

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

ELIZABETH CLARKSON,

Appellant,

v.

TABITHA LEHMAN IN HER OFFICIAL CAPACITY AS ELECTIONS
COMMISSIONER OF SEDGWICK COUNTY, KANSAS,

Appellee.

ORDER

At oral arguments in this case the court was advised by appellee that the results from the 2014 General Election in Sedgwick County have been certified as required under Chapter 25 of the Kansas Statutes Annotated. As a result, it appears a recount would not affect the outcome of the 2014 election. If true, the question arises whether the appellant has presented for our review a judiciable case or controversy regarding a recount of the 2014 election.

As a general rule, Kansas appellate courts do not decide moot questions or render advisory opinions. This Court recognizes that its role is to "determine real controversies relative to the legal rights of persons and properties which are actually involved in the particular case properly brought before it and to adjudicate those rights in such manner that the determination will be operative, final, and conclusive." [Citation omitted.] *Stano v. Pryor*, 52 Kan. App. 2d 679, 682-83, 372 P.3d 427 (2016) (quoting *State v. Hilton*, 295 Kan. 845, 286 P.3d 871 [2012]). Moreover, an appeal will be dismissed for mootness if it is clearly and convincingly shown the actual controversy has ended, the only judgment that could be entered would be ineffectual for any purpose, and it would not impact any of the parties' rights. [Citations omitted.] *Wiechman v. Huddleston*, 304 Kan. 80, 83, 370 P.3d 1194, (2016).

Accordingly, the court orders the parties to file supplemental briefing on the following issues:

1. Would a recount as requested by the appellant affect the results of the 2014 election contest? If so, how? What legal authority supports or undercuts the argument that a recount ordered as a result of this appeal would affect the 2014 election results? Does Kansas law provide that a recount may be ordered for a purpose other than to contest an election?
2. What is the scope of any recount sought by the appellant? Identify the precincts and candidates/questions that would be involved, and the procedures under which the recount would be conducted. Identify in the record where the district court made any legal or factual findings relating to the scope or conduct of any election recount.
3. Identify in the record where the district court made any legal or factual findings regarding the issues of fact and law related to the claim for a recount submitted for decision by the plaintiff and defendant in the pretrial conference order filed on January 21, 2016.
4. Is this appeal moot? If so, should this court retain the appeal?

The supplemental briefing shall be filed with the Clerk of the Appellate Courts on or before 5:00 p.m. on October 20, 2017, and should not exceed 15 pages in length.

DATED: September, 29, 2017.

FOR THE COURT

/s/ G. Gordon Atcheson
G. Gordon Atcheson
Presiding Judge