NOT DESIGNATED FOR PUBLICATION

Nos. 125,088
125,089
125,090
125,091

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

JILL FOSTER-KOCH, et al.,
Appellees,

v.

SHAWNEE COUNTY HEALTH DEPARTMENT,
Appellant.

MEMORANDUM OPINION

Appeal from Shawnee District Court; TERESA L. WATSON, judge. Opinion filed June 9, 2023. Appeal dismissed.

James M. Crowl, county counselor, and *Ashley R. Biegert*, assistant county counselor, for appellant.

Rebekah A. Phelps-Davis, of Phelps-Chartered, of Topeka, for appellees.

Before COBLE, P.J., HILL and ATCHESON, JJ.

PER CURIAM: In these cases consolidated for appeal, the Shawnee County District Court found that the county's designated local health officer improperly issued quarantine orders for four public school students who had been exposed to the virus causing COVID-19. The orders expired well before the district court ruled, and the parties agree the narrow legal dispute is indisputably moot. Courts typically do not consider claims or cases that have become moot. We decline to apply any exception to the mootness

doctrine. Although the circumstances here might be capable of repetition, the local health officer's actions were so patently outside the mandated statutory process governing quarantine orders that these cases do not present a legal question of substantial public interest or importance. We, therefore, dismiss the appeal.

FACTUAL AND PROCEDURAL BACKGROUND

Given the resolution of this appeal, we condense our factual recitation. The Shawnee County Board of Commissioners appointed Dr. Erin Locke, a physician, as the county's local health officer in early 2021. See K.S.A. 65-201(a) (appointment of local health officer). In the midst of the COVID-19 pandemic, Dr. Locke formulated a detailed set of guidelines for identifying and quarantining elementary and secondary school students exposed to the virus. The guidelines themselves have not been at issue in this litigation. We treat them as largely objective standards based on the proximity of a student to someone who has contracted COVID-19. Under the guidelines, students exposed to the virus could be quarantined—confined to their homes—for 10 days dependent upon remaining symptom free. The quarantine could be cut to seven days with a negative COVID-19 test.

At the start of the 2021-22 school year, Dr. Locke provided school administrators with form quarantine orders bearing her facsimile signature. If a school official (commonly, we gather, the principal, assistant principal, or a nurse) determined a student had been exposed to COVID-19 as provided in the guidelines, the student's parent would be given both a notice and a presigned quarantine order that had been filled in with the student's name, the date of exposure, and where the student was to be confined. The form order outlined the duration of the quarantine and other information.

Early in the school year, two sisters received quarantine orders, and their mother filed two actions challenging the orders, case Nos. 21 CV 459 and 21 CV 460. See

K.S.A. 65-129c(d)(1) (individual may request hearing contesting quarantine order to be treated as habeas corpus proceeding under article 15 of Chapter 60). The district court consolidated those cases. Two other students filed like actions, case Nos. 21 CV 500 and 21 CV 592. The petitions identified the Shawnee County Health Department as the respondent, a point nobody questioned in the district court. Nor do we now. The district court held three evidentiary hearings—one in the sisters' consolidated cases and one in each of the other cases—at which Dr. Locke and other witnesses testified.

The parties recognized the quarantine orders had expired long before the hearings, and the health department had moved to dismiss the actions as moot. The district court issued three lengthy written rulings finding all of the quarantine orders to have been unenforceable because they were effectively "issued" by the school officials and not by Dr. Locke, who had merely signed blank documents without reviewing the particular circumstances of each student. In those rulings, the district court also stated the legal disputes were not moot. But the district court actually found they fell within an exception to the doctrine under which courts may consider moot claims that are capable of repetition and are of public interest or concern, even though any ruling would not affect the present legal relationship of the litigants. The health department has appealed.

Before turning to our disposition of the appeal, we mention that in 21 CV 459 and 21 CV 460 (the actions involving the two sisters) and 21 CV 500, the hearing transcripts establish that the students were given quarantine orders Dr. Locke signed in advance and that Dr. Locke never reviewed their circumstances or approved those orders after such a review. The record in 21 CV 592 is, at best, ambiguous in that respect. The phrasing of the relevant questions the lawyers posed to Dr. Locke and the content of her responses at least suggest she reviewed the facts and approved the quarantine order before school officials delivered it to the student. From our perspective, that possibility makes no difference in the outcome of the appeal.

On appeal, the health department invites us to revisit the district court's ruling on mootness. We take the invitation seriously.

ANALYSIS

A legal controversy becomes moot when judicial resolution of the controlling issue would no longer affect the legal rights or alter the legal relationship of the parties. *State v. Montgomery*, 295 Kan. 837, 840-41, 286 P.3d 866 (2012); *Litke v. Board of Morris County Comm'rs*, No. 124,528, 2023 WL 1879318, at *1 (Kan. App. 2023) (unpublished opinion). Here, as we have said, the quarantine orders for the four students expired in 2021. Whether the orders were validly issued then would not have any impact on the children and their comings and goings now. Although the Kansas Supreme Court has cautioned against hasty or cavalier dismissals of cases as moot in the name of judicial efficiency lest tangible rights of one or both parties be compromised, this appeal presents a paradigmatic example of mootness. See *State v. Roat*, 311 Kan. 581, 591, 466 P.3d 439 (2020) (counseling judicial circumspection in declaring controversy moot).

Courts typically refrain from addressing controversies that have become moot precisely because any decision would amount to an advisory ruling created for its own sake rather than as a mechanism for resolving a concrete dispute between litigants. See *State ex rel. Morrison v. Sebelius*, 285 Kan. 875, 896-97, 179 P.3d 366 (2008); *Litke*, 2023 WL 1879318, at *1. But mootness is a prudential consideration weighing against what may be improvident judicial decision-making rather than a jurisdictional bar to any judicial action whatsoever. *Roat*, 311 Kan. at 590; *Astorga v. Leavenworth County Sheriff*, No. 124,944, 2022 WL 16843472, at *2 (Kan. App. 2022) (unpublished opinion). So courts have the authority to render decisions addressing otherwise moot legal issues or disputes. And there are recognized, though quite narrow, exceptions to the mootness doctrine under which a court may providently decide an issue. Those exceptions entail repetitive legal claims that evade review because they naturally become moot before the

judicial process can fully address them and issues of substantial public interest or importance. See *Montgomery*, 295 Kan. at 841; *State v. DuMars*, 37 Kan. App. 2d 600, 605, 154 P.3d 1120 (2007).

Here, the record suggests the county health department pulled back from using presigned quarantine orders to be served on school children without any further review by the local health officer. We have no indication the practice continues. If it remains in place or were reinstated, we expect students potentially subject to such orders in the midst of a pandemic or other public health crisis could, acting through their parents or guardians, bring declaratory judgment actions challenging the validity of the practice. See K.S.A. 60-1701; K.S.A. 60-1704; see also *Theisman v. City of Overland Park*, No. 104,193, 2011 WL 2637452, at *3-4 (Kan. App. 2011) (unpublished opinion); 26 C.J.S. Declaratory Judgments § 25 ("The controversy in a declaratory judgment action must be substantial, definite, and concrete, and it must be one wherein the rights of persons or property are actually involved."). The specific issue—the statutory authority of a local health officer to "issue" preapproved quarantine orders to individuals without considering their specific circumstances—likely would be sufficiently concrete and developed to define a legal controversy amenable to declaratory review and determination. We question whether this appeal now addresses the ongoing application of an existing policy or practice.

More significantly, this appeal does not present a legal issue of substantial public importance. The use of presigned quarantine orders that a local health officer does not otherwise review before they are issued is so plainly contrary to the governing statutes the practice cannot be considered even colorably proper. We see no need to prolong this otherwise moot litigation to formally pronounce the obvious.

Under K.S.A. 65-129b(1)(B), in the face of a potentially life-threatening contagious disease, a local health officer "may order an individual or group of individuals

to go to and remain in places . . . of quarantine" when "medically necessary and reasonable" if the individual or the group has been exposed to the disease and the separation will reduce the spread of the contagion. The statute extends the same authority to the Secretary of the Kansas Department of Health and Environment. A local health officer, thus, holds the authority to issue a quarantine order to an individual when the circumstances support doing to so to impede the spread of a dangerous communicable disease. The decision necessarily depends upon the local health officer's assessment of those individualized circumstances and his or her exercise of professional judgment in light of those circumstances, since the issuance of an order is discretionary rather than mandatory—as the Legislature's use of "may" conveys. See *Hill v. Kansas Dept. of Labor*, 292 Kan. 17, 21, 248 P.3d 1287 (2011) (statutory "may" permissive in contrast to mandatory "shall"); *Farmers State Bank v. Orcutt*, No. 105,835, 2012 WL 1920329, at *4 (Kan. App. 2012) (unpublished opinion) (Kansas appellate courts infrequently, but sometimes, construe statutory "shall" as permissive if legislative intent clear; finding no Kansas appellate case construing statutory "may" to be mandatory rather than discretionary). Elsewhere in the same statutory scheme, the Legislature deployed "shall" to describe other duties imposed on a local health officer. See K.S.A. 65-119 (certain information related to infectious diseases "shall be confidential"); K.S.A. 65-129c(b) (quarantine order "shall specify" statutorily described information). We may reasonably conclude the Legislature intended to draw a meaningful distinction between "shall" and "may" as a result. In turn, the use of presigned orders that school personnel "issue" by rote if certain guidelines have been satisfied reflects the antithesis of the contemplated discretionary statutory process calling upon local health officers to exercise professional judgment before ordering confinement of specific individuals. In effect, Dr. Locke abdicated to various school officials her discretionary decision-making.

The statutory scheme contemplates that the Secretary of the Department of Health and Environment may shift some of his or her duties to a "designee." See K.S.A. 65-

116a(b). There is no comparable option for the local health officers. And the issuance of quarantine orders is not among those delegable duties in any event.

Contrary to the county health department's suggestion to us, the statutory process does not require a local health officer to personally investigate whether an individual has been exposed to an infectious disease in circumstances warranting a quarantine order. The local health officer may rely on contact tracing and other investigatory work done by responsible parties, such as school nurses or administrators, to then issue a quarantine order for a specific student or some other individual. The decision, however, must be based on the local health officer's review of the reported circumstances. The statutory scheme brooks no fair debate otherwise. Given the clarity of that legislative command, we see no legally murky issue demanding our attention. Accordingly, we conclude this appeal does not fit within an exception to the mootness doctrine.

Appeal dismissed as moot.