UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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December 10, 2020

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 20-12743-HH
Case Style: Michelle Irizarry, et al v. Orlando Utilities Commission
District Court Docket No: 6:19-cv-00268-RBD-EJK

The enclosed copy of this Court's Order of Dismissal is issued as the mandate of this court. See 11th Cir. R. 41-4. Counsel and pro se parties are advised that pursuant to 11th Cir. R. 27-2, "a motion to reconsider, vacate, or modify an order must be filed within 21 days of the entry of such order. No additional time shall be allowed for mailing."

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Christopher Bergquist/aw, HH
Phone #: 404-335-6169

Enclosure(s)

DIS-4 Multi-purpose dismissal letter

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-12743-HH

MICHELLE IRIZARRY,
VALERIE WILLIAMS,
JOANNE NIXON,
JOANN ROBINSON,
BRANDON LITT,

Plaintiffs - Appellees,

versus

ORLANDO UTILITIES COMMISSION,

Defendant - Appellant.

On Appeal from the United States
District Court for the Middle District of Florida

BEFORE: MARTIN, BRANCH, and BRASHER, Circuit Judges.

BY THE COURT:

Appellant's "Unopposed Motion to Vacate the District Court's Order and Dismiss Appeal as Moot" is GRANTED IN PART AND DENIED IN PART. This appeal is DISMISSED AS MOOT because the district court has dismissed the underlying suit on the merits. But the motion is DENIED insofar as it seeks vacatur of the district court's June 23, 2020 order. There is no authority for an appellate court to vacate a district court's non-final order merely because the entry of a ruling on the merits has mooted an interlocutory appeal. The Supreme Court's decision in *United States v. Munsingwear*, 340 U.S. 36 (1950), is inapplicable. When a case becomes moot on

appeal from a final judgment, vacatur of the underlying judgment is necessary to "clear[] the path for future relitigation of the issues between the parties and [to] eliminate[] a judgment, review of which was prevented through happenstance." *Id.* at 40. But, unlike a final judgment, a district court's interlocutory ruling on a motion for judgment on the pleadings is not res judicata and "carries no precedential weight, even within the same district." *United States v. Cerceda*, 172 F.3d 806, 812 n.6 (11th Cir. 1999) (en banc) (per curiam). *See also Hand v. DeSantis*, 946 F.3d 1272, 1275 n.5 (11th Cir. 2020) ("declin[ing] to vacate our prior stay-panel opinion" upon the mootness of the appeal because the stay-panel opinion "'has no res judicata effect and the rationale of the *Munsingwear* doctrine thus is inapplicable.'" (quoting *F.T.C. v. Food Town Stores, Inc.*, 547 F.2d 247, 249 (4th Cir. 1977)).

The Clerk's Office is directed to close this matter.