

VIRGINIA:

*In the Supreme Court of Virginia held at the Supreme Court Building in the  
City of Richmond on* Friday *the* 8th *day of* May, 2015.

Joseph M. Levin,

Appellant,

against

Record No. 140965

Circuit Court No. CL13-3029

Virginia Department of  
Criminal Justice Services,

Appellee.

Upon an appeal from an  
order entered by the Circuit  
Court of the City of Richmond.

Joseph M. Levin appeals an order of the Circuit Court of the City of Richmond revoking his appointment as a Special Conservator of the Peace. The circuit court found that Levin no longer possessed a valid registration issued by the Department of Criminal Justice Services (DCJS). DCJS had retracted Levin's registration after discovering that he had been previously convicted of a misdemeanor involving moral turpitude. See generally Code § 19.2-13(B).

On appeal, Levin claims that the circuit court did not have continuing authority to enter the revocation order after twenty-one days had passed from the entry of the original appointment order. See Rule 1:1. DCJS contends that an appointing court has continuing authority over the appointee during the term of appointment, a power

implied by the Special Conservator of the Peace statutes<sup>1</sup> and consistent with the common law.<sup>2</sup>

While this case was pending on appeal, the General Assembly amended Code § 19.2-13(A) and expressly confirmed a circuit court's authority to "revoke the appointment order" during the term of the conservator's appointment.<sup>3</sup> 2015 Va. Acts ch. 772 (S.B. 1195, Va. Gen. Assem. (Reg. Sess. 2015)). Though the parties dispute whether these amendments are declarative of existing law, we need not engage in any extended debate over their application to the present case.

A case becomes moot "[w]henver it appears or is made to appear that there is no actual controversy between the litigants, or that, if it once existed, it has ceased to do so" during the pendency of the case. The Daily Press, Inc. v. Commonwealth, 285 Va. 447, 452, 739 S.E.2d 636, 639 (2013) (citation and internal quotation marks omitted). When this happens, "it is the duty of every judicial tribunal not to proceed to the formal determination of the apparent controversy" because "[o]nly real controversies and

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<sup>1</sup> See Code §§ 9.1-150.1 through -150.4.

<sup>2</sup> "The office of conservators of the peace is a very ancient one," McClannan v. Chaplain, 136 Va. 1, 12-13, 116 S.E. 495, 497-98 (1923), and it "originated in the common law of England and was crystallized in two ancient English statutes," Fedele v. Commonwealth, 205 Va. 551, 553, 138 S.E.2d 256, 258 (1964) (citing, among other sources, statutes of King Edward III in the 14th century). See also Williams v. Commonwealth, 142 Va. 667, 669-70, 128 S.E. 572, 573 (1925); accord 1 William Blackstone, Commentaries on the Laws of England \*335-42 (1765).

<sup>3</sup> These amendments take effect on July 1, 2015. See Code § 1-214(A).

existing rights are entitled to invoke the exercise of their powers." Id. (citation and internal quotation marks omitted).

As a general rule, no court should "give opinions upon moot questions or abstract propositions" or "declare principles or rules of law which cannot affect the matter in issue in the case before it." Hankins v. Town of Virginia Beach, 182 Va. 642, 644, 29 S.E.2d 831, 832 (1944) (citation and internal quotation marks omitted). Such advisory opinions represent an attenuate exercise of judicial power, one in which the Virginia judiciary "traditionally declines to participate." Commonwealth v. Harley, 256 Va. 216, 219-20, 504 S.E.2d 852, 854 (1998).

In this case, it would accomplish nothing to remand the case back to the circuit court, given Levin's legal incapacity to serve in his previously appointed position. DCJS has retracted Levin's registration, and his legal authority to act pursuant to the court's earlier appointment order has ceased.<sup>4</sup> A reversal and remand of this case would necessarily result in a reissuance of the revocation order by the circuit court under its incontestable authority to issue such orders pursuant to amended Code § 19.2-13(A).

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<sup>4</sup> At oral argument, Levin's counsel acknowledged that Levin had filed an appeal of DCJS' decision pursuant to the Virginia Administrative Process Act, Code § 2.2-4000 et seq., and that the appeal had been unsuccessful. See Oral Argument Audio at 5:42 to 6:03.

For these reasons, we dismiss this appeal as moot. This order shall be certified to the said circuit court.

A Copy,

Teste:

*Pat L Harrington*

Clerk