

in his supplemental pleading and affidavit filed August 20, 2014, he states, "The Claimant Orlando Fields #263062, is not in dispute of the property in question, which has been returned and received by the claimant (Rosetta Stone Language Course (sic)) in good condition, except for a Spanish book with two-(2) CD's, and the denial to utilize the computer to study the software." It appears to the Tribunal that the subject of this claim, the Rosetta Stone language course, has been returned to the Claimant.

The Claimant has also made application to transfer or remove his claim to chancery or circuit court pursuant to Tenn. Code Ann. 9-8-404. The criterion for removal is set by statute:

(a) Prior to hearing, upon the petition of either party showing the approval of the attorney general and reporter, the claim shall be removed to the appropriate chancery or circuit court with venue for handling in accordance with this part, except the normal procedural rules of the court shall be applicable. Appeal from the chancery or circuit court shall be to the court of appeals.

(b) The commission may transfer the action to the appropriate chancery or circuit court with venue on its own after a determination, in writing, by the commission that fair and complete resolution of all claims involved cannot be accomplished in administrative proceedings before the commission. Such transfers shall be limited to tort claims arising out of the same fact situation where much of the evidence to be presented would be admissible against the state and one (1) or more additional defendants. If such transferred claim is not consolidated for trial, the claim against the state shall be transferred back to the commission. If, prior to the time of trial, all claims other than those against the state have been dismissed, settled or otherwise concluded, upon motion of the state

the claim shall be transferred back to the commission. The transferred claim shall be handled in accordance with this part, except the normal procedural rules of the court shall be applicable. Appeal from the chancery or circuit court shall be to the court of appeals.

Tenn. Code Ann. § 9-8-404

It is clear that for a transfer or removal to take place, there must be an additional defendant other than the State of Tennessee. In this claim, the only defendant is the State of Tennessee. This claim is not eligible for transfer and the application for transfer to circuit or chancery court must be respectfully denied.

The Claims Commission has jurisdiction to adjudicate monetary claims against the State of Tennessee. It cannot order the State to provide services, order injunctive relief or issue declaratory judgments. The Claims Commission can only order monetary awards:

As to the Claimant's second issue, the Commissioner denied a mandatory injunction because he was of the opinion that he only had the authority granted to him under the Act which specifically limited his jurisdiction to monetary claims against the State. We concur in the Commissioner's conclusion.

Burchfield v. State, 774 S.W.2d 178, 184 (Tenn. Ct. App. 1988)

Because the property in controversy has been returned to the Claimant, it would not be proper for the Tribunal to award monetary damages in a claim that has become moot. The Tribunal looks to our appellate courts in making this decision.

“A case is not justiciable if it does not involve a genuine, continuing controversy requiring the adjudication of presently existing rights.” *Nicely*, 182 S.W.3d at 338. A case is considered moot if “it no longer serves as a means to provide some sort of judicial relief to the prevailing party.” *Id.*

A moot case is one that has lost its character as a present, live controversy. The central question in a mootness inquiry is whether changes in the circumstances existing at the beginning of the litigation have forestalled the need for meaningful relief. A case will generally be considered moot if it no longer serves as a means to provide relief to the prevailing party. *McIntyre v. Traugher*, 884 S.W.2d 134, 137 (Tenn.Ct.App.1994) (internal citations omitted).

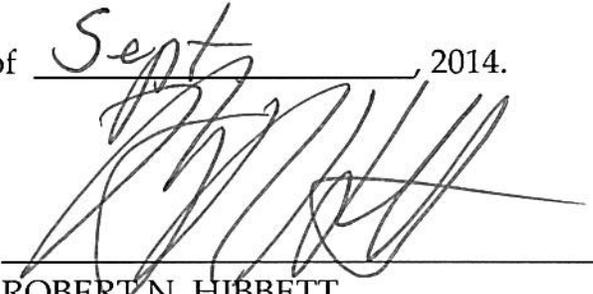
Foster Bus. Park, LLC v. J & B Investments, LLC, 269 S.W.3d 50, 57 (Tenn. Ct. App. 2008)

There is no longer a continuing controversy in this matter that the Tribunal may adjudicate pursuant to statute. Therefore, the claim must be dismissed.

IT IS, THEREFORE, ORDERED:

1. The application to transfer the claim to circuit or chancery court is denied.
2. The claim is respectfully dismissed with prejudice.

ENTERED this 2 day of Sept, 2014.



ROBERT N. HIBBETT
Claims Commissioner
Sitting as the Trial Court of Record

CERTIFICATE OF SERVICE

This is to certify that a true and exact copy of the foregoing document has been served upon the following parties of record:

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This 3rd day of September 2014.

Paula Swanson

PAULA SWANSON
Administrative Clerk
Tennessee Claims Commission