

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

ROGER G. CANUPP, JACOB MYERS,  
LAWRENCE MCGEE, HUBERT DAVIDSON,  
TYWAUN JACKSON, CHARLES DURDEN,

Plaintiffs,

vs.

Case No. 2:04-cv-260-FtM-99DNF

LIBERTY BEHAVIORAL HEALTHCARE  
CORP., LUCY HADI, Secretary of the  
Department of Children and Families,

Defendants.

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**ORDER OF PARTIAL DISMISSAL**

This matter comes before the Court upon review of Defendant Liberty's "Suggestion of Mootness" (Doc. #138) and "Plaintiff's Notice of Non-Opposition to Liberty's Suggestion of Mootness" (Doc. #141).

The Plaintiffs, class members who are currently detained at the Florida Civil Commitment Center, allege that the Defendants are violating their constitutional rights. Plaintiffs named Liberty Behavioral Health Corporation ("Liberty") and the Florida Department of Children and Families as the Defendants. The Complaint does not seek monetary damages as relief. Defendant Liberty now suggests that the Court dismiss Liberty from this action because as of July 1, 2006, Liberty no longer provides services to operate the Florida Civil Commitment Center due to a

contract that expired June 30, 2006. (Doc. #138 at 2.) As such, Defendant Liberty “no longer has any authority, power, influence, or presence at the FCCC” and will not have such influence in the future. (citations omitted). Plaintiffs state that they do not oppose the Court’s dismissal of Liberty since Liberty is no longer the vendor operating the FCCC. (Doc. #141 at 1.)

Article III of the Constitution, known as the case and controversies limitation, prevents federal courts from deciding moot questions because the Court lacks subject matter jurisdiction. U.S.C.A. Const. Art. III. Mootness can occur due to a change in circumstances or a change in law. Coral Springs St. Sys., Inc. V. City of Sunrise, 371 F.3d 1320 (11th Cir. 2004). A case is also moot when the issue presented is no longer live, the parties lack a legally cognizable interest in its outcome, or a decision could no longer provide meaningful relief to a party. Troiano v. Supervisor of Elections in Palm Beach County, Fla., 382 F.3d 1276 (11th Cir. 2004); Christian Coalition of Ala. v. Cole, 355 F. 3d 1288 (11th Cir. 2004); Crown Media LLC v. Gwinnett County, Ga., 380 F.3d 1317 (11th Cir. 2004). Dismissal is not discretionary but “is required because mootness is jurisdictional. Any decision on the merits would be an impermissible advisory opinion.” Troiano, 382 F.3d at 1282 (citing Al Najjar v. Ashcroft, 273 F.3d 1330, 1335-36 (11th Cir. 2001)). As noted by the Supreme Court, “[t]he requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence

(mootness).” Arizonans for Official English v. Arizona, 520 U.S. 43, 68 (1997) (citations omitted).

A very narrow exception to the mootness doctrine exists for those cases that are “capable of repetition yet evading review.” De La Teja v. United States, 321 F.3d 1357 (11th Cir. 2003); Brooks v. Georgia State Bd. Of Elections, 59 F.3d 1114 (11th Cir. 1995). Two conditions must be met to invoke this doctrine: 1) the challenged action must be of a short duration to be fully litigated; and 2) there exists a reasonable expectation that the same complaining party would be subjected to the same action again. Christian Coalition of Ala. v. Cole, 355 F.3d at 1293(emphasis added). A “remote possibility that an event might recur is not enough to overcome mootness, and even a likely recurrence is insufficient if there would be ample opportunity for review at that time.” Soliman v. United States ex. rel. INS, 296 F.3d 1237, 1243 (11th Cir. 2002) (quotations omitted). In the instant case Defendant Liberty no longer provides services at the FCCC and another provider is currently operating the FCCC. Further, Liberty does not anticipate providing services at the FCCC or any similar facility in Florida.


ACCORDINGLY, it is hereby

**ORDERED:**

1. The Complaint is **dismissed** as to Defendant Liberty Behavioral Healthcare Corporation.

2. Judgment to that effect will be withheld pending adjudication of the action as a whole.

**DONE AND ORDERED** in Fort Myers, Florida, on this 16th day of January, 2007.

  
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**JOHN E. STEELE**  
United States District Judge

SA: alj  
Copies: All Parties of Record