

HERMON SCHOOL DEPARTMENT

v.

ESTATE OF SHAWN MCBREAIRTY

Argued January 10, 2024
Decided January 14, 2025

Panel: STANFILL, C.J., and MEAD, HORTON, CONNORS, and DOUGLAS, JJ.

MEMORANDUM OF DECISION

The Estate of Shawn McBreairty appeals from an order entered by the Superior Court (Penobscot County, *Mallonee, J.*) denying, based on an application of Maine’s anti-SLAPP statute, Shawn McBreairty’s special motion to dismiss the Hermon School Department’s complaint against him for declaratory and injunctive relief. *See* 14 M.R.S. § 556 (2023).¹ McBreairty died while the appeal was pending, and we granted the Estate’s motion to substitute itself as the appellant. We conclude, contrary to the Estate’s argument, that the appeal and underlying matter are moot and must be dismissed. The School Department sought only declaratory and injunctive relief personal to McBreairty, remedies that a court could not now impose with any practical effect. *See Mainers for Fair Bear Hunting v. Dep’t of Inland Fisheries and Wildlife*, 2016 ME 57, ¶ 5, 136 A.3d 714 (“An issue is moot when there remains no real and substantial controversy, admitting of specific relief through a judgment of conclusive character.” (quotation marks omitted)); *see also Ten Voters of the*

¹ Title 14 M.R.S. § 556 was amended, and then repealed and replaced, after the trial court entered its order. *See* P.L. 2023, ch. 322, § 1 (effective Oct. 25, 2023); P.L. 2023, ch. 626, §§ 1-7 (effective Jan. 1, 2025) (to be codified at 14 M.R.S. §§ 731-742 (2025)). These changes to the statute do not affect our analysis here.

City of Biddeford v. City of Biddeford, 2003 ME 59, ¶¶ 5, 7, 822 A.2d 1196. Moreover, the Estate's potential interest in a discretionary attorney fee award, were it to prevail on the merits on appeal, is insufficient to preserve the vitality of the controversy or permit us to delve into the merits of the appeal. *See J.S. v. Westerly Sch. Dist.*, 910 F.3d 4, 9-10 (1st Cir. 2018); *Diffenderfer v. Gomez-Colon*, 587 F.3d 445, 451-52 (1st Cir. 2009).

The entry is:

Appeal dismissed. Remanded to the Superior Court for dismissal of the Hermon School Department's action as moot.

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