

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

FILED
United States Court of Appeals
Tenth Circuit

APR 26 1990

PROTECT OUR EAGLES' TREES (POETs),)

Plaintiff-Appellant,)

v.)

CITY OF LAWRENCE, KANSAS; LAWRENCE)
RIVER PLAZA ASSOCIATES; UNITED STATES)
ARMY CORPS OF ENGINEERS; UNITED STATES)
DEPARTMENT OF INTERIOR; UNITED STATES)
ENVIRONMENTAL PROTECTION AGENCY,)

Defendants-Appellees.)

ROBERT L. HOECKER
Clerk

No. 89-3115
(D.C. No. 89-2090)
(D. Kan.)
(715 F. Supp. 996)

ORDER AND JUDGMENT*

Before BRORBY, EBEL, Circuit Judges, and JOHNSON**, District Judge.

**Honorable Alan B. Johnson, District Judge, United States District Court for the District of Wyoming, sitting by designation.

This appeal seeks review of a ruling of the United States District Court for the District of Kansas denying plaintiff's motion for a temporary restraining order and dismissing the

* This order and judgment has no precedential value and shall not be cited, or used by any court within the Tenth Circuit, except for purposes of establishing the doctrines of the law of the case, res judicata, or collateral estoppel. 10th Cir. R. 36.3.

action. Protect Our Eagles' Trees v. City of Lawrence, 715 F. Supp. 996 (D. Kan. 1989). The underlying action was brought pursuant to several environmental statutes and sought primarily to enjoin the destruction of a particular stand of trees near the Bowerstock Dam on the Kansas River in Lawrence.

The district court denied all relief as to the various claimed violations of the statutes. No stay of the court's order was sought, either in the district court or in this court. Consequently, the trees in question were removed over a year ago and the development has proceeded, nearly to completion.

Generally, an appeal should be dismissed as moot when events occur that prevent an appellate court from granting any effective relief. Colorado Interstate Gas Co. v. FERC, 890 F.2d 1121, 1126 (10th Cir. 1989); FDIC v. Jennings, 816 F.2d 1488, 1490 (10th Cir. 1987); Pursifull v. Eakin, 814 F.2d 1501, 1506 (10th Cir. 1987). Where the act sought to be enjoined has occurred, an appeal of a district court order denying an injunction is moot. Thournir v. Buchanan, 710 F.2d 1461, 1463 (10th Cir. 1983). Even if we were to conclude that the district court erred, no effective relief is available. See Neighbors Organized to Insure a Sound Env't v. McArtor, 878 F.2d 174, 178 (6th Cir. 1989)(issue on appeal moot when airport terminal operational and court not in position to prevent what has occurred); City of Romulus v. County of Wayne, 634 F.2d 347, 349 (6th Cir. 1980)(action is moot where activities sought to be enjoined have occurred and can no longer be prevented); Florida Wildlife Fed'n v. Goldschmidt, 611 F.2d 547, 549 (5th Cir. 1980)(same, especially where no stay on appeal

sought); Friends of the Earth, Inc. v. Bergland, 576 F.2d 1377, 1379 (9th Cir. 1978)(same). See also Ogunquit Village Corp. v. Davis, 553 F.2d 243, 246 (1st Cir. 1977)(court would not disturb completed project for minor lapses in planning). The relief sought must be capable of addressing the alleged harm. Blinder, Robinson & Co. v. United States SEC, 748 F.2d 1415, 1418 (10th Cir. 1984), cert. denied, 471 U.S. 1125 (1985); see also Park County Resource Council v. United States Dep't of Agriculture, 817 F.2d 609, 615 (10th Cir. 1987)(court needs ability to redress issue to have power to address it).

Further, this is not a situation capable of repetition yet evading review because there is no reasonable expectation that the parties will again be embroiled in the controversy. See Society of Professional Journalists v. Secretary of Labor, 832 F.2d 1180, 1184-85 (10th Cir. 1987)(no demonstrated probability that present fact situation will recur).

Plaintiff, in its argument that the matter is not moot, suggests we could revoke or modify the Corps of Engineers' permit or order that the facility be dismantled, altered, or operated differently, citing Van Abbema v. Fornell, 807 F.2d 633 (7th Cir. 1986). In Van Abbema, the court held that the appeal was not made moot by the fact that construction (allegedly in violation of NEPA) had begun. A noteworthy difference between Van Abbema and this case is that in Van Abbema the claimed injuries flowing from improper issuance of the permit "occur both in the construction and in the operation of the facility." 807 F.2d at 636. Here, by contrast, this whole lawsuit was about saving these particular

trees. The facts surrounding Van Abbema are thus wholly different than the situation here.

Because we can provide no effective relief for plaintiff, we conclude the appeal is moot. In accordance with Duke Power Co. v. Greenwood County, 299 U.S. 259, 267 (1936), we vacate the district court's judgment and remand with instructions to dismiss the complaint. See Great W. Sugar Co. v. Nelson, 442 U.S. 92 (1979).

VACATED and REMANDED.

ENTERED FOR THE COURT
PER CURIAM