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SIXTH DIVISION
June 22, 2012

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

DEBORAH ORLANDO COONEY,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	
)	No. 07 CH 10498
ILLINOIS DEPARTMENT OF CHILDREN AND)	
FAMILY SERVICES; and ERWIN McEWEN, in His)	
Official Capacity as Acting Director of the Illinois)	
Department of Children and Family Services,)	The Honorable
)	Rita Novak,
Defendants-Appellees.)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Justices Garcia and Palmer concurred in the judgment.

ORDER

¶ 1 HELD: The removal of plaintiff's indicated findings from the state central register after five years by operation of law rendered plaintiff's claim moot and the collateral consequences exception to the mootness doctrine did not apply.

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¶ 2 Plaintiff, Deborah Orlando Cooney, appeals the circuit court's dismissal of her appeal from the administrative decision of defendants, the Illinois Department of Children and Family Services (IDCFS) and Erwin McEwen, in his official capacity as acting director of the IDCFS, based on the doctrine of mootness. Plaintiff contends her appeal was not moot, and, if this court finds otherwise, the exception to the mootness doctrine for collateral consequences applies in this case. Based on the following, we affirm.

¶ 3 **FACTS**

¶ 4 Following an investigation of alleged child abuse, IDCFS determined there was credible evidence to support an indicated report that plaintiff mentally abused her child. On September 12, 2005, IDCFS entered an indicated finding of child abuse against plaintiff and entered the finding onto the state central register (register) pursuant to section 7.14 of the Abused and Neglected Children Reporting Act (Act) (325 ILCS 5/7.14 (West 2004)). IDCFS subsequently amended the indicated finding to add an allegation of substantial risk of physical injury. On September 27, 2005, plaintiff requested an administrative hearing, asking that the indicated findings be expunged from the register. A prehearing conference was scheduled for October 18, 2005. The hearing was not held until October 2006 as a result of a series of continuances. After the hearing, the administrative law judge (ALJ) issued findings of fact and conclusions of law, ultimately recommending that the director of IDCFS deny plaintiff's appeal. On March 30, 2007, McEwen issued a final IDCFS decision concurring with the ALJ and denying plaintiff's request to expunge the indications from the register.

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¶ 5 On April 17, 2007, plaintiff filed a complaint for judicial review requesting summary reversal of the indicated findings. In her complaint, plaintiff alleged the IDCFS violated her due process rights by failing to comply with its 90-day rule for issuing a final administrative decision (89 Ill. Adm. Code §336.220(a)(2)). Plaintiff additionally alleged that McEwen's decision was against the manifest weight of the evidence. The circuit court addressed plaintiff's due process claim and concluded that her rights were not violated where only 89 days were attributable to the IDCFS. On September 14, 2009, the circuit court denied plaintiff's request for summary reversal. The circuit court also denied plaintiff's requested certification for interlocutory appeal.

¶ 6 In March 2010, plaintiff filed a motion to reverse and remand based on newly discovered evidence, namely, an affidavit from her son, in which he averred that he gave false testimony at the administrative hearing. A hearing was held on the motion. On July 29, 2010, the circuit court remanded the matter to McEwen to determine whether further administrative proceedings were warranted. On November 23, 2010, McEwen issued a decision on remand, finding "[a]s of November 8, 2010, the indicated finding of abuse against [plaintiff] had been removed from the State Central Register. Therefore, all issues in the proceedings concerning the indicated finding against [plaintiff] are moot. No further action is warranted. This is my final decision." The IDCFS subsequently filed a motion to dismiss pursuant to section 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619 (West 2004)), arguing that plaintiff's request for judicial review was moot. Plaintiff responded that the cause was not moot and, if so, the collateral consequences exception to the mootness doctrine applied. On April 5, 2011, the circuit court dismissed the case in its entirety, finding the case was moot and the collateral consequences

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exception did not apply. This appeal followed.

¶ 7

DECISION

¶ 8 A section 2-619 motion to dismiss admits the legal sufficiency of the complaint.

Sandholm v. Kuecker, 2012 IL 111443, ¶55. Section 2-619(a) of the Code allows dismissal of a complaint where, in relevant part, "the court does not have jurisdiction of the subject matter of the action" or the claim is "barred by other affirmative matter avoiding the legal effect of or defeating the claim." 735 ILCS 5/2-619(a)(1), (a)(9) (West 2004). When ruling on a section 2-619 motion to dismiss, a court must construe the pleadings and supporting documents in a light most favorable to the nonmoving party, accepting as true all well-pleaded facts and reasonable inferences drawn therefrom. Sandholm, 111443, ¶55. The question on appeal is whether there is a genuine issue of material fact precluding dismissal or whether dismissal is proper as a matter of law. *Id.* We review the dismissal of a complaint *de novo*. *Id.*

¶ 9 Plaintiff first contends that her appeal is not moot. Plaintiff argues that the removal of her name from the register due to operation of law as opposed to a finding that the indicated reports were unfounded has caused her numerous "harms," thereby making her claims not moot.

¶ 10 "As a general rule, courts in Illinois do not decide moot questions, render advisory opinions, or consider issues where the result will not be affected regardless of how those issues are decided." *In re Alfred H.H.*, 233 Ill. 2d 345, 351, 910 N.E.2d 74 (2009). "An appeal is considered moot where it presents no actual controversy or where the issues involved in the trial court no longer exist because intervening events have rendered it impossible for the reviewing court to grant effectual relief to the complaining party." *In re J.T.*, 221 Ill. 2d 338, 349-50, 851

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N.E.2d 1 (2006).

¶ 11 If this court were to determine that plaintiff's name was improperly placed on the register, the only effectual relief that could be granted is the removal of her name from the register.

Pursuant to section 7.16 of the Act, when a petitioner succeeds on administrative review to amend an indicated finding into an unfounded report, the report is "released and expunged." 325 ILCS 5/7.16 (West 2004). However, pursuant to section 7.14 of the Act, a plaintiff's name and any identifying information related to the indicated finding must be removed from the register after five years. 325 ILCS 5/7.14 (West 2004). Plaintiff's name was placed on the register on September 12, 2005, and was removed as of November 8, 2010, pursuant to the affidavit of the administrator of the register. As a result, this court cannot provide any additional effectual relief. Plaintiff's appeal is, therefore, moot.

¶ 12 A reviewing court, however, may consider an otherwise moot claim, "even though a court order or incarceration has ceased, because a plaintiff has 'suffered, or [is] threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision.' " Alfred H.H., 233 Ill. 2d at 361 (quoting *Spencer v. Kemna*, 523 U.S. 1, 7 (1998)). Collateral consequences must either be presumed or proven on a case-by-case basis. *Id.* at 361, 362. "Unless a case meets the 'rigid standard' requiring each element of a mootness exception to be clearly established, the exception is inapplicable." (Emphasis in original.) *In re J.B.*, 204 Ill. 2d 382, 388, 789 N.E.2d 1259 (2003) (citing *In re India B.*, 202 Ill. 2d 522, 543, 782 N.E.2d 224 (2002)). Whether an exception to the mootness doctrine applies is a question of law, which we review de novo. *Id.* at 350.

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¶ 13 Plaintiff contends we can presume collateral consequences in this case. Specifically, plaintiff argues that, because she will continue to suffer future harms traceable to the unfounded indicated findings, such as potential threats to her nursing career as well as her inability to pursue a malicious prosecution claim, collateral consequences should be presumed. We disagree.

¶ 14 Unlike in criminal cases where collateral consequences are presumed because the results of the conviction are known to persist in the form of heavier penalties in future cases and resulting civil rights issues (*People v. Wagner*, 89 Ill. 2d 308, 312, 433 N.E.2d 267 (1982); *People v. Nunn*, 77 Ill. 2d 243, 246, 396 N.E.2d 27 (1979)), the presumption has not been extended beyond criminal convictions. See *People v. Murrell*, 60 Ill. 2d 287, 294, 326 N.E.2d 762 (1975) (no presumption where a sentence has already been served); see also *U.S. v. Juvenile Male*, 131 S. Ct. 2860, 2864 (2011) (no presumption where the respondent was no longer subject to sex-offender-registration conditions); *Spencer*, 523 U.S. at 12 (no presumption where a parole had been revoked). Plaintiff has not cited case law to support her argument that the speculative injuries to her career are akin to presumptive collateral legal consequences stemming from criminal convictions. We cannot say that plaintiff's speculative injuries are "likely to comport with reality." See *Spencer*, 523 U.S. at 12. Plaintiff, therefore, is required to prove the existence of collateral consequences in order to avoid the effect of the mootness doctrine.

¶ 15 Plaintiff has not satisfied her burden where she cannot demonstrate that she suffered, or has been threatened with, an actual injury traceable to the IDCFS which would likely be redressed if the indicated reports were deemed unfounded. See *Alfred H.H.*, 233 Ill. 2d at 361. Plaintiff does not allege that she has suffered any actual injuries; rather, plaintiff argues that the

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stigma of the indicated findings could affect her nursing license, her future employment opportunities, and her ability to pursue a malicious prosecution claim against defendants.

¶ 16 According to plaintiff, her nursing license must be renewed every two years and is subject to suspension, revocation, and refusal because of the indicated findings. Plaintiff, however, did not suffer any such consequences while her name remained on the register from 2005 until 2010 and plaintiff has not provided any evidence that she has been threatened with any such consequences now or in the future. Cf. *In re Val Q.*, 396 Ill. App. 3d 155, 159-60, 919 N.E.2d 976 (2009) (collateral consequences exception applied despite the expiration of a 90-day period covered by the circuit court's order where the order was the respondent's first involuntary treatment order, and would likely not be the last, because she would need psychotropic medication long-term and where the order could affect future guardianship proceedings). Rather, although the department of professional regulation had access to the confidential indicated findings pursuant to section 11.1 of the Act, the findings are no longer part of the register as of 2010 and, therefore, cannot be used to "conduct investigations or take disciplinary action." 325 ILCS 5/11.1 (West 2004), 325 ILCS 5/7.14 (West 2004). Moreover, plaintiff fails to convince this court that the indicated findings remain a threat to future employment because she could face questions about her "unfavorable past." Unlike the statute cited in *Alfred H.H.* where an optometry license could be threatened based on mental illness (225 ILCS 80/24(a)(16) (West 2006)), plaintiff has not cited any relevant codes or statutes limiting her ability to be employed as a nurse because indicated findings were made against her. See *Alfred H.H.*, 233 Ill. 2d at 362. We, therefore, find there are no actual injuries threatened against plaintiff.

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¶ 17 Furthermore, plaintiff was involved in a federal case filed by the Seventh Circuit Court of Appeals, which provides that she lost custody of her children because she suffered from " 'Munchausen syndrome by proxy,' in which 'an individual produces or feigns physical or emotional symptoms in another person under his or her care. Usually the victim is a young child, and the person producing the symptoms may be the child's parent or caretaker, most often the mother.' [Citation.]" *Cooney v. Rossiter*, 583 F.3d 967, 970 (2009). Therefore, any injury that could result from the facts underlying the indicated findings are not solely traceable to the IDCFS. See *Alfred H.H.*, 233 Ill. 2d at 363 (collateral consequences not proven where the respondent had multiple involuntary commitments prior to the commitment at issue and was a felon with an expired murder sentence).

¶ 18 Finally, we find no merit in plaintiff's argument that her inability to pursue a malicious prosecution claim against defendants qualifies as a collateral consequence. A malicious prosecution action requires a plaintiff to prove: "(1) the commencement or continuation of an original criminal or civil judicial proceeding by the defendant; (2) the termination of the proceeding in favor of the plaintiff; (3) the absence of probable cause for such proceeding; (4) the presence of malice on the part of [the] defendant; and (5) damages resulting to the plaintiff." *Illinois Nurses Ass'n v. Board of Trustees of the University of Illinois*, 318 Ill. App. 3d 519, 741 N.E.2d 1014 (2000). As we have already determined, there are no "damages" or injuries plaintiff has encountered as a result of the indicated findings.

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¶ 19

CONCLUSION

¶ 20 We affirm the judgment of the circuit court finding plaintiff's claim was moot and the collateral consequences exception to the mootness doctrine does not apply.

¶ 21 Affirmed.