95 L. Ed. 36 (1950). Our Supreme Court observed that vacatur is the " 'ordinary practice' " in the federal courts but that they have limited vacatur in settled cases. *State* v. *Charlotte Hungerford Hospital*, supra, 308 Conn. 144–45. Nevertheless, the court determined that the settlement in that case did not preclude vacatur because the legal principles warranting that limitation were not present in that case because the hospital did not voluntarily

forfeit its appeal by participating in the settlement between the state and the claimant, and that the settlement was " 'happenstance' " with respect to the hospital. Id., 145.

In distilling these principles, it is clear that, when a case becomes moot on appeal, this court is not automatically compelled to simply dismiss the appeal: it retains jurisdiction to exercise its supervisory authority to vacate the trial court's judgment and remand with direction to dismiss the underlying case as moot. See *American Tax Funding, LLC* v. *Design Land Developers of Newtown, Inc.*, 200 Conn. App. 837, 851, 240 A.3d 678 (2020); see also *Russman* v. *Board of Education*, 260 F.3d 114, 121 (2d Cir. 2001). It bears reiterating that in federal cases, which our courts look to for guidance with respect to the law of vacatur, "[w]hen a civil case becomes moot pending appellate adjudication, 'the established practice in the federal system is to reverse or vacate the judgment below and remand with a direction to dismiss.' *Arizonans for Official English* v. *Arizona*, 520 U.S. 43, 71, 117 S. Ct. 1055, 137 L. Ed. 2d 170 (1997)." *Hassoun* v. *Searls*, 976 F.3d 121, 125 (2d Cir. 2020). Of course, whether to vacate the trial court's judgment or simply dismiss the appeal, leaving the court's judgment intact, depends on the equities of the case. See *U.S. Bancorp Mortgage Co.* v. *Bonner Mall Partnership*, 513 U.S. 18, 25, 115 S. Ct. 386, 130 L. Ed. 2d 233 (1994); see also *Cracco* v. *Vance*, 830 Fed. Appx. 43, 45 (2d Cir. 2020) ("[t]o determine whether vacatur is appropriate, we must look at the equities of the individual case" (internal quotation marks omitted).

In the present case, the court declared that the city, Ganim, and Perez "failed to adhere to the . . . city charter and rules of the . . . commission when appointing . . . Garcia to the position of assistant chief of police. . . ." None of those parties, however, bear responsibility for mooting this appeal. See *Hassoun* v. *Searls*, supra, 976 F.3d 131 ("[t]he touchstone of our analysis is [t]he appellant's fault in causing mootness" (internal quotation marks omitted)). These defendants did not terminate Garcia's employment to avoid appellate review or otherwise remove her from that position. Instead, Garcia's voluntary retirement after a long career with the police department mooted the case. Thus, it would be inequitable under these circumstances to force the city, Ganim, and Perez to acquiesce in the trial court's judgment by the " 'vagaries of circumstance.' "[6] *State* v. *Charlotte Hungerford Hospital*, supra, 308 Conn. 144.

Additionally, vacating the court's judgment would prevent it from spawning any potential legal consequences. The court, in its decision, interpreted various city charter provisions in a way that might require the city and its public officials to undertake new—and, in the defendants' view, "functionally impossible"—mea-

sures in filling vacancies and certifying lists for various noncompetitive jobs. Because the court's judgment could have legal consequences in future litigation, the judgment should be vacated so that the rights of all parties are preserved. See *State* v. *Charlotte Hungerford Hospital*, supra, 308 Conn. 146 ("[t]he hospital could well be precluded from contesting the state's interpretation of [General Statutes] § 4-151 (c) in any future litigation"); *State* v. *Boyle*, 287 Conn. 478, 490, 949 A.2d 460 (2008) ("the Appellate Court's judgment will spawn legal consequences"); *American Tax Funding, LLC* v. *Design Land Developers of Newtown, Inc.*, supra, 200 Conn. App. 851–52 ("[v]acating the judgment would prevent it from spawning legal consequences and would clear the path for future relitigation of the issues"). In short, the equities of this case warrant vacatur.

The appeal is dismissed and the judgment is vacated.

In this opinion the other judges concurred.

[1] The plaintiffs also named as defendants the Bridgeport Civil Service Commission; Joseph Ganim, in his official capacity as mayor of the city; David J. Dunn, in his official capacity as the personnel director of the city; A.J. Perez, in his official capacity as chief of police of the police department; and Rebeca Garcia. We refer to the named parties collectively as the defendants, and individually by name when appropriate.

[2] On January 20, 2023, following oral arguments in this case, the plaintiffs notified this court that Porter had been appointed to the position of chief of police for the city. This appointment meant that Porter had now become a defendant in his official capacity because he succeeded Perez, who was sued in his official capacity as chief of police. Nevertheless, Porter indicated that he "remains a party-plaintiff on the defendants' appeal because of his overriding interest in preventing violations of the civil services provision of the [city charter]" despite it being unlikely that he will seek appointment to the position of assistant police chief in the future.

[3] In an order dated December 12, 2022, this court provided the parties with an opportunity to submit supplemental briefing on the questions of mootness and vacatur. The parties submitted their supplemental briefs on February 14, 2023.

[4] The plaintiffs do not argue that any exception to the mootness doctrine applies.

[5] The plaintiffs' prayer for relief provided: "WHEREFORE, the plaintiff requests that the court grant the plaintiff the following relief . . . [a] temporary injunction barring . . . Garcia from serving in the position of assistant police chief until further order of the court"; "[a] temporary and permanent injunction barring [the city, the civil service commission, Ganim, Perez, and Dunn] from making any appointments to the position of assistant police chief until the position of assistant police chief is filled in keeping with the city charter requirements for making appointments to positions in the classified service of the Bridgeport civil service system"; "[a] declaratory judgment declaring that the position of assistant police chief is a position that must be filled pursuant to the civil service provisions of the . . . city charter for appointments to the [city's] classified service"; "[a] declaratory judgment declaring that the appointment of . . . Garcia to the position of assistant police chief is null and void because [the city, Ganim, and Perez] failed to follow the civil service provisions of the . . . city charter for making her appointment to the position of assistant police chief"; "[c]osts"; and "[s]uch other and further relief as may be appropriate."

[6] We note that, although the plaintiffs also named Garcia as a defendant in the action (presumably given her interests in the outcome of it), the plaintiffs' complaint does not center on any of Garcia's conduct.