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This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5750-13T3

COALITION FOR ANIMALS,

Appellant,

v.

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION,
DIVISION OF FISH AND WILDLIFE,

Respondent.

Argued January 11, 2017 – Decided March 2, 2017

Before Judges Accurso and Manahan.

On appeal from the New Jersey Division of Fish
and Wildlife, New Jersey Department of
Environmental Protection.

Dante DiPirro argued the cause for appellant.

Robert S. Guzek, Jr., Deputy Attorney General,
argued the cause for respondent (Christopher
S. Porrino, Attorney General, attorney;
Melissa H. Raksa, Assistant Attorney General,
of counsel; Mr. Guzek, on the brief).

PER CURIAM

In this appeal, the Coalition for Animals (Coalition) argues
the Division of Fish and Wildlife (Division) within the New Jersey

Department of Environmental Protection (Department) failed to issue timely annual reports for fiscal years 2013, 2014 and 2015, as required by N.J.S.A. 23:2-2.¹ During the pendency of the appeal, the Department issued annual reports for 2013, 2014 and 2015. The reports were submitted to the Legislature and were made available to the public on its website. Predicated upon the issuance of these reports, we hold there is no justiciable issue for this court to resolve.

The Coalition raises the following arguments on appeal:

POINT I

THE DIVISION HAS VIOLATED ITS STATUTORY OBLIGATIONS BY FAILING TO TIMELY ISSUE ANNUAL REPORTS AND FAILING TO FOLLOW THE PROCEDURES REQUIRED FOR THE ISSUANCE OF SUCH REPORTS.

A. The Division failed to timely issue annual reports.

B. The Division failed to comply with the procedures required for issuance of annual reports.

POINT II

THE COURT SHOULD ORDER THE DIVISION TO ISSUE ITS F[ISCAL] Y[EAR] 2015 ANNUAL REPORT BY NOVEMBER 30, 2015[,] IN ACCORDANCE WITH THE PROCEDURAL REQUIREMENTS FOR THE ISSUANCE OF AN ANNUAL REPORT AS SET FORTH IN TITLE 52, AND DECLARE THE PENALTY PROVISIONS OF TITLE 52 ARE

¹ The Coalition filed an appeal in August 2014, which addressed the Department's annual reports for 2013 and 2014. Thereafter, in July 2015, the Coalition filed an amended appeal which addressed the Department's annual report for 2015.

APPLICABLE SHOULD THE AGENCY FAIL TO MEET ITS
STATUTORY OBLIGATIONS FOR ISSUING ANNUAL
REPORTS.

In the Coalition's reply brief, it raises the following points:

POINT I

THE DIVISION MUST COMPLY WITH THE STATUTORY
MANDATES IN TITLE 52 GOVERNING THE ISSUANCE
OF ITS ANNUAL REPORT.

POINT II

[THE COALITION] HAS STANDING BECAUSE IT HAS A
SUFFICIENT STAKE IN THE OUTCOME OF THE CASE,
A REAL ADVERSENESS WITH RESPECT TO THE SUBJECT
MATTER, AND A SUBSTANTIAL LIKELIHOOD OF
SUFFERING HARM IN THE EVENT OF AN UNFAVORABLE
DECISION.

POINT III

THE APPEAL IS NOT MOOT BECAUSE IT PRESENTS
ISSUES OF PUBLIC SIGNFICANCE THAT ARE CAPABLE
OF REPETITION BUT EVADING REVIEW.

As noted, the Department asserts that its submission of the
2015 annual report renders the requested relief moot. The
Department also argues that the Coalition lacks standing and that,
despite the Coalition's argument, there is no statutory deadline
for the issuance of the annual report. In reply, the Coalition
contends the issue is one of public importance, capable of
reoccurrence, and likely to continue evading review. Therefore,
the Coalition argues this court should decline to dismiss the
matter on mootness grounds.

We first address the issue of mootness. An issue is considered moot when "our decision can have no practical effect on the existing controversy." Redd v. Bowman, 223 N.J. 87, 104 (2015) (citation omitted); Greenfield v. N.J. Dep't of Corr., 382 N.J. Super. 254, 258 (App. Div. 2006). "When a party's rights lack concreteness from the outset or lose it by reason of developments subsequent to the filing of suit, the perceived need to test the validity of the underlying claim of right in anticipation of future situations is, by itself, no reason to continue the process." State v. Davila, 443 N.J. Super. 577, 584 (App. Div. 2016) (quoting JUA Funding Corp. v. CNA Ins./Cont'l Cas. Co., 322 N.J. Super. 282, 288 (App. Div. 1999)). "[C]ourts of this state do not resolve issues that have become moot due to the passage of time or intervening events." Ibid. (alteration in original) (quoting City of Camden v. Whitman, 325 N.J. Super. 236, 243 (App. Div. 1999)).

In limited instances, courts will address the merits of appeals that have become moot, electing to do so "where the underlying issue is one of substantial importance, likely to reoccur but capable of evading review." Zirger v. Gen. Accident Ins. Co., 144 N.J. 327, 330 (1996); see Joye v. Hunterdon Cent. Req'l High Sch. Bd. of Educ., 176 N.J. 568, 583 (2003). We may decline to dismiss a matter on mootness grounds in order to address

an important matter of public interest. Reilly v. AAA Mid-Atl. Ins. Co. of N.J., 194 N.J. 474, 484 (2008). Before continued jurisdiction will be invoked in moot cases there must be an issue "of great public importance compelling definitive resolution despite mootness[.]" Oxfeld v. N.J. State Bd. of Educ., 68 N.J. 301, 303 (1975).

The Coalition argues that this matter is of important public interest and analogous to those cases where our Supreme Court has declined to dismiss a matter on mootness grounds. See Nini v. Mercer Cty. Cmty. Coll., 202 N.J. 98, 105 n.4 (2010) (finding the statutory issues qualified as important matters of public interest, having "a significant effect on senior citizens in the workplace, and [] continu[ing] to divide our courts"); Reilly, supra, 194 N.J. at 478, 484-85 (holding the issue of statutory and regulatory interpretation for purposes of assessing insurance eligibility rating points qualified as an important matter of public interest); In re Application of Boardwalk Regency Corp. for Casino License, 90 N.J. 361, 368 (1982) (reviewing technically moot issue where the matter was of "considerable importance to the casino industry as well as the general public").

The Division's annual reports inform the public regarding the programs and services the Division provides; programs and services, which are in consonance with its mission "as a

professional environmental organization dedicated to the protection, management and wise use of the State's fish and wildlife resources." We agree with the Coalition that these reports are important to the general public as the Legislature has mandated them. The reports also serve the public interest by providing information regarding protection of the State's vital natural resources. However, we do not agree with the Coalition that, with the reports having been filed, the timing of the issuance of the reports implicates important matters of public interest or presents a matter of substantial importance that mandates our review.

Having determined the timing of the issuance of the reports is not justiciable, we do not need to decide whether the alleged untimely provision of the reports is likely to reoccur, but be capable of evading review. See Zirger, supra, 144 N.J. at 330.

Finally, in light of our determination as to mootness, the issue raised by the Department relative to standing is not ripe for consideration.

Dismissed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION