

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Velogol v. City of Weirton

212 W. Va. 687 (2002) · Decided December 3, 2002

SUMMARY

The Supreme Court of Appeals of West Virginia dismissed as moot an appeal challenging a City of Weirton ordinance imposing a police and fire service fee. The court held that the city's amendment and reenactment of the ordinance cured the challenged substantive and procedural defects, making review of the original ordinance futile.

CASE DETAILS

|                    |                                                                                                                                                                                                                                                                     |
|--------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT              | Supreme Court of Appeals of West Virginia                                                                                                                                                                                                                           |
| JURISDICTION       | West Virginia                                                                                                                                                                                                                                                       |
| DECIDED            | December 3, 2002                                                                                                                                                                                                                                                    |
| DISPOSITION        | dismissed                                                                                                                                                                                                                                                           |
| PROCEDURAL POSTURE | Plaintiffs appealed a final order of the Circuit Court of Brooke County upholding a municipal ordinance imposing a police and fire service fee. While the appeal was pending, the City amended and reenacted the ordinance and moved to dismiss the appeal as moot. |
| STANDARD OF REVIEW | The court reviewed the mootness issue de novo in the context of an appeal from a final judgment.                                                                                                                                                                    |
| PRECEDENTIAL VALUE | Published precedential opinion                                                                                                                                                                                                                                      |
| PARTIES            | George P. Velogol, Anthony Iaquina v. City of Weirton                                                                                                                                                                                                               |

TOPICS

- mootness
- municipal law
- ordinances
- appellate procedure
- statutory interpretation

PRACTICE AREAS

- municipal law
- appellate procedure
- constitutional law
- statutory interpretation

QUESTIONS PRESENTED

1. Whether the appeal challenging the original version of Weirton Ordinance 1288 became moot after the City amended and reenacted the ordinance.

2. Whether the court should decide the ordinance's procedural and substantive validity despite mootness under the capable-of-repetition-yet-evading-review exception.

## HOLDINGS

1. The City's amendment and reenactment of Ordinance 1288 rendered the appeal moot because adjudicating the validity of the original ordinance would have no practical effect after the alleged substantive and procedural defects were cured.
2. The court declined to reach the merits under the capable-of-repetition-yet-evading-review exception and dismissed the appeal as moot.

## KEY QUOTATIONS

*“Having considered the parties’ arguments and having thoroughly reviewed the record in this case, we find that this appeal was rendered moot by the City’s reenactment of Ordinance 1288.”* (at 689)

*“Consequently, it would simply be an exercise in futility for this Court to undertake an analysis of Ordinance 1288 as originally enacted.”* (at 689)

*“Accordingly, for the reasons set forth above, this appeal is dismissed as moot.”* (at 689)

## FACTUAL BACKGROUND

Weirton adopted Ordinance 1288 on June 29, 2000, imposing a police and fire service fee. The appellants challenged the ordinance's enactment procedure, its imposition of a fee on alleged nonusers, and its different rates for churches and schools. While the appeal from the order upholding the ordinance was pending, Weirton amended and reenacted the ordinance to define property owners as users, provide a basis for rate differentials, and comply with statutory publication requirements.

## PROCEDURAL HISTORY

Velogol and Iaquina filed a declaratory judgment action challenging Weirton Ordinance 1288 on procedural and substantive grounds. After an evidentiary hearing, the Circuit Court of Brooke County upheld the ordinance on August 31, 2001. During the appeal, Weirton amended and reenacted the ordinance to address the alleged defects and moved to dismiss; the Supreme Court of Appeals dismissed the appeal as moot.

## DISPOSITION

dismissed

## CASES CITED

- Tynes v. Shore, 117 W. Va. 355, 185 S.E. 845 (1936)
- State ex rel. Hedrick v. Board of Comm'rs of County of Ohio, 146 W. Va. 79, 118 S.E.2d 73 (1961)
- State ex rel. Durkin v. Neely, 166 W. Va. 553, 276 S.E.2d 311 (1981)
- State ex rel. Lilly v. Carter, 63 W. Va. 684, 60 S.E. 873 (1908)

- State ex rel. M.C.H. v. Kinder, 173 W. Va. 387, 317 S.E.2d 150 (1984)
- State ex rel. Davis v. Vieweg, 207 W. Va. 83, 529 S.E.2d 103 (2000)
- Dean v. Town of Addison, 207 W. Va. 538, 534 S.E.2d 403 (2000)
- City of Huntington v. Bacon, 196 W. Va. 457, 473 S.E.2d 743 (1996)
- City of Princeton v. Stamper, 195 W. Va. 685, 466 S.E.2d 536 (1995)
- Ellison v. City of Parkersburg, 168 W. Va. 468, 284 S.E.2d 903 (1981)
- United States v. Hemme, 476 U.S. 558, 106 S. Ct. 2071, 90 L. Ed. 2d 538 (1986)
- United States v. Darusmont, 449 U.S. 292, 101 S. Ct. 549, 66 L. Ed. 2d 513 (1981)
- Welch v. Henry, 305 U.S. 134, 59 S. Ct. 121, 83 L. Ed. 87 (1938)

---

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/west-virginia-supreme-court-of-appeals-of-west-virginia/2002/velogol-v-city-of-weirton-w1ayz9hk>