UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

C.A. NO. 18-11510-H

Mathis Wright, Jr.,
Plaintiff-Appellee,

v.

Sumter County Board of Elections and Registration,
Defendant-Appellant.

Appeal from the United States District Court
Middle District of Georgia

Case No. 1:14-cv-42-WLS

REPLY IN FURTHER SUPPORT OF MOTION TO EXPEDITE APPEAL AND OPPOSITION TO MOTION TO DISMISS

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CERTIFICATE OF INTERESTED PERSONS

Pursuant to Rule 26.1-1 of this Court, Appellant certifies that the below listed persons and entities have interests in the outcome of this case:

Trial Judge:

Sands, W. Louis

Attorneys for Plaintiff-Appellee:

Sells, Bryan L.
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Khondoker, Aklima

Attorneys for Defendant-Appellant:

Braden, E. Mark
McKnight, Katherine L.
Raile, Richard
Stanley, Trevor
Reid, Kimberly

Plaintiff:

Wright, Mathis Kearse, Jr.

Defendant:

Sumter County Board of Elections and Registration

Rule 26.1 Corporate Disclosure Statement:

There is no nongovernmental corporate party to this proceeding, and no association of persons, form, partnerships or corporations that have an interest in the case or the outcome of the appeal.

Appellee's response to Appellant's motion to expedite and motion to dismiss are unpersuasive on every point.

Appellee's principal argument is mootness. But Appellee cites preliminary-injunction case law for the proposition that a *permanent* injunction has somehow "been satisfied." Resp. 10. Their argument ignores the injunction's yet-to-be satisfied obligations—including that Sumter County conduct a special election in November 2018—in contending that an injunction giving the Appellee practically everything he requested in this litigation will be dead letter as of May 22, 2018. But the lower court's takeover of Sumter County School Board elections ensures that legally cognizable interests remain at stake, and an active "Controversy" continues to exist between the parties.

Appellee's motion-to-expedite arguments fare no better. They too almost entirely depend on the specious mootness argument. They also contradict at least a dozen filings by Appellee in the court below demanding

expediency and complete resolution prior to the next School Board election. Finally, the arguments identify no harm Appellee will suffer from an expedited appeal.

For these reasons, the Court is duty-bound to entertain this appeal—which is not moot—and it should exercise its discretion to expedite it—to avoid further damage from the lower court's permanent injunction.[1]

A. This Appeal Is Not Moot.

A case is moot when "no legally cognizable interest is at stake between the parties" and, therefore, the matter is "no longer a 'Case' or 'Controversy' for purposes of Article III." *RES-GA Cobblestone, LLC v. Blake Const. & Dev., LLC*, 718 F.3d 1308, 1314 (11th Cir. 2013). This appeal does not meet that standard because legally cognizable interests remain.

[1] This brief is a consolidated response to Appellee's motion to dismiss and reply in further support of Appellant's motion to expedite. Although the Court afforded Appellant additional time to oppose Appellee's motion to dismiss, that additional time is unnecessary. Appellant respectfully requests that the Court order a reply on Appellee's motion to dismiss by Wednesday, April 25, 2018, so that these issues may be resolved expeditiously.

First, between August and November 2018, the County is obligated to comply with a series of changes to the administration of its elections imposed by the District Court's permanent injunction. The County must hold a School Board election, scheduled by state statute to be held in May,[2] in November. That is a final order and it is not moot. The next School Board election—with administration dates beginning in August 2018—must be held under a new plan. That is a final order and it is not moot. Just because the District Court has not yet issued the new plan does not mean that Sumter County could use the existing plan for the next School Board election. Departure from the Court's mandates would be punishable by contempt: so if, for example, Sumter County conducted a special election for School Board membership on July 1, 2018, using the old map, Appellee would move for contempt—and win. In short, the lower court now runs Sumter County's School Board elections, and the notion

[2] Ga. Code. Ann. § 21-2-139 (a) (Jan. 1, 2013); *see also*, D.C. Dkt. 172 ¶¶57-58.

that this supervision somehow ends in May 2018 is unfounded.

Second, Appellant is entitled to more in this appeal than just holding its School Board elections in May 2018. *See Church of Scientology of California v. United States*, 506 U.S. 9, 13 (1992). If successful on appeal, Appellant is entitled to a voiding of the District Court's order for the November election, Appellant can return to using the old map for the School Board Districts, and would be entitled to a reprieve from the obligation to pay Appellee's attorneys' fees, which are likely to be onerous in this case that has lasted over four years and is on its second appeal to this Court. The District Court's order on liability, which created this obligation to pay attorneys' fees, is a final order and it is not moot.

In sum, the issues on appeal—the District Court's permanent injunction and the liability finding that forms the basis for that injunction—are not the "moving target" Appellee warns of, they are fixed. In his response,

Appellee argues that "[t]he terms of the district court's injunction canceling the election have been satisfied," and therefore this Court lacks jurisdiction over this appeal. Resp. 10. But as detailed above, the terms of the District Court's injunction have ***not*** been satisfied; they have only just begun.

The principal case cited by Appellee for mootness, *RES-GA Cobblestone*, involved a settlement following the appeal. *RES-GA Cobblestone*, 718 F.3d at 1315. This Court noted in that case: "[p]ayment of a judgment and an acknowledgement of satisfaction will moot an appeal from the judgment." *Id.* Not only has no settlement occurred here but the primary driver of mootness in *RES-GA*, that all outstanding obligations to the Court had been satisfied, has not occurred here. As detailed above, Appellant has substantial outstanding obligations to the Court and to Appellee and, through this appeal, it seeks relief from those obligations.

Appellee relies wholesale on preliminary injunction precedent to argue that "where the effective time period

of the injunction has passed," the appeal is moot. Resp. 11 citing *Brooks*, *Fleming*, and cases "collect[ed]" in *Fleming*. But not one of the cases cited by Appellee (or collected by the cases he cites) relates to a ***permanent*** injunction. The District Court considered a preliminary injunction and rejected it. Dkt. 204 at 4 ("Because the Court has already decided the merits of this action in Wright's favor, neither a temporary restraining order nor a preliminary injunction are appropriate. Rather, the Court must decide whether to issue a permanent injunction."). The injunction against Sumter County is permanent, not temporary or preliminary. The harm from the permanent injunction is ongoing and will only be exacerbated if the District Court's finding of liability is overturned ***after*** the County conducts a special election under the District Court's remedy. The County, Board members, candidates and voters will have to cope with yet another change in the School Board map and likely Board membership.

Appellant's appeal is not moot and Appellee's motion to dismiss should be denied.

B. The Court Should Expedite this Appeal.

Remarkably, after arguing (incorrectly) that the Court cannot move fast enough to resolve this appeal, Appellee flips that position on its head and argues that there is no hurry to move it along. This argument, too, is specious.

For one thing, Appellee has offered no harm it would suffer from moving the appeal along. And his argument that Sumter County will suffer no harm ignores the special election the lower court scheduled for November (at Appellee's request), using a court-ordered remedy.

Indeed, Appellant's arguments should sound familiar to Appellee because he made them vigorously below. In at least a dozen pleadings and orders Appellee filed in, and sought from, the District Court, he pressed for urgency and speed and resolution prior to the next election. D.C. Dkt. 107 at 1 (Plaintiff pressing for trial date prior to next school board election) (June, 20, 2017); D.C. Dkt. 108 at 2 (District Court acceding to Plaintiff's

press for resolution prior to next school board election) (June 23, 2017); D.C. Dkt. 114 at 2 (same) (Sept. 21, 2017); D.C. Dkt. 128 at 4 (Plaintiff opposing extension of trial date because "[i]t would be virtually impossible for the Court to resolve this case and provide relief in time for the 2018 school-board elections if the trial does not commence until January") (Nov. 8, 2017); Nov. 15, 2017 Hr'g Tr. at 10 (Attached as Exhibit A)("plaintiff is interested in having this matter resolved in time for a remedy to be in place, should the Court order one, for the next election")(Nov. 15, 2017); D.C. Dkt. 140 at 5 (Plaintiff sought to have a remedy in place three months prior to election in order to "give potential candidates adequate time in advance of the qualifying period to decide whether to run in the new districts.")(Dec. 6, 2017); D.C. Dkt. 174 at 13 ("the Court should enter an order adopting one of Wright's remedial proposals" "no later than February 26" because "of the impending 2018 school-board elections")(Jan. 22, 2018); D.C. Dkt. 178 at 4 (Plaintiff pressing for

additional expert discovery to conclude several weeks prior to the candidate qualifying period for the May 2018 election) (Feb. 9, 2018); D.C. Dkt. 179 (D.C. Dkt. 180 at 11 ("However the Court chooses to proceed, it should ensure that an acceptable remedy is in place as soon as possible.")(Feb. 14, 2018); D.C. Dkt. 191 at 2 (Plaintiff pressing for speed in resolving case prior to May 2018 election "[o]ut of fairness to candidates who will have qualified for the May election and could soon be campaigning, and in consideration of election officials who similarly will begin soon to prepare ballots for the election.")(Mar. 7, 2018); D.C. Dkt. 199 at 1 (Plaintiff seeking a delay of the next School Board election so that the District Court had time to adopt Plaintiff's proposed remedial plan prior to it) (Mar. 26, 2018).

In other words, despite Appellee's current position, he has agreed all along that good cause exists for final resolution of this case prior to the next School Board election. *See also*, D.C. Dkt. 128 at 4 (Nov. 15, 2017) ("[i]n order to give potential [school board] candidates

sufficient notice of the districts in which they might choose to run, this Court would need to decide the case some time before [the candidate filing period on March 5].”); Dkt. 174 at 13 (Jan. 22, 2018)(Plaintiff arguing that Court should order remedial plan no later than February 26, 2018, to “give potential candidates adequate time in advance of the qualifying period, which begins on March 5, to decide whether to run in the new districts.”).

Appellee’s response brief does little to counter these reasons for expedited consideration nor the good cause found in Appellant’s Motion to Expedite. Indeed, most of Appellee’s arguments go to the merits of the appeal (and Appellant looks forward to addressing them in briefing on the merits), not whether expeditious review is appropriate. *See, e.g.*, Resp. at 13-14 (alleging that Appellant failed to timely raise objections to Appellee’s proposals and made claims about briefing below that are “not true”). Appellee claims that “reversing the district court’s remedial plan or final

judgment in April 2019" would give Appellant meaningful relief but, of course, that would be ***after*** new members are elected to the Sumter County School Board using a court-ordered remedy, an event impossible to undo.

For these reasons and those detailed in Appellant's Motion, good cause exists for this Court to expedite this appeal.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court set an expedited briefing and oral argument schedule in this appeal so that the Court's decision can be issued prior to the end of July 2018. As part of this request, Appellant asks that the Court schedule oral argument during the next available argument calendar week after the final reply brief has been filed.

Appellant's appeal is not moot and Appellee's motion to dismiss should be denied.

Dated: April 20, 2018 Respectfully submitted,

/s/ Katherine L. McKnight

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Counsel to Appellant Sumter County Board of Elections and Registration

RULE 32(g) CERTIFICATE OF COMPLIANCE

Counsel certifies that, pursuant to Federal Rules of Appellate Procedure 27(d)(2)(A) and 32(g), the text of this Motion, excluding certificates, tables, and signature blocks, is **1,934 words**.

/s/ Katherine L. McKnight
Katherine L. McKnight

Counsel to Appellant Sumter County Board of Elections and Registration

CERTIFICATE OF SERVICE

I hereby certify pursuant to Fed. R. App. P. 25(d) that on April 20, 2018, the foregoing Reply in Further Support to Motion to Expedite was filed through the CM/ECF system and served electronically on all participants in this appeal.

Dated: April 20, 2018

/s/ Katherine L. McKnight
Katherine L. McKnight

Counsel to Appellant Sumter County Board of Elections and Registration

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REPLY IN FURTHER SUPPORT OF MOTION TO EXPEDITE APPEAL

AND

OPPOSITION TO MOTION TO DISMISS

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION

MATHIS KEARSE WRIGHT, JR., : Case No. 1:14-CV-42-WLS
:
PLAINTIFF :
vs. : November 15, 2017
: Albany, Georgia
Sumter County Board of :
Elections and Registration,:
:
DEFENDANT. :

PRETRIAL HEARING
BEFORE THE HONORABLE W. LOUIS SANDS
UNITED STATES DISTRICT JUDGE, PRESIDING

APPEARANCES:

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but we agreed to simply combine those. There's no dispute over jurisdiction.

THE COURT: All right.

MR. SELLS: We had different entries with respect to proposed deadlines for posttrial proposed findings of fact and conclusions of law, and I think we need the Court's guidance on that.

As you know, the plaintiff is interested in having this matter resolved in time for a remedy to be in place, should the Court order one, for the next election. I don't know how much time you have mentally reserved to do that and what sort of briefing schedule you have.

THE COURT: Well, probably not enough. Madam Clerk, let me see your calendar again. There's one thing that the Court has traditionally considered. There are a lot of holidays in December and January, and we are getting a little bit ahead because that's why the Court chose to the week of the 11th. That was one I thought was amply ahead of the holiday, essentially.

MR. SELLS: Yes.

THE COURT: And while I think the Court, in its practice and experience, and counsel, in their practices and experience, know about working through