

STATE OF MICHIGAN
COURT OF APPEALS

MACOMB COUNTY HEALTH DEPARTMENT,
Plaintiff-Appellee/Cross-Appellant,
and

UNPUBLISHED
October 4, 2012

DEPARTMENT OF COMMUNITY HEALTH,
Intervening Plaintiff-Appellee

v

No. 303914
Macomb Circuit Court
LC No. 2010-005053-CZ

BOYD COTTRELL, d/b/a SPORTY'S BAR AND
GRILL, a/k/a SPORTY O'TOOLES,
Defendant-Appellee.

Before: JANSEN, P.J., and BORRELLO and BECKERING, JJ.

MEMORANDUM.

Defendant appeals by right the trial court's denial of his motion to enjoin Plaintiff Macomb County Health Department from enforcing the ban on cigarette smoking in public places set forth in the Michigan Clean Indoor Air Act, MCL 333.12601 *et seq* (the smoking ban). We dismiss the appeal as moot.

“As a general rule, an appellate court will not decide moot issues.”¹ “An issue is deemed moot when an event occurs that renders it impossible for a reviewing court to grant relief.”² However, an issue “is not moot if it will continue to affect a party in some collateral way.”³

¹ *B P 7 v Bureau of State Lottery*, 231 Mich App 356, 359; 586 NW2d 117 (1998).

² *Id.*

³ *People v Cathey*, 261 Mich App 506, 510; 681 NW2d 661 (2004); see also *Hayford v Hayford*, 279 Mich App 324, 325; 760 NW2d 503 (2008).

Here, defendant's bar was cited multiple times by the Health Department for violating the smoking ban on multiple occasions. Defendant responded by suing to enjoin the smoking ban's enforcement, arguing that the law was unconstitutional under, inter alia, an equal protection theory. At oral argument, defendant revealed that the bar has gone out of business since this litigation was initiated, and further revealed that defendant has no plans to reopen another bar. The Health Department indicated at oral argument that, because defendant's bar has closed, it could no longer seek to sanction defendant's bar for violations of the smoking ban. In short, it is impossible for us to grant the relief requested by defendant. Defendant is now out of business—accordingly, enjoining the ban's enforcement would not provide him any relief. Moreover, because defendant has no plans to reopen, the continued enforcement of the smoking ban will not continue to affect him in a collateral way.

Appeal dismissed as moot.

/s/ Kathleen Jansen

/s/ Stephen L. Borrello

/s/ Jane M. Beckering