

Cite as 2019 Ark. 193
SUPREME COURT OF ARKANSAS
No. CV-18-362

ARKANSAS STATE PLANT BOARD AND
TERRY WALKER, IN HIS OFFICIAL
CAPACITY AS DIRECTOR OF THE
ARKANSAS STATE PLANT BOARD

APPELLANTS

V.

GARY JOHNSON; RANDY JOHNSON;
DAVIS FARM PARTNERSHIP/ROBERT
TYLER DAVIS, ET AL.

APPELLEES

Opinion Delivered June 6, 2019

APPEAL FROM THE MISSISSIPPI COUNTY
CIRCUIT COURT
[NO. 47OCV-18-62]

HONORABLE TONYA M.
ALEXANDER, JUDGE

APPEAL DISMISSED.

JOSEPHINE LINKER HART, Justice

This is a companion case to *Arkansas State Plant Board v. Bell*, 2019 Ark. 164, ___ S.W.3d ___, which we handed down on May 23, 2019. As in *Bell*, the Arkansas State Plant Board, Terry Walker, in his official capacity as director of the Arkansas State Plant Board, Otis Howe, in his official capacity as chair of the Arkansas State Plant Board, and members of the Arkansas State Plant Board (collectively, the “Plant Board”) appeal the circuit court’s temporary restraining order (TRO) that enjoined the Plant Board from enforcing its agency rule limiting the use of dicamba herbicides after April 15, 2018.

On appeal, the Plant Board makes the exact argument that it did in *Bell*: (A) The

circuit court lacked jurisdiction to enjoin the Plant Board's ruling limiting the use of dicamba herbicides because the complaint is barred by sovereign immunity; and (B) The complaint fails to state a claim for which relief may be granted on this issue because (1) there was no likelihood of success on the merits demonstrated; (2) it fails to plead irreparable harm; (3) an adequate remedy at law exists; (4) there was no ripe justiciable controversy; and (5) state agencies must first submit all proposed rules and regulations to the governor for approval, followed by review and approval by the legislature before finalization did not demonstrate a likelihood of success on the merits. However, the Plant Board has since repealed and replaced this rule, and the TRO has expired by operation of law. Accordingly, as we did in *Bell*, we dismiss the appeal as moot.

Appeal dismissed.

Leslie Rutledge, Att'y Gen., by: *Jennifer L. Merritt*, Senior Ass't Att'y Gen., for appellant.

Stoner Law PLLC, by: *Kyle Stoner*, for appellees.