

CASE NO. 96,650

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

BRETT AND YVONNE SHIVELY,
Appellees,

v.

WESLEY MEDICAL CENTER, LLC;
LINDALL SMITH, M.D.;
Appellants,

MARK SPRINGER, M.D.;
RAYMOND GRUNDMEYER, III, M.D.,
AND ANY AND ALL PHYSICIANS, RESIDENTS
OR OTHER EMPLOYEES, AGENTS, OR
INDEPENDENT CONTRACTORS WORKING IN OR
ASSOCIATED WITH WESLEY MEDICAL CENTER, LLC,
Defendants.

ORDER

After reviewing the Appellants' brief and the Appellees' response to this Court's show-cause order, the above-captioned appeal is dismissed as moot.

A case is moot when no further controversy exists between the parties and where any judgment of the court would be without effect. *Rodarte v. Kansas Dept. of Transportation*, 30 Kan. App.2d 172, 183, 39 P.3d 675, *rev. denied* 274 Kan. 1113 (2002). "It is the duty of the courts to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles which cannot affect the matters in issue before the court." *In re Tax Appeal of Colorado Interstate Gas Co.*, 270 Kan. 303, 305, 14 P.3d 1099 (2000).

An exception to the general rule regarding whether a case is moot exists if the case

involves a question of public interest. Appellate courts are inclined to retain an appeal on this basis if the question involves one that is likely to arise *frequently* in the future unless it is settled by a court of last resort. *Allenbrand v. Zubin Darius Contractor*, 253 Kan. 315, Syl. ¶3, 855 P.2d 926 (1993). (emphasis added) "The phrase "public interest" as used in this connection means something more than that the individual members of the public are interested in the decision of the appeal from motives of curiosity or because it may bear upon their individual rights or serve as a guide for their future conduct as individuals." *State ex rel. Stephan v. Johnson*, 248 Kan. 286, 290, 807 P.2d 664 (1991).

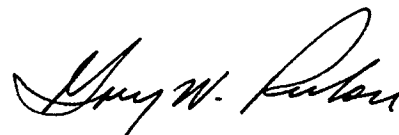
First it must be remembered that the general rule is to dismiss an appeal which has become moot and that the retention of such an appeal because of the public interest therein is an exception to that rule. The decision as to whether to retain a moot case in order to pass on a question of public interest lies in the discretion of the court. 248 Kan. at 290.

Appeal dismissed.

DATED:

11/03/06.

FOR THE COURT



GARY W. RULON
CHIEF JUDGE