

IN THE SUPREME COURT OF THE STATE OF NEVADA

NEVADA POLICY RESEARCH
INSTITUTE, a Nevada domestic
nonprofit corporation,

Appellant,

vs.

NICOLE J. CANNIZZARO, an
individual engaging in dual
employment with the Nevada State
Senate and Clark County District
Attorney; JASON FRIERSON, an
individual engaging in dual
employment with the Nevada State
Assembly and Clark County Public
Defender; HEIDI SEEVERS
GANSERT, an individual engaging in
dual employment with the Nevada State
Senate and University of Nevada, Reno;
GLEN LEAVITT, an individual
engaging in dual employment with the
Nevada State Assembly and Regional
Transportation Commission;
BRITTNEY MILLER, an individual
engaging in dual employment with the
Nevada State Assembly and Clark
County School District; DINA NEAL,
an individual engaging in dual
employment with the Nevada State
Senate and Nevada State College;
JAMES OHRENSCHALL, an
individual engaging in dual
employment with the Nevada State
Senate and Clark County Public
Defender; MELANIE SCHEIBLE, an
individual engaging in dual
employment with the Nevada State

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Case No. 82341

Appeal from Eighth Judicial District
Court, Clark County, Nevada
Case No. A-20-817757-C

**RESPONDENT HEIDI
SEEVERS GANSERT'S REPLY
TO APPELLANT'S
OPPOSITION TO GANSERT'S
MOTION TO DISMISS**

Senate and Clark County District Attorney; JILL TOLLES, an individual engaging in dual employment with the Nevada State Assembly and University of Nevada, Reno; SELENA TORRES, an individual engaging in dual employment with the Nevada State Assembly and Clark County School District; and THE LEGISLATURE OF THE STATE OF NEVADA,

Respondents.

RESPONDENT HEIDI SEEVERS GANSERT’S REPLY TO APPELLANT’S OPPOSITION TO GANSERT’S MOTION TO DISMISS

Respondent Heidi Seevers Gansert, by and through her counsel, Berna Rhodes-Ford, General Counsel for Nevada State College, and Gary A. Cardinal, Assistant General Counsel for the University of Nevada, Reno, hereby submits her Reply to Appellant’s Opposition to Heidi Seevers Gansert’s Motion to Dismiss (“Opposition”), and requests dismissal of this Appeal as to Respondent Gansert, only, on the basis that she is no longer engaged in dual employment and, therefore, Appellant can no longer state a claim against her.

MEMORANDUM OF POINTS AND AUTHORITIES

I. ARGUMENT

A. NPRI Cannot State a Claim of Relief Against Gansert

While the caption, “Memorandum of Points and Authorities” was inadvertently deleted before the argument in the Motion to Dismiss, the

motion indeed contained the legal argument that the factual basis for Appellant's claim against Respondent Gansert was extinguished, as Respondent has resigned her position with the University of Nevada, Reno and is no longer engaged in dual employment. This was confirmed by the Declaration of Heidi Seevers Gansert submitted as Exhibit 1 in support of the motion. Because alleged dual employment is the very basis of Appellant's case, it is self-evident that Appellant can no longer state a claim against Respondent Gansert. Accordingly, the case must be dismissed. NRCP 12(b)(5).

B. NPRI's Claim as to Gansert is Moot

Moreover, the appeal as it pertains to Respondent Gansert is moot due to her resignation from her executive branch position. This Court has recognized that while a case may present a live controversy at its beginning, it may become moot by the occurrence of subsequent events. *Personhood Nevada v. Bristol*, 126 Nev. 599, 602, 245 P. 3d 572, 574 (2010), citing *University Sys. v. Nevadans for Sound Gov't*, 120 Nev. 712, 720, 100 P.3d 179, 186 (2004) and *Wedekind v. Bell*, 26 Nev. 395, 413-15, 69 P. 612, 613-614 (1902). A live controversy must be present through all stages of the proceeding. *Id.* at 602, citing *Arizonans for Official English v. Arizona*, 502 U.S. 43, 67, 117 S.Ct. 1055, 137 L.Ed.2d 170

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(1997) and *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 476-78, 110 S.Ct. 1249, 108 L.Ed.2d 400 (1990). Dismissal is appropriate when an appeal is moot. *Personhood*, 126 Nev. at 606.

This Court has recognized an exception to dismissal on the basis of mootness when a case involves a matter of widespread importance that is capable of repetition, yet evading review. *Id.* at 602. However, this exception does not apply here, as the appeal will continue as to the remaining Respondents so that the issues presented here will not evade review.

Appellant contends that Respondent Gansert should remain in the litigation because her former position differed from that of Respondent Dina Neal and that this difference would have an impact on the Court's factual analysis. Appellant's position is unsound for several reasons. First, it would require the Court to speculate about the respective job duties of these two Respondents. Second, it ignores the job status of other Respondents who remain parties to the appeal. Third, there is no allegation in any of the pleadings below that Respondent Gansert is a public official or officer to support Appellant's position that Respondent Gansert's remaining presence is critical to this appeal. And fourth, because this appeal is moot as to Respondent Gansert, any decision by this Court would be advisory only. This Court has previously stated, "This court's duty is

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not to render advisory opinions, but rather, to resolve actual controversies by an enforceable judgment.” *Personhood*, 126 Nev. at 602, citing *NCAA v. University of Nevada*, 97 Nev. 56, 57, 624 P.2d 10, 10 (1981).

Appellant appears to distrust the contents of Respondent Gansert’s Declaration, characterizing it a “carefully worded statement” and a “carefully worded disclaimer” throughout its brief. *See* Opposition at pages 2 and 3. Respondent appears to imply that the Declaration was designed to deceive in order to gain dismissal. The implication is unfounded. To assuage Respondent’s fears, the Supplemental Declaration of Heidi Seevers Gansert is attached hereto as Exhibit A, confirming that she is not employed in any executive branch whatsoever, either with the State or any local government.

II. CONCLUSION

Respondent Gansert is no longer employed in the executive branch, and the dual employment argument, therefore, no longer applies to her. Under no set of facts can a claim can be stated against her for allegedly violating the Separation of Powers clause of the Nevada Constitution. Simply put, the case has become moot as against Respondent Gansert, and there is no legal justification for requiring her to continue participating in a case that no longer applies to her. This

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matter must be dismissed as to Respondent Gansert.

Respectfully submitted, this 22nd day of February, 2021.

/s/ Berna L. Rhodes-Ford

BERNA L. RHODES-FORD

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and Jill Tolles*

CERTIFICATE OF SERVICE

Pursuant to NRAP 25(d) I hereby certify that I am an employee of the University of Nevada, Reno, an institution of the Nevada System of Higher Education, and that on the 22nd day of February, 2021, I electronically filed the preceding document with the Clerk of the Court by using the Court's electronic filing system which will send a notice of electronic filing to the following:

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/s/ Michelle A. Ené

Employee of the University of Nevada,
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Education

EXHIBIT A

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SUPPLEMENTAL DECLARATION OF HEIDI SEEVERS GANSERT

I, HEIDI SEEVERS GANSERT, make this Declaration pursuant to NRS 53.045 and state that the assertions of this Declaration are true, except as to those matters stated on information and belief, and that as to such matters, I believe them to be true. I am personally familiar with the facts set forth in this Declaration and am competent to testify to such matters if called upon to do so.

1. I was previously employed as the Executive Director, External Relations for the University of Nevada, Reno.

2. I resigned my position with the University, effective January 8, 2021 and do not intend to return to that position.

3. I am not currently employed in any other executive branch position *whatsoever, either with the State or any local government.*

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 19 day of February, 2021.


HEIDI SEEVERS GANSERT