[Cite as *Monroe v. Korleski,* 2011-Ohio-1671.]

[Please see amended version of opinion at 2011-Ohio-1784.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

City of Monroe,	:	
Appellant-Appellant,	:	
v.	:	No. 10AP-718 (ERAC No. 096265)
Chris Korleski, Director of Environmental Protection et al.,	:	(REGULAR CALENDAR)
Appellees-Appellees.	:	
Robert D. Snook et al.,	:	
Appellants-Appellees,	:	
(Suncoke Watch, Inc. et al.,	:	Nos. 10AP-721 (ERAC No. 096268)
Appellants-Appellants),	:	10AP-722 (ERAC No. 096270)
v.	:	10AP-723 (ERAC No. 096272)
Chris Korleski, Director of Environmental Protection et al.,	:	10AP-724 (ERAC No. 096273)
Appellees-Appellees.	:	(REGULAR CALENDAR)

D E C I S I O N

Rendered on April 7, 2011

Van Kley & Walker, LLC, Jack A. Van Kley and *Christopher A. Walker*; *K. Philip Callahan*, for appellant City of Monroe.

Michael DeWine, Attorney General, *Samuel Peterson* and *Sarah T. Bloom*, for appellees Director of Environmental Protection.

Peter A. Precario and *Megan De Lisi*, for appellants Suncoke Watch, Inc., Lisa Frye, Barbara Stubbs and Charles Inwood.

Baker & Hostetler LLP, Ben L. Pfefferle, III, and *Gregory R. Flax*, for appellee AK Steel Corp.

Barnes & Thornburg LLP, *Charles R. Dyas, Jr.,* and *Mark Crandley*, for appellees Middletown Coke Co. and Suncoke Energy, Inc.

APPEALS from the Environmental Review Appeals Commission

TYACK, J.

{¶1} This is an administrative appeal of the Environmental Review Appeals Commission's ("ERAC") June 30, 2010 order granting a motion to dismiss filed by appellees AK Steel Corp., Suncoke Energy, Inc. and its subsidiary Middletown Coke Co., and Chris Korleski, Director of the Ohio Environmental Protection Agency ("EPA"). Appellants Suncoke Watch, Inc. (not affiliated with Suncoke Energy) and the City of Monroe are appealing ERAC's dismissal of their appeals before the commission on June 30, 2010.

{¶2} At issue here is the EPA's 2008 issuance of a permit to Middletown Coke Co. to build a new coke facility, which appellants challenged before ERAC, and while those proceedings were still ongoing, the EPA issued a new permit in 2010, which superseded the prior permit.

{¶3} Appellant City of Monroe presents three assignments of error for our review:

> [I.] This Case Lacks a Justiciable Controversy and thus is Moot Only if Vacating Middletown Coke Company's New Source Review Permit to Install Cannot Revive its Previously Issued Netting Permit.

> [II.] Although Some Case Law Suggests that Vacating a Superseding State Action Revives the Replaced Action, the Vacatur of a Superseding Ohio EPA PTI Cannot Revive the Replaced PTI.
>
> [III.] Because the ERAC's Decision Dismisses Monroe's Appeal for Mootness Without Finding that the Netting Permit Cannot be Revived by Vacating the NSR Permit, the Decision Lacks the Findings Required by R.C. § 3745.05.

{¶4} Appellant Suncoke Watch, Inc. also presents the following two assignments of error:

> FIRST ASSIGNMENT OF ERROR
>
> WHEN, DURING THE PENDANCY OF AN ADMINISTRATIVE APPEAL, A SUBSEQUENT LEGAL ACTION IS TAKEN, WHICH IN TURN CREATES AN ISSUE WHICH CAN OR MAY AFFECT THE SUBSTANTIVE AND PRECEDURAL RIGHTS OF THE PARTIES IN THAT APPEAL, IT IS ERROR TO DISMISS THE ENTIRE APPEAL AS MOOT BECAUSE THE UNDERLYING CONTROVERSY HAS BEEN REMOVED FROM THE CONSIDERATION OF THE APPELLATE BODY BUT THE NEW ISSUE REMAINS UNDETERMINED.
>
> SECOND ASSIGNMENT OF ERROR
>
> WHERE ERAC ISSUES A FINAL ORDER WHICH FAILS TO ADDRESS A CRITICAL ELEMENT NECESSARY TO DETERMINE MOOTNESS, IT IS ERROR FOR THE COMMISSION TO DISMISS THE CASE ON THE BASIS OF MOOTNESS.

{¶5} This being an administrative appeal from ERAC, our standard of review is provided by R.C. 3745.06. *Stark C & D Disposal, Inc. v. Bd. of Stark Cty. Combined Gen. Health Dist.*, 10th Dist. No. 10AP-51, 2010-Ohio-4607, ¶6 (citing *Robinson v. Whitman* (1975), 47 Ohio App.2d 43, 53-54). Using this standard of review, this court must affirm ERAC's decision if it is supported by reliable, probative, and substantial evidence, and is in accordance with law. *Stark C & D* (citing *Red Hill Farm Trust v. Schregardus* (1995), 102 Ohio App.3d 90, 95).

{¶6} "Reliable" evidence is that which is dependable, and can be confidently trusted. *Our Place, Inc. v. Ohio Liquor Control Comm.* (1992), 63 Ohio St.3d 570, 571. "Probative" evidence is that which is both relevant, and tends to prove any fact or issue in question. Id. "Substantial" evidence is that which is important. Id.

{¶7} The order from which appellants are appealing dismissed the ERAC case based on the doctrine of mootness:

> In the immediate case, the Director contends that the NSR permit explicitly advised that it superseded the netting permit. While the term "supersede" has not been previously defined by the Commission, Black's Law Dictionary defines supersede to mean [sic] "annul, make void, or repeal by taking the place of." * * * In accordance with Black's Law Dictionary, the Commission finds that in this context, where a permit is stated to "supersede" a prior permit, the superseding permit replaces the prior permit and renders it effectively void.

ERAC Decision (Jun. 30, 2010), ¶17.

{¶8} Although Black's Law Dictionary is a respected legal source, used by nearly everyone in the legal profession, it is not a binding or mandatory legal authority, and as a matter of law, judicial decisions should not be based solely upon one of its entries. See, e.g., *Niepsuj v. Niepsuj*, 9th Dist. No. 21888, 2004-Ohio-4201, ¶12 (citing *Mid-Ohio Liquid Fertilizers, Inc. v. Lowe* (1984), 14 Ohio App.3d 36, 38). ("Black's Law Dictionary is recognized in Ohio as secondary authority. * * * As such, no error was committed by [ERAC] by relying on case law precedent, primary authority, rather than Black's Law Dictionary."); *State v. Knoechel* (Mar. 11, 1985), 12th Dist. No. CA84-10-074, 1985 WL 8638, at *2 ("[A] definition from Black's Law Dictionary, while germane, is clearly not binding nor dispositive of [a legal] issue."). This is not to take away from the fact that Black's Law Dictionary is an invaluable legal resource. However, it is but a *secondary authority*. See, e.g., *State ex rel. OTR v. Columbus* (1996), 76 Ohio St.3d

203, 208. The purpose of secondary authorities is to persuade and guide the courts. Secondary authorities do not dictate the outcome of dispositive legal issues in a case.

{¶9} As a general matter, courts will not resolve issues that are moot. See, e.g., *In re L.W.*, 168 Ohio App.3d 613, 618, 2006-Ohio-644, ¶11 (citing *In re Brown,* 10th Dist. No. 03AP-1205, 2005-Ohio-2425, ¶15). This is not a local or state of Ohio rule of procedure, but rather a firmly-rooted legal doctrine. See, e.g., *U.S. v. W. T. Grant Co.* (1953), 345 U.S. 629, 632, 73 S.Ct. 894 ("[T]o say that the case has become moot means that the defendant is entitled to a dismissal as a matter of right[.]"). (Citation omitted.); *St. Pierre v. U.S.* (1943), 319 U.S. 41, 43, 63 S.Ct. 910 ("Since the cause is moot, the writ will be [d]ismissed."); *Albin v. Cowing Pressure Relieving Joint Co.* (1942), 317 U.S. 211, 212, 63 S.Ct. 170 ("[N]o reason appears why this one cannot or should not be reviewed[;] [n]or does it appear from the record which is before us that the issue is moot.").

{¶10} Actions are moot " 'when they are or have become fictitious, colorable, hypothetical, academic or dead.' " *In re L.W.*, at ¶11 (quoting *Grove City v. Clark,* 10th Dist. No. 01AP-1369, 2002-Ohio-4549, ¶11). The distinguishing characteristic of such issues is that they involve no actual genuine, live controversy. Id. " 'A moot case is one which seeks to get a judgment on a pretended controversy, when in reality there is none, or a decision in advance about a right before it has been actually asserted and contested, or a judgment upon some matter which, when rendered, for any reason cannot have any practical legal effect upon a then-existing controversy.' " Id. (quoting *Culver v. Warren* (1948), 84 Ohio App. 373, 393). As the case law dictates, when a case is deemed moot, the proper remedy is dismissal, the basis for which is that there is no controversy for the court to decide.

{¶11} The mootness question in this case relates to the EPA's issuance of the second permit to appellee Middletown Coke Co., which stated that "[t]his permit (#P0104768) *supersedes* the previous permit (#14-06023, issued November 25, 2008)

issued for this site." ERAC Decision, ¶6. (Emphasis added.) Appellees argue that the term supersede means terminate. Appellants position, however, is that the EPA, could at some future point, revoke the second permit, and that upon doing so, the prior permit would be "revived." (Brief of Appellant City of Monroe, at 18.)

{¶12} In the absence of any statutory or agency definition of the term supersede, we look to its common or usual meaning, which, consistent across several sources, means to replace, or take the place of; to set aside, or make void. E.g., Black's Law Dictionary (8th ed. 1999). Based on this meaning of supersede, it appears unlikely that appellees could somehow "revive" the prior permit. If the EPA allowed appellees to revive the superseded permit, then appellants would not be without remedy. They could appeal again since the likelihood of the prior permit being revived is at best speculative, we cannot say that there is a live controversy with respect to the superseded permit at the present time.

{¶13} Having found that this case contains no live controversy, we dismiss the appeal effectively affirming ERAC's disposition.

Appeal dismissed.

KLATT and SADLER, JJ., concur.

_____