

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

ADAMS CLEANERS, INC.
d/b/a ALL AMERICAN
CLEANERS and KARLEE, LLC,

Court of Appeals of New Mexico
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Mark Reynolds

Plaintiffs-Appellants,

v.

No. A-1-CA-41769

NEW MEXICO ENVIRONMENT
DEPARTMENT,

Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY
Matthew J. Wilson, District Court Judge

Hinkle Shanor LLP
Thomas M. Hnasko
David A. Lynn
Santa Fe, NM

for Appellants

New Mexico Environment Department
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Jennifer L. Olson, Assistant General Counsel
Albuquerque, NM

for Appellee

MEMORANDUM OPINION

HENDERSON, Judge.

{1} Plaintiffs Adams Cleaners, Inc. d/b/a All American Cleaners (Adams
Cleaners) and Karlee, Inc. (Karlee) appeal from a district court order dismissing their

1 complaint against Defendant New Mexico Environment Department (NMED). On
2 appeal, Plaintiffs argue that the district court erred by ruling: (1) the district court
3 did not have authority to adjudicate a constitutional issue pursuant to the Declaratory
4 Judgment Act, NMSA 1978, §§ 44-6-1 to -15 (1975); (2) Plaintiffs were required to
5 exhaust administrative remedies before the district court had subject matter
6 jurisdiction; and (3) the New Mexico Water Quality Act, NMSA 1978, §§ 74-6-1 to
7 -17 (1967, as amended through 2025),¹ gives the Water Quality Control Commission
8 (WQCC) authority to adjudicate constitutional issues and determine the scope of its
9 own authority. Concluding that Plaintiffs' appeal is moot because there is no current
10 administrative action against Plaintiffs, we dismiss this appeal.

11 **BACKGROUND**

12 {2} Adams Cleaners operates a laundry facility (the Site) in Artesia, New Mexico,
13 which they lease from Karlee, the Site owner. NMED detected a groundwater
14 contamination plume below the Site and issued Plaintiffs a notice of liability.²
15 Plaintiffs responded that NMED could not impose liability on them because they

¹We refer to the 2019 version of the Water Quality Act here as used by Plaintiffs on appeal and in their July 2023 declaratory judgment action. The Legislature amended the Water Quality Act in 2025 and the amendments are discussed below as relevant to our disposition of this case.

²The Water Quality Act gives the WQCC authority to assign administrative responsibility to constituent agencies. *See* § 74-6-4(G). The WQCC assigned NMED enforcement responsibility over contaminant discharge and allows NMED to issue abatement requirements and compliance orders to responsible parties. *See* 20.6.2.4105(B) NMAC; 20.6.2.1220 NMAC; § 74-6-10(A).

1 had never used contaminants at the Site. However, NMED maintained that Plaintiffs
2 were responsible parties as owners and operators of the Site and issued additional
3 notices of liability requiring Plaintiffs to assume abatement responsibility. Plaintiffs
4 did not, and NMED issued a final notice demanding an abatement plan within sixty
5 days or Plaintiffs would face formal enforcement action.

6 {3} Instead of submitting an abatement plan, Plaintiffs brought a declaratory
7 judgment action in district court arguing that NMED exceeded its authority by
8 imposing liability on owners or operators of a facility who did not cause
9 contamination, and that the regulatory definition of “responsible person” is
10 unconstitutionally vague. NMED responded with a motion to dismiss, arguing that
11 the district court lacked subject matter jurisdiction over the matter because Plaintiffs
12 failed to exhaust administrative remedies and failed to state a claim. The district
13 court granted NMED’s motion to dismiss, ruling that it was without subject matter
14 jurisdiction over the action because the WQCC may adjudicate the extent of its
15 authority and alleged constitutional violations, and Plaintiffs failed to exhaust
16 administrative remedies. Plaintiffs now appeal the district court’s order.

17 {4} While Plaintiffs’ district court action was ongoing, NMED issued an
18 administrative compliance order requiring Karlee to submit an abatement plan or
19 face penalties. However, after Plaintiffs appealed the district court order, NMED
20 filed a “Notice of Withdrawal of Abatement Requirement and Administrative

1 Compliance Order and Motion to Approve a Different Time Period” with the WQCC
2 in order to comply with a pending federal Comprehensive Environmental Response,
3 Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. §§ 9601-9675,
4 action at the Site.³ The WQCC granted the motion to withdraw the abatement plan
5 requirement and administrative compliance order against Plaintiffs, and gave NMED
6 180 days after a CERCLA investigation is completed to issue a new abatement
7 action if necessary. The CERCLA investigation remains ongoing.

8 **DISCUSSION**

9 {s} On appeal, Plaintiffs argue that the district court’s order dismissing their
10 complaint should be reversed because the district court erred by: abdicating its
11 authority pursuant to the Declaratory Judgment Act to adjudicate constitutional
12 issues; ruling that Plaintiffs were required to exhaust administrative remedies before
13 bringing a declaratory judgment action; and ruling that the Water Quality Act
14 confers authority to the WQCC to adjudicate constitutional issues and determine the

³CERCLA authorizes federal remediation of hazardous contamination. *See* 42 U.S.C. § 9604. NMED has a cooperative agreement with the United States Environmental Protection Agency (EPA), pursuant to 40 C.F.R. § 300.505 (2025), allowing NMED to use federal funding to perform pre-CERCLA site assessments to assess whether a site may qualify for federal remediation. However, pursuant to 42 U.S.C. § 9605(h) and Section 3.6 of the EPA’s “2016 Revised Pre-CERCLA Screening Guidance,” sites cannot qualify for federal remediation if a state is already pursuing abatement action against the site. *See* <https://semspub.epa.gov/work/HQ/196807.pdf>. Therefore, NMED was required to withdraw their state abatement action before CERCLA remediation could be pursued at the Site.

1 scope of its own authority. However, we do not reach these arguments because we
2 conclude that Plaintiffs’ appeal is moot as there is no current administrative action
3 against Plaintiffs.

4 **I. Mootness**

5 {6} NMED argues that this appeal is moot because Plaintiffs are no longer subject
6 to administrative action after the WQCC withdrew the abatement plan requirement
7 and administrative compliance order.⁴ Plaintiffs argue that their appeal is not moot
8 because the withdrawal “is not a dismissal of the enforcement proceedings, but
9 merely a pause for more time . . . with the anticipated result that NMED will continue
10 its enforcement action.” We agree with NMED and dismiss this appeal as moot

⁴NMED also argues that Plaintiffs’ claim that the regulatory definition of “responsible person” is unconstitutionally vague is moot following 2025 amendments to the Water Quality Act. When Plaintiffs filed their appeal, “responsible person” was only defined in 20.6.2.7(R)(2) NMAC as “a person who is required to submit an abatement plan or who submits an abatement plan pursuant to this part.” However, while this appeal was pending, the Legislature added a definition for “responsible party” that includes “the owner and operator of a facility,” § 74-6-2(T)(1), and a provision holding responsible parties liable “for the release of a water contaminant that occurred prior to and since the effective date of this 2025 act.” Section 74-6-10.3(A). NMED argues that Plaintiffs now “squarely fit into” the definition of “responsible person,” but Plaintiffs argue that NMED cannot retroactively apply this legislation to their case. However, because we dismiss this appeal as moot, we need not determine whether the recent amendments retroactively apply. *See City of Las Cruces v. El Paso Elec. Co.*, 1998-NMSC-006, ¶ 18, 124 N.M. 640, 954 P.2d 72 (declining to comment on recent statutory amendments because appellate courts should avoid rendering advisory opinions for moot questions).

1 because any administrative action against Plaintiffs was withdrawn and the filing of
2 a future abatement action would constitute a new action.

3 {7} “As a general rule, this Court does not decide moot cases.” *Gunaji v. Macias*,
4 2001-NMSC-028, ¶ 9, 130 N.M. 734, 31 P.3d 1008. “When no actual controversy
5 exists for which a ruling by the court will grant relief, an appeal is moot and
6 ordinarily should be dismissed.” *Republican Party of N.M. v. N.M. Tax’n & Revenue*
7 *Dep’t*, 2012-NMSC-026, ¶ 10, 283 P.3d 853. The Declaratory Judgment Act also
8 requires an “actual controversy” before a district court can assume jurisdiction.
9 Section 44-6-2; *see AFSCME v. Bd. of Cnty. Commr’s of Bernalillo Cnty.*, 2016-
10 NMSC-017, ¶ 15, 373 P.3d 989 (“Under the [Declaratory Judgment] Act, courts in
11 New Mexico have jurisdiction to adjudicate and declare rights and legal relations
12 only in cases of actual controversy.”). In order for an actual controversy to exist
13 under the Declaratory Judgment Act, there must be “a controversy involving rights
14 or other legal relations of the parties seeking declaratory relief; a claim of right or
15 other legal interest asserted against one who has an interest in contesting the claim;
16 [the] interests of the parties must be real and adverse; and the issue involved must
17 be ripe for judicial determination.” *City of Las Cruces v. El Paso Elec. Co.*, 1998-
18 NMSC-006, ¶ 16, 124 N.M. 640, 954 P.2d 72 (internal quotation marks and citation
19 omitted).

1 {8} In this case, Plaintiffs' claims became moot when the WQCC's "Notice of
2 Withdrawal of Abatement Requirement and Administrative Compliance Order and
3 Motion to Approve a Different Time Period" explicitly withdrew the administrative
4 actions against Plaintiffs, removed the matter from the docket, and vacated
5 Plaintiffs' request for a hearing. Plaintiffs did not oppose the withdrawal, but argue
6 that this case is not moot because the order also approved a new time period of 180
7 days after the CERCLA investigation concludes for NMED to issue another
8 abatement plan action, if NMED so chooses. However, the CERCLA investigation
9 has not begun at the Site and "[t]he mere possibility or even probability that a person
10 may be adversely affected in the future by official acts fails to satisfy the actual
11 controversy requirement." *Yount v. Millington*, 1993-NMCA-143, ¶ 36, 117 N.M.
12 95, 869 P.2d 283 (internal quotation marks and citation omitted). Additionally,
13 "when the department withdraws . . . an abatement plan action, the petition is vacated
14 and the department must issue a new . . . abatement plan action," within the time
15 period approved or determine that the "abatement plan action is no longer required."
16 20.1.3.22(C)(2)(f) NMAC. If another abatement plan action is issued, the
17 administrative review process under 20.6.2.4114 NMAC begins anew.⁵ *See id.*

⁵If NMED were to pursue a new abatement action against Plaintiffs in the future, Plaintiffs will not be left without recourse. "Upon issuance of a new permitting action or abatement plan action, the right to file a new petition under . . . 20.6.2.4114 NMAC, is available." 20.1.3.22(C)(2)(f) NMAC. Regulation 20.6.2.4114(A) NMAC provides that if NMED determines an abatement action is

1 Therefore, when the WQCC withdrew the abatement plan requirement and
2 administrative compliance order, all pending actions against Plaintiffs were vacated
3 pursuant to 20.1.3.22(C) NMAC.

4 {9} Accordingly, there is no actual controversy affecting Plaintiffs and this Court
5 is without jurisdiction to hear Plaintiffs’ appeal. *See Gunaji*, 2001-NMSC-028, ¶ 9
6 (“A case is moot when no actual controversy exists, and the court cannot grant actual
7 relief.” (internal quotation marks and citations omitted)); *City of Las Cruces*, 1998-
8 NMSC-006, ¶ 16 (“A case will be dismissed for mootness if no actual controversy
9 exists.”); *Romine v. Romine*, 1983-NMSC-086, ¶ 6, 100 N.M. 403, 404, 671 P.2d
10 651 (“An action is properly dismissed if the issues therein become moot, leaving the
11 court without jurisdiction.”). Although this Court has discretion to “review moot
12 cases that present issues of substantial public interest or which are capable of
13 repetition yet evade review,” *Gunaji*, 2001-NMSC-028, ¶ 10, we decline to do so
14 here. Thus, we dismiss Plaintiffs’ appeal as moot.

15 **CONCLUSION**

16 {10} For the foregoing reasons, we dismiss this appeal as moot.

required, it shall give written notice to the responsible person. Then, “[a]ny person who participated in the action before the secretary and who is adversely affected by the action listed in Subsection A of 20.6.2.4114 NMAC may file a petition requesting a review before the commission.” 20.6.2.4114(B) NMAC. Similarly, if a new administrative compliance order is issued, “a person who is adversely affected . . . by a compliance order approved by the commission . . . may appeal to the court of appeals for further relief.” Section 74-6-7(A).

1 {11} IT IS SO ORDERED.

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4 
5 SHAMMARA H. HENDERSON, Judge

6 WE CONCUR:

7 
8 JENNIFER L. ATTREP, Judge

9 
10 ZACHARY A. IVES, Judge