SUBURBAN TEL. CO. V. MOUNTAIN STATES TEL. & TEL. CO., 1963-NMSC-121, 72 N.M. 420, 384 P.2d 690 (S. Ct. 1963)

SUBURBAN TELEPHONE CO., a corporation, Plaintiff-Appellant,
vs.
The MOUNTAIN STATES TELEPHONE & TELEGRAPH COMPANY, a corporation, Defendant-Appellee

No. 7197

SUPREME COURT OF NEW MEXICO

1963-NMSC-121, 72 N.M. 420, 384 P.2d 690

June 24, 1963

Motion for Rehearing Denied September 9, 1963

Action by first telephone company for mandamus to compel second company to establish toll connection for first company's customers in community. The District Court, McKinley County, Frank B. Zinn, D.J., denied relief, and plaintiff appealed. The Supreme Court, Carmody, J., held that appeal was rendered moot by determination that first company had no right to serve community, and would be dismissed where questions were not of public interest and would not bear upon subsequent litigation between parties.

COUNSEL

Denny & Glascock, Gallup, Baird & Lundquist, Zion, Ill., for appellant.

Bigbee & Byrd, Santa Fe, Akolt, Turnquist, Shepherd & Dick, Denver, Colo., for appellee.

JUDGES

Compton, C.J., and Chavez and Noble, JJ., concur. Moise, J., having recused himself, not participating.

AUTHOR: CARMODY

OPINION

*{*421}* **{1}** Appellant, Suburban Telephone Company, sought, by mandamus, to require The Mountain States Telephone and Telegraph Company to establish and maintain a toll connection at Gallup, New Mexico, for Suburban's customers at Quemado, New

Mexico. This appeal is from an order of the district court quashing and vacating an alternative writ of mandamus.

{2} At oral argument, it appeared that the issues of this case might be resolved, depending upon our decision in The Mountain States Telephone and Telegraph Company v. Suburban Telephone Co., N.M., 384 P. 2d 684. It was therefore determined to advance No. 7285 on our calendar, and an opinion therein has today been filed.

{3} The practical effect of the decision in No. 7285 is that appellant has, at least at this time, no right to furnish telephone service at Quemado, New Mexico, and thus the instant case is rendered moot. The opinion in the case referred to results in a change of circumstances so that any decision in this case would be of no practical purpose, insofar as the parties are concerned. The grounds upon which appellant based it, cause of action no longer exist. See Benton v. Singleton, 1902, 114 Ga. 548, 40 S.E. 811, 58 L.R.A. 181; Heitmuller v. Stokes, 1921, 256 U.S. 359, 41 S. Ct. 522, 65 L. Ed. 990; Lake Charles Metal Trades Council v. Newport Industries (5th Cir. 1950), 181 F.2d 820; cf. Ellison v. Ellison, 1944, 48 N.M. 80, 146 P.2d 173. We do not believe that the questions are of public interest and which might bear upon subsequent litigation between the parties so as to require us to determine the case either on its legal issues or the merits (but cf. Freeman v. Medler, 1942,46 N.M. 383, 129 P.2d 342).

{4} The appeal will be dismissed. It is so ordered.