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Justiciability

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SUPREME COURT, APPELLATE DIVISION THIRD DEPARTMENT

In re Clear Channel Communications Inc. et al.[1] (decided July 8, 1999)

Petitioners, Clear Channel Communications Inc., brought an Article 78 proceeding[2] regarding the determination of Larry J. Rosen, County Judge of Albany, for excluding television cameras from a criminal trial.[3] Petitioners sought a declaration that the Civil Rights Law section 52[4] was a violation of the New York State Constitution because it prevented audio-visual coverage and televising of such proceedings.[5] The Appellate Division, Third Department, held that the completion of the criminal trial rendered moot the media company's constitutional challenge to the statute prohibiting audio-visual coverage and televising of trials.[6]

Petitioners moved by order to show cause for permission to conduct audio-visual coverage of *People v. McKenna*.[7] Civil

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[1] 263 A.D.2d 663, 692 N.Y.S.2d 812 (N.Y.A.D. 3 Div. July 8, 1999).

[2] N.Y. C.P.L.R 7801 (McKinney 1994) (providing in pertinent part that "[p]rohibition, however, is a traditional exception that serves to restrain judicial or quasi-judicial officers from acting without jurisdiction or in excess of their jurisdiction").

[3] *Clear Channel*, 263 A.D.2d at 663, 692 N.Y.S.2d at 812.

[4] N.Y. Civ. RIGHTS LAW § 52 (McKinney 1992). This statute provides in pertinent part:

> No person, firm, association or corporation shall televise, broadcast, take motion pictures or arrange for the televising, broadcasting, or taking of motion pictures within the state of proceedings, in which testimony of witnesses by subpoena or other compulsory process is or may be taken, conducted by a court, commission, committee, administrative agency or other tribunal in this state.

Id.

[5] *Clear Channel*, 263 A.D.2d at 663, 692 N.Y.S.2d at 812.

[6] N.Y. CONST. art. VI, § 3 (stating in pertinent part: "The jurisdiction of the court of appeals shall be limited to the review of questions of law").

[7] State of N.Y. v. McKenna, 250 A.D.2d 240, 244, 685 N.Y.S.2d 110, 113 (3d Dep't 1998), *cert. denied*, 93 N.Y.2d 855, 710 N.E.2d 1102, 688 N.Y.S.2d 503 (1999).

Rights Law section 52 prohibited the audio-visual coverage and televising of such proceeding.[8] Judge Rosen, respondent, granted leave to intervene, but refused to find section 52 unconstitutional because legislation allowing the judge discretion to grant permission for audio-visual coverage[9] had expired on June 30, 1997; thus, section 52 could be applied in its entirety.[10]

Finding that "no civil appeal lies from the order entered in this criminal action," the Court of Appeals dismissed Clear Channel's appeal of Judge Rosen's decision.[11] Then, Clear Channel commenced [a] CPLR article 78[12] proceeding in an effort to vacate the court's order denying audio-visual coverage.[13] Soon after, a jury acquitted McKenna[14]and the State then moved to dismiss the article 78 petition for mootness.[15] The petition was dismissed as moot by the Appellate Division, thus eliminating the need to rule on the constitutionality of the statute.[16]

The Supreme Court, Appellate Division, Third Department, began its analysis by stating Federal[17] and State[18] constitutions are based on "the power of a court to declare the law only arises out of, and is limited to, determining the rights of persons which are actually controverted in a particular case pending before the

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[8] N.Y. CIV. RIGHTS LAW § 52 (McKinney 1992).

[9] N.Y. JUD. Law § 218.

[10] *Clear Channel*, 263 A.D.2d at 663, 692 N.Y.S.2d at 812.

[11] *Id.*

[12] N.Y. C.P.L.R. 7801 (McKinney 1994).

[13] *Clear Channel*, 263 A.D.2d at 663, 692 N.Y.S.2d at 812.

[14] *McKenna*, 250 A.D.2d at 244, 685 N.Y.S.2d at 113.

[15] *Clear Channel*, 263 A.D.2d at 663, 692 N.Y.S.2d at 812.

[16] *Id.*

[17] U.S. CONST. art. III § 2. This provides in pertinent part: "The judicial powers shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made." *Id.*

[18] N.Y. CONST. art. VI § 3. This provides in pertinent part: "The jurisdiction of the court of appeals shall be limited to the review of questions of law." *Id.*

tribunal."[19] Once a case ceases to have an actual controversy the case must be rejected for mootness.

In *Arizonans For Official English v. Arizona*[20] a state employee challenged the State of Arizona's constitutional provision that the state's official language would be English. The federal District Court held the provision to be unconstitutional.[21] While the case was on appeal the petitioner left government employment.[22] The Supreme Court then vacated and remanded judgment on the grounds that petitioner's case became moot when she no longer faced possible disciplinary actions at work.[23]

Mootness is dominant in ending a case unless an exception is met.[24] The Supreme Court of the United States defined exceptions to application of the mootness doctrine in *Roe v. Wade*.[25] In *Roe*, the action was brought for declaratory and injunctive relief regarding the constitutionality of the Texas criminal abortion laws.[26] The Court addressed the doctrine of mootness with regard to a normal pregnancy period.[27] The Court found exceptions to mootness would be based on a significant fact in the litigation, that the litigation would seldom survive beyond the trial stage, and that the repetition of cases of a similar nature would elude appellate review because the significant fact would no longer be present.[28] These exceptions that the Court identified allowed the petitioner to

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[19] *Clear Channel*, 263 A.D.2d at 664, 692 N.Y.S.2d at 813 (citing *In Re Hearst Corp.*, 50 N.Y.2d 707, 713, 409 N.E.2d 876, 877, 431 N.Y.S.2d 400, 409 (1980)).

[20] Arizonans For Official English v. Arizona, 520 U.S. 43 (1997).

[21] *Id.* at 43 (petitioner was a state employee facing disciplinary sanctions at work).

[22] *Id.* at 44.

[23] *Id.*

[24] *Clear Channel*, 263 A.D.2d at 664, 692 N.Y.S.2d at 813 .

[25] Roe v. Wade, 410 U.S. 113, 125 (1971) (holding Texas criminal abortion statutes prohibiting abortion at any stage to be unconstitutional, regardless that the woman was not currently pregnant).

[26] *Id.* at 116.

[27] *Id.* at 125 (recognizing that the normal pregnancy period is 266 days).

[28] *Id.* (reasoning that the judicial system should not be so inflexible as to deny justice to a pregnant women solely because the pregnancy would be over before the court system could play out the case in its entirety).

avoid dismissal of her appeal simply due to the fact she was no longer pregnant during the appeal process.[29]

This logic was echoed on the state level in *Hearst Corporation v. Clyne.*[30] The Hearst Corporation published the Albany Times-Union, a daily newspaper, and Shirley Armstrong was a reporter for that newspaper.[31] Armstrong was not allowed into the courtroom during a defendant's plea of guilty. Armstrong claimed having been denied access without an opportunity to be heard by the court.[32] The New York Court of Appeals found mootness as a well-rooted grounds for discharge through not only the Constitutional separation of powers[33] but also within the fabric of the decision making process itself because the guilty plea was already entered.[34]

The New York State courts have adopted the exceptions to the mootness doctrine identified in *Roe* by distilling it into three common factors that were expressed in *Hearst.*[35] The petitioners in *Hearst* brought an Article 78 proceeding seeking declaration that closing the courtroom to the press during the entry of a guilty plea was illegal.[36] The common factors leading to an exception of the mootness doctrine were pinpointed in *Hearst*: "(1) a likelihood of repetition, either between the parties or among other members of the public; (2) a phenomenon typically evading review; and (3) a showing of significant or important questions not previously passed on, i.e., substantial and novel issues."[37] The court finding

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[29] *Id.*

[30] *Hearst* at 713-714, 409 N.E.2d at 877, 431 N.Y.S.2d at 402 (citing *In Re Workman's Comp. Fund*, 224 N.Y. 13, 16, 119 N.E. 1027, 1026, (1918); California v. San Pablo & Tulare R.R., 149 U.S. 308, 314 (1893)).

[31] *Id.*

[32] *Id.*

[33] *Id.*

[34] *Id.* (reasoning that the rights of parties could not be affected, thus a decision would carry no weight).

[35] *Hearst* at 714-715, 409 N.E. at 878, 431 N.Y.S.2d at 402.

[36] *Id.* at 712, 409 N.E. at 876, 431 N.Y.S.2d at 401 (involving press being excluded during an entry of a guilty plea).

[37] *Id.* at 714-715, 409 N.E. at 878, 431 N.Y.S.2d at 402.

none of the requisite exceptions found the petitioners' claim moot.[38]

Clear Channel dealt with a constitutional challenge to a 1952 statute which overrode permissive legislation allowing judges discretion that had not been utilized for 10 years.[39] In *Clear Channel*, the issue at trial was whether the completion of the criminal trial rendered moot the constitutional challenge to a statute prohibiting audio-visual and television coverage of trials.[40] The court did not find any valid exception to override the doctrine of mootness.[41] Petitioners were barred from claiming to be unable to determine if proceedings would be closed, thus they were found to possess the ability to bring their case in before the case had ultimately been concluded.[42] Since petitioners had ample time and notice to bring a claim, the court declined to rule on the constitutionality of the statute, holding that the claim was moot and none to the exceptions of mootness were satisfied.[43]

In conclusion, federal and New York law both prohibit courts from ruling in cases that fall under the doctrine of mootness unless certain exceptions are met. The overall significance of the doctrine of mootness is to prevent claims that have become non-existent through some outside factor from being pushed through the judicial system. Under both the federal and state constitutional analysis, the respective amendments prohibit moot claims without a qualified exception. *Clear Channel* solidified the court's commitment to equivalent federal interpretation of the independent state constitution.[44]

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[38] *Id.*

[39] *Id.*

[40] *Clear Channel*, 263 A.D.2d at 663, 692 N.Y.S.2d at 812.

[41] *Id.* at 664, 692 N.Y.S.2d at 813.

[42] *Id.* (citing In re Westchester Rockland Newspaper, 48 N.Y.2d 430, 399 N.E.2d 518, 423 N.Y.S.2d 630 (1979) (involving a proceeding to vacate an order which excluded the public and press from a pretrial mental competency hearing in a criminal case)).

[43] *Id.*

[44] U.S. CONST. Art III § 2. and N.Y. CONST. Art VI § 3.