**[Cite as *In re Atty. Gen.'s Subpoena*, 2010-Ohio-476.]**

**THE COURT OF APPEALS**

**ELEVENTH APPELLATE DISTRICT**

**GEAUGA COUNTY, OHIO**

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| IN THE MATTER OF: THE ATTORNEY GENERAL'S SUBPOENA (WILLIAM BRIDGE III, d.b.a. COLUMBUS FIRE REPAIR). | **:** | **MEMORANDUM OPINION** |
| | **:** | **CASE NO. 2009-G-2916** |

Civil Appeal from the Court of Common Pleas, Case No. 09 M 000748.

Judgment: Appeal dismissed.

*Leonard W. Yelsky*, Yelsky & Lonardo, 75 Public Square, #800, Cleveland, OH 44113 (For Appellant William Bridge III).

*Richard Cordray*, Attorney General, and *Melissa S. Szozda*, Assistant Attorney General, State Office Tower, 14th Floor, 30 East Broad Street, Columbus, OH 43215-3428 (For Appellee Attorney General).

CYNTHIA WESTCOTT RICE, J.

**{¶1}** Appellant, William Bridge III, d.b.a. Columbus Fire Repair ("CFR"), appeals the judgment of the Geauga County Court of Common Pleas, denying his motion to quash an investigatory subpoena issued by appellee, the Ohio Attorney General, pursuant to R.C. 1345.06. At issue is whether the appeal is moot. For the reasons that follow, we dismiss the appeal.

**{¶2}** In 2008, appellee received a series of citizen complaints against CFR, alleging that the complainants had entered into home repair contracts with CFR. They alleged they had paid CFR large sums of money for home repairs that CFR had either failed to perform or defectively performed, and that CFR refused to return the payments

made. In one case the complainants had paid CFR over $25,000 and in another, they paid $28,000.

**{¶3}** On or about May 27, 2009, appellee issued an investigatory subpoena duces tecum to appellant, instructing him to appear at the attorney general's office in Columbus on June 29, 2009 to testify concerning an investigation presently being conducted by appellee pursuant to the provisions of the Ohio Consumer Sales Practices Act, R.C. Chapter 1345.

**{¶4}** The duces tecum instructed appellant to bring with him 12 categories of documents related to CFR's contracting services performed for consumers from June 1, 2007 to date, including contracts entered into with consumers, estimates, proposals, permits, surety bonds, prior lawsuits, and consumer complaints.

**{¶5}** Appellant received the subpoena on June 5, 2009. On that date, appellant's attorney James R. Douglass, wrote a letter to Assistant Attorney General Melissa S. Szozda, advising her that appellant would cooperate with appellee's investigation. Mr. Douglass stated that appellant was currently in the process of copying every consumer file in his possession within the time frame referenced in the subpoena. He said that upon completion of copying, he would contact the attorney general and make the documents available for pick up, which he said would occur by June 22, 2009.

**{¶6}** Then, on June 26, 2009, without any further discussion with the attorney general or attempt to resolve the matter, appellant, through his new counsel, Leonard W. Yelsky, filed a motion in the trial court to quash the attorney general's subpoena, simply stating the subpoena "is an invasion of William Bridge's Constitutional Rights

including but not limited to the 4th [sic] and 5th Amendments of [sic] the United States Constitution."

**{¶7}** On July 8, 2009, appellee filed a brief in opposition to appellant's motion. On July 23, 2009, the court entered judgment, denying appellant's motion to quash, finding that the subpoena was authorized by R.C. 1245.06, and that appellant had "failed to provide any detail in support [of] his motion."

**{¶8}** Thereafter, on July 24, 2009, appellant filed a reply to the attorney general's brief in opposition. In support of his reply, appellant filed his affidavit in which he stated that he did not consent to the attorney general's search of his records, and that "[t]he remedies contained in the O.R.C. available to the Attorney General has made [him] feel insecure and in jeopardy."

**{¶9}** Appellant appeals the trial court's judgment, asserting the following as his sole assignment of error:

**{¶10}** "The trial court erred and abused its discretion when the trial court denied appellant/petitioner's motion to quash the attorney general subpoena because if forced to testify pursuant to such subpoena appellant Bridge's Fifth Amendment rights would be compromised and violated by allowing the attorney general blanket authority to make an all encompassing uncontrolled exploratory search of all of petitioner's papers and records."

**{¶11}** We observe that, after appellant filed his appeal, appellee filed a notice of withdrawal of the investigatory subpoena and a motion to dismiss the appeal as moot. The Tenth Appellate District in *Nextel W. Corp. v. Franklin County Bd. Of Zoning Appeals*, 10th Dist. No. 03AP-625, 2004-Ohio-2943, held:

**{¶12}** "As a general rule, courts will not resolve issues that are moot. See *Miner v. Witt* (1910), 82 Ohio St. 237. 'The doctrine of mootness is rooted both in the "case" or "controversy" language of Section 2, Article III of the United States Constitution and in the general notion of judicial restraint. * * * While Ohio has no constitutional counterpart to Section 2, Article III, the courts of Ohio have long recognized that a court cannot entertain jurisdiction over a moot question.' (Citations omitted.) *James A. Keller, Inc. v. Flaherty* (1991), 74 Ohio App.3d 788, 791.

**{¶13}** "***

**{¶14}** "Notwithstanding the above ***, there are exceptions to the mootness doctrine. A court may hear an appeal that is otherwise moot when the issues raised are 'capable of repetition, yet evading review.' *State ex rel. Plain Dealer Pub. Co. v. Barnes* (1988), 38 Ohio St.3d 165, paragraph one of the syllabus. The 'capable of repetition, yet evading review' exception to the mootness doctrine 'applies only in exceptional circumstances in which the following two factors are both present: (1) the challenged action is too short in its duration to be fully litigated before its cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again.' *State ex rel. Calvary v. Upper Arlington*, 89 Ohio St.3d 229, 231, 2000-Ohio-142." *Nextel W. Corp*., supra, at ¶10-14.

**{¶15}** "*** [T]here must be more than a theoretical possibility that the action will arise again. There must exist a '"reasonable expectation" or a "demonstrated probability" that the same controversy will recur involving the same complaining party.' *Murphy v. Hunt* (1982), 455 U.S. 478, 482." *James A. Keller, Inc. v. Flaherty* (1991), 74 Ohio App.3d 788, 792. We note that since the attorney general's subpoena has been

withdrawn, there is nothing for us to consider. Further, the record before us is devoid of any evidence or stipulations addressing either of the elements of this exception. We therefore hold that the issue raised by this appeal is moot.

**{¶16}** For the reasons stated in the Opinion of this court, the instant appeal is dismissed.

MARY JANE TRAPP, P.J.,

TIMOTHY P. CANNON, J.,

Concur.