

No. 1-11-3419

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JANET HUGHES, individually and as a member of the Board of Education of District 113A)	Appeal from the Circuit Court of Cook County,
)	
Plaintiff-Appellant/Cross-Appellee,)	
)	
v.)	
)	
TIMOTHY RICKER, as superintendent of District 113A,)	No. 11 CH 15943
JOHN WOOD, as past president of the Board of Education of Lemont-Bromberek Combined School District 113A, and LISA WRIGHT, as president of the Board of Education of District 113A,)	
)	The Honorable
)	Richard J. Billik, Jr.
Defendants-Appellees/Cross-Appellants.)	Judge Presiding.
)	

JUSTICE TAYLOR delivered the judgment of the court.
Presiding Justice McBride and Justice Palmer concurred in the judgment.

ORDER

¶ 1 *Held:* The public interest exception to the mootness doctrine does not apply to a claim by a former school board member who does not allege a general policy to deny

her access to school district documents. She also failed to plead a *prima facie* case for either declaratory or injunctive relief where she no longer had a tangible interest in those district documents, or an ascertainable right that needed protection. However, sanctions under Rule 137 were not warranted where plaintiff makes a good faith argument for the extension of existing law.

¶ 2 Plaintiff, Janet Hughes, a school board member of district 113A, appeals from an order of the circuit court of Cook County dismissing her complaint to compel defendants, the superintendent of the board, as well as its current and past presidents, to produce recordings of closed session meetings as well as certain financial documents. She contends that, contrary to the trial court's holding, the public interest exception to the mootness doctrine is applicable in this matter, and that she pled a *prima facie* case for declaratory judgment and injunctive relief. Defendants, in a cross-appeal, contend that the trial court erred in denying their motion for sanctions pursuant to Illinois Supreme Court Rule 137, given the vexatious nature of plaintiff's complaint.

¶ 3 BACKGROUND

¶ 4 On April 28, 2011, plaintiff filed a complaint for declaratory judgment and injunctive relief against defendants, Timothy Ricker, John Woods and Lisa Wright, in their respective duties as superintendent, past president and current president of Lemont-Brombeck Combined School District 113A. In that complaint, plaintiff alleged that at the time the complaint was filed, she was a member of the board of education of district 113A. She further alleged that, beginning on June 17, 2009, she asked Superintendent Ricker for access to board of education meeting

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minutes from 2005 and 2006, as well as tape recordings of a closed session meeting from February 2009. Ricker initially told plaintiff that he would make all those minutes and recordings available for plaintiff's review, but later stated that while she may review the minutes of any meetings, the recordings could not be accessed by board members. On September 24, 2009, plaintiff sent a new request to both Ricker and then-board president John Wood, to listen to tape recordings of "various" closed session meetings, which Wood declined. According to the complaint, an attorney named Mark Stern, apparently representing plaintiff at that time, sent an e-mail to the board's attorney asking about Wood's "open ended denial" of plaintiff's request to review what are apparently " 'accounts payable and checks paid' " by the district. According to the complaint, the board's counsel responded that the district had not actually denied plaintiff's request, but merely explained why those documents, which included 16 months of cancelled checks, could not be produced within the two-day time frame that plaintiff requested.

¶ 5 The complaint further alleged that plaintiff sent a new request to Ricker and Woods on October 20, 2009, to review the recording of a meeting from October 14, 2009, and Ricker responded that her request would be forwarded to Woods. More than one year later, on February 11, 2011, she again made that request to Ricker, and six days later, the board's attorney denied her request, stating that plaintiff had failed to " 'assert a purpose or responsibility which serves as a basis for [her] access to the verbatim recording.' " According to plaintiff, on March 16, 2011, she sent another request to Ricker and Lisa Wright, who was then the new board president, for the recordings from the meeting on October 14, 2009, which was, again, denied. This time, however, plaintiff also allegedly requested "invoices 'scheduled for approval at the March 21,

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2011 regular Board of Education meeting,' and all attorney bills incurred by the District." While she acknowledges that she was given a copy of those invoices, which is attached to the complaint, the accounting for the attorney's fees was redacted.

¶ 6 Plaintiff claimed that knowledge of all discussions made during closed session meetings is necessary for the performance of her functions as a board member because the subject of those meetings may include matters on which all members will take a final action at a later open meeting. She further stated that access to information regarding the district's accounts payable and checks paid is similarly necessary to the performance of her duties as a board member, which include the monitoring of the superintendent's "stewardship of the assets of the district" under section 10-16.7 of the Illinois School Code (School Code) (105 ILCS 5/10-16.7), and "[a]pproving the annual budget, tax levies, major expenditures, payment of obligations, annual audit, and other aspects of the district's financial obligation" under section 220 of the board's policy manual.

¶ 7 Based on those allegations, plaintiff's complaint sought both declaratory and injunctive relief. She requested the court declare as illegal the defendants' "policies" of: (1) denying her access to the recordings of closed session meetings and to the district's financial records; and (2) placing on plaintiff the burden of showing the relevance of the information that she requested. Plaintiff also asked the court to declare that all board members are entitled to access to all board and district documents, "without limitation." With respect to injunctive relief, plaintiff asked that the court order defendants to produce all previously requested documents, namely, the recordings of the board's closed meetings, and all of district 113A's accounts payable, including

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attorney's invoices.

¶ 8 In support of her request for injunctive relief, plaintiff stated that she had no adequate remedy at law because she was "forced" to fulfill her duties as a board member without access to relevant information about district "matters." She further asserted that the board, the district and herself were suffering irreparable harm because without such an injunction, board members must make decisions without knowing all the relevant actions taken by the district's in past closed meetings. Plaintiff stated that since board members cannot make informed decisions without access to those records, the balance of equities favored the injunction.

¶ 9 It is undisputed that when plaintiff filed that complaint, she had already lost her bid for reelection as a board member on April 5, 2011, and that her term expired on May 2, 2011, merely four days after she filed that complaint. However, plaintiff stated in her complaint that while this matter would not be resolved until after the end of her term, a declaration of the board members' rights to access the recordings of closed meetings and financial records was necessary in the public interest. According to plaintiff, such a declaration would prevent future officials from delaying compliance with such board member's right to access that information.

¶ 10 Plaintiff cited, in support of her claim for declaratory and injunctive relief, sections 10-20, 16.7 and 21.4 of the School Code. Section 10-20 states that "the board may exercise all other powers not inconsistent with this Act that may be requisite or proper for the maintenance, operation, and development of any school or schools under the jurisdiction of the board." 105 ILCS 5/10-20 (West 2011). Section 16.7, in turn, provides that it is part of the board's duties to "direct" the superintendent in his charge of the administration of the district, including his

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recommendations on the budget. 105 ILCS 5/10-21.4 (West 2011). Further, according to section 10-21.4, the superintendent's duties include keeping the records and accounts as directed by the board and aid in making reports as required by the board. 105 ILCS 5/10-21.4 (West 2011). In addition, plaintiff relied on sections 210 and 220 of the board's policy manual. According to plaintiff, section 210 provides that the board's powers include the "broad authority to adopt and enforce all necessary policies for the management and government of public schools," and section 220 states that the powers and duties of the board include approving the annual budget, major expenditures, payment of obligations, annual audit, and other aspects of the district's financial operation.

¶ 11 In response to plaintiff's complaint, defendants filed, on June 29, 2011, a combined motion to dismiss plaintiff's complaint pursuant to section 2-619.1 of the Illinois Code of Civil Procedure (Civil Code), and a motion for sanctions against plaintiff under Illinois Supreme Court Rule 137. In their motion to dismiss, defendants claimed that: (1) plaintiff lacked standing to bring her action because the matter became moot when her term ended on May 2, 2011, and should be dismissed pursuant to section 2-619(a)(9) of the Civil Code; and (2) plaintiff failed to plead a *prima facie* cause of action for either injunctive or declaratory relief, and the complaint should be dismissed under section 2-615 of the Civil Code. In their motion for sanctions, defendants incorporated their arguments from their motion to dismiss, and argued that since plaintiff knew that her action would become moot within four days of filing her complaint, her action was so meritless and frivolous that it could only have been brought in bad faith and served no purpose other than to harass the school district.

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¶ 12 On July 12, 2011, the circuit court set a briefing schedule for the motion to dismiss and stayed the motion for sanctions, and on August 15, 2011, plaintiff filed her response to defendants' motion. In that response, she argued that her action fell within the public interest exception to the mootness doctrine. She further stated that she pled a *prima facie* claim for declaratory and injunctive relief because the School Code and the common law gave board members unqualified access to all documents of the school district. On August 25, 2011, defendants filed their reply, in which they claimed that the public interest exception is inapplicable to this matter and that, in any event, such an exception can only be argued when a case becomes moot after the circuit court renders its decision.

¶ 13 On November 15, 2011, the circuit court granted defendants' motion to dismiss and denied their motion for sanctions. The court stated, in its memorandum and order, that this matter was undisputably moot, and that the public interest exception to the mootness doctrine is inapplicable because plaintiff had not alleged facts indicating a dispute over a policy of the board or the district generally denying plaintiff and potentially other board members access to all district records. It further noted that plaintiff failed to plead a *prima facie* case for declaratory and injunctive relief because she could not demonstrate a legal and tangible interest, and since she was no longer a board member, her claim for injunctive relief similarly failed. The transcript of the proceedings before the trial court shows that at the end of the hearing on defendants' motions, defendants' counsel reminded the court that they still had an outstanding motion for Rule 137 sanctions, which had not been briefed or argued. The court responded that while that matter had not been briefed, the court would deny it based on the motion itself.

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¶ 14 On appeal, plaintiff now contends that the circuit court erred in finding that the public interest exception to the mootness doctrine was not applicable in this matter, and in ruling that plaintiff failed to plead a *prima facie* case for declaratory judgment or for injunctive relief. On a cross-appeal, defendants contend that the circuit court improperly denied their motion for Rule 137 sanctions against plaintiff without having that matter briefed or argued.

¶ 15 ANALYSIS

¶ 16 In addressing plaintiff's appeal, we initially observe that section 2-619(a)(9) of the Civil Code allows involuntary dismissal where the claim against defendant is "barred by other affirmative matter avoiding the legal effect of or defeating the claim. 735 ILCS 5/2-619(a)(9) (West 2011). In contrast, a motion to dismiss brought under section 2-615 attacks the legal sufficiency of the complaint, and presents a question of whether it states a cause of action upon which relief can be granted. 735 ILCS 5/2-615 (West 2011); *Kopchar v. City of Chicago*, 395 Ill. App. 3d 762, 772 (2009). Dismissals under either section are reviewed *de novo*. *Id.*

¶ 17 Turning to plaintiff's contention that her claim was not barred by the mootness doctrine, we note a matter becomes moot when intervening events have rendered it impossible for a court to grant effectual relief to the complaining party. *In re Commitment of Hernandez*, 238 Ill. 2d 195, 201 (2010). Here, plaintiff's term expired on May 2, 2011, and plaintiff has not alleged that she would continue to have any right to access of the school district's records, nor has she alleged that reviewing the unredacted invoices requested would have any effect on any existing controversy. Thus, as the parties do not appear to dispute, this case became moot on that date.

¶ 18 As noted above, however, plaintiff asks us to invoke the public interest exception to the

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mootness doctrine. Under that exception, courts will entertain an otherwise moot question when: (1) the question is of a public nature; (2) there is a need for an authoritative resolution for the purpose of guiding public officers in the performance of their duties; and (3) the question is likely to recur. *In re Alfred H. H.*, 233 Ill. 2d 345, 355 (2009). Our courts have recognized that the public interest exception requires a clear showing of each criterion (*In re Alfred H. H.*, 233 Ill. 2d at 356), and is invoked only on rare occasions that involve " 'an extraordinary degree of public concern and interest' " (*Edwardsville School Service Personnel Association, IEA-NEA v. Illinois Educational Labor Relations Board*, 235 Ill. App. 3d 954, 959-60 (1992)). We review the circuit court's determination on the applicability of the public interest exception under an abuse of discretion standard. *ChiCorp Inc. v. Bower*, 336 Ill. App. 3d 132, 139 (2002).

¶ 19 Defendants correctly note that since plaintiff does not allege any general policy of the school district to deny board members access to district records, but only that she was denied access to some, but not all, of her requests, the issue in this case does not so appear to affect the public interest to the degree necessary to bring her case within the purview of this exception. In fact, plaintiff acknowledged in her complaint that she was provided many of the school records that she requested, and did not allege that she made an inquiry to the entire board of education for the records which she was allegedly denied. While plaintiff contends that she seeks a declaratory judgment stating that board members have full access to all school records, she claims that the reason for such unqualified access is that board members need to review those records to perform their duties. Under such circumstances, a board member's access to district records would depend on his or her particular needs, depending on the duty to be performed, which precludes us

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from finding that the public interest at issue is so strong as to fall within the public interest exception. See, e.g., *City of Chicago v. Leviton*, 137 Ill. App. 3d 126, 130 (1985) (whether landlords are required to provide alternative housing to tenants while repairs are being made depends on the facts of each case, and therefore not within the public interest exception).

Furthermore, contrary to plaintiff's contention, the fact that this issue involves the interpretation of the School Code, that does not require a finding that the issue is of sufficiently public nature for the exception to apply. See, e.g., *Edwardsville School Service Personnel Association*, 235 Ill. App. 3d at 961 (judicial interpretation of a statute is not of such public importance to fall within the public interest exception).

¶ 20 Moreover, since plaintiff is no longer a board member, she is unlikely to be affected by future denials of requests to review school district records. See, e.g., *Sharma v. Zollar*, 265 Ill. App. 3d 1022, 1029 (1994) (alleged denial of plaintiff's right to issue subpoena would not recur after the case against him was dismissed). Although she points to one other case in which a school board member was denied access to closed session tapes, that does not appear sufficient to support the argument that a declaratory judgment is necessary now. Courts of this state have repeatedly held that, even if other litigants of this state may be affected by a similar issue, which is not of particularly sensitive nature, it will be best addressed " 'at a later date, in the context of an actual controversy, when charges are pending and when effectual relief can be granted.' " *Caro v. Whitaker*, 386 Ill. App. 3d 485, 490 (2008), quoting *Hanna v. City of Chicago*, 382 Ill. App 3d 672, 684 (2008), citing *Sharma*, 265 Ill. App. 3d at 1029. Exceptions to that rule include cases which are capable of repetition but evading review, and matters of life and death, such as

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the governmental action impeding on religious beliefs (*Whitaker*, 386 Ill. App. 3d at 490), none of which are present in this case. Thus, we conclude that the circuit court did not abuse its discretion in finding that the public interest exception does not apply to plaintiff's claim.

¶ 21 Plaintiff's reliance on *Brown v. Johnson*, 362 Ill. App. 3d 413 (2005) for the proposition that this matter is of an important public nature because it involves a public official, is misplaced. The question in that case involved how school boards, as entities, were generally authorized, under the School Code and Election Code to determine whether vacancies existed and to appoint replacements. *Id.* at. 417-18. In contrast, plaintiff's claim does not involve an issue as public as general rules governing the appointment of officials by the board, but only whether individual members have unqualified access to specific documents without explaining why they are necessary for the performance of their duties.

¶ 22 We next note that even assuming, *arguendo*, that the mootness doctrine was not at issue here, plaintiff would fare no better. Contrary to plaintiff's second contention, the circuit court did not err in dismissing plaintiff's case for failure to plead a *prima facie* cause of action for either injunctive or declaratory relief.

¶ 23 A party seeking a permanent injunction must demonstrate that: (1) she has a clear and ascertainable right that needs protection; (2) there is no adequate remedy at law; and (3) she will suffer irreparable harm if injunctive relief is not granted. *Helping Others Maintain Environmental Standards v. Bos*, 406 Ill. App. 3d 669, 688 (2010). With respect to plaintiff's claim for a declaratory judgment, she was required to show that: (1) she had a legal tangible interest; (2) the defendants had an opposing interest; and (3) there was an actual controversy

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between the parties concerning such interests. *Beahringer v. Page*, 204 Ill. 2d 363, 373 (2003).

¶ 24 Here, the fact that plaintiff was no longer a board member at the time of the hearing on defendants' motion to dismiss is fatal to both her claims of injunctive and declaratory relief. She no longer had any possible ascertainable right that needed protection, nor would she suffer irreparable harm, as required for injunctive relief. Similarly, plaintiff did not have a claim for declaratory relief because she now lacks any alleged tangible interest in the district's records, and there is no longer any controversy between the parties.

¶ 25 Moreover, even if she were still a board member, her complaint would still fall short of establishing a *prima facie* case for injunctive or declaratory relief because she did not demonstrate either a clear and ascertainable right that needed protection, nor a legal tangible interest. In her complaint, plaintiff relies mainly on sections 10-20 and 10-16.7 of the School Code, as well as section 220 of the board's policy manual, for the proposition that board members have the right to unqualified access to all of the school district's documents, including recordings of closed session meetings and unredacted invoices.

¶ 26 As noted above, section 10-20 of the School Code provides that the board's powers are not limited by those enumerated in the other sections of the statute, and that "the board may exercise all other powers not inconsistent with this Act that may be requisite or proper for the maintenance, operation, and development of any school or schools under the jurisdiction of the board." 105 ILCS 5/10-20 (West 1996). Further, section 10-16.7 states, *inter alia*, that the "board shall evaluate the superintendent in his or her administration of school board policies and his or her stewardship of the assets of the district." 105 ILCS 5/10-16.7 (West 2006). In

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addition, section 220 of the board's policy manual apparently states that "[i]ndividual [B]oard members may listen to verbatim recordings when that action is germane to their responsibilities, e.g. in order to check the accuracy of minutes."

¶ 27 According to plaintiff's complaint, those provisions give her the power, as a board member, to access any district documents. She claims that the unredacted attorney invoices may be relevant in evaluating the superintendent's management of the district's assets, and that she needs access to the recordings of closed session meetings because the matters discussed may later become the subject of an open meeting in which she will vote. However, not only does section 10-20 of the School Code give the board no specific rights to access all district documents, but plaintiff does not allege in her complaint why the recordings of the meetings in question and unredacted invoices were necessary for her to monitor the superintendent, or about what matters discussed in closed meetings she needed to inform herself. While plaintiff contends that she cannot state her purpose in accessing those documents with the required specificity because she lacks knowledge of their content, that argument is unpersuasive where she admits that she accessed the redacted version of the invoice and the recordings of those minutes.

¶ 28 Plaintiff also cites sections 10-21.4 and 10-13, which pertain to the duties of the board's superintendent and president, respectively, and provide that the superintendent has a duty to keep records and create reports and that both he and the president are required to perform such duties as delegated to them by the board. While plaintiff argues in her complaint that those provisions impose on the superintendent and president to give school boards access to district records, defendants correctly note that she provided no authority translating the duties described in the

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statute into a right to access the district's records.

¶ 29 Moreover, insofar as the School Code gives the board all powers needed to perform its functions, and requires the superintendent and president to perform duties delegated by the board, those powers do not pertain to individual board members, but to the board as an entity. In fact, as defendants point out, the School Code requires board members to swear that they recognize that "a board member has no legal authority as an individual and that decisions shall be made only by a majority vote [of the board]." 105 ILCS 5/10-16.5 (West 2010).

¶ 30 Furthermore, while plaintiff points out in her complaint that section 2.06 of the Public Meetings Act does not prohibit a school board member from accessing verbatim recordings of a closed session meeting (5 ILCS 120/2.06 (West 2011)), the circuit court correctly noted that the statute contains no language which gives her the actual right to such recordings.

¶ 31 Plaintiff's reliance on private corporate law, as well as case law from another jurisdiction is equally misplaced. While directors of a private corporation have an " 'absolute' " right to inspect books and records (See, e.g., *Semantes v. Estes*, 374 Ill. App. 3d 468, 472 (2007)), plaintiff failed to show that such right is applicable to members of a board of education. Even if public officers have the same level of fiduciary responsibility of that of a company's director (See *City of Chicago v. Keane*, 64 Ill. 2d 559, 565-66 (1976)), it does not follow that they share all of the same rights. In fact, as defendants correctly note, school board members' right to district records are subject to various statutory limitations which do not apply to a company's directors. See, e.g., 105 ILCS 10/6 (West 2010) (limiting school board members' access to students' records); 20 U.S.C. §1232g(b)(1)(A) (West 2010) (same). Further, *Gabrilson v. Flynn*, 554

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N.W.2d 267, 275-76 (Iowa 1966), on which plaintiff relies for the proposition that school board members have a general right to access district records, is not sufficient to establish a clear right by school board members in Illinois. That case is based on the laws of Iowa, and governed by a statute other than the Illinois School Code, but it also appears to stand for the mere proposition that school board members may access district documents to the extent needed to perform their duties, rather than the unlimited access that plaintiff suggests. *Gabrilson*, 554 N.W.2d at 275-76. Accordingly, we conclude that the circuit court did not err in finding that plaintiff failed to plead a *prima facie* case for either declaratory or injunctive relief.

¶ 32 We now turn to defendants' cross-appeal from the circuit court's order denying their motion for sanctions under Illinois Supreme Court Rule 137. Defendants contend that the circuit court violated Rule 137 by denying their motion without having the matter briefed or argued. They further argue that such denial was also improper because plaintiff's lawsuit was practically moot at its inception.

¶ 33 Rule 137 serves as a deterrent against truly frivolous litigation, not as a penalty for unsuccessful litigants, and subjective good faith is sufficient to avoid such sanctions. *Mandziara v. Canulli*, 299 Ill. App. 3d 593, 601 (1998). A circuit court's decision on a motion for such sanctions is not to be reversed absent an abuse of discretion, namely, where no reasonable person would take the view adopted by it. *Spiegel v. Hollywood Condominium Towers Association*, 283 Ill. App. 3d 992, 1001 (1996). Further, while appellate courts for the second and third districts of Illinois have required circuit courts to set forth its reasons for any ruling on a motion for sanctions (see, e.g., *O'Brien & Associates, P.C. v. Tim Thompson, Inc.*, 274 Ill. App. 3d 472,

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482-83 (1995); *In re Estate of Baker*, 242 Ill. App. 3d 684, 687 (1993)), courts of this district have held that Rule 137 only requires courts to enunciate its reasons for granting sanctions, not for denying them (See *Mandziara*, 299 Ill. App. 3d at 602).

¶ 34 Here, the record shows that when defendants' counsel reminded the court that they had an outstanding motion for sanctions, which had not been briefed, the court responded that "based on the motion itself, respectfully it's going to be denied." The court's lack of explanation of its reason for that denial does not, in this district, warrant a remand. Further, while plaintiff filed her complaint four days before it became moot, she presented an argument as to why it should fall within the public interest exception to the mootness doctrine. Similarly, while she fell short of pleading a *prima facie* case for injunctive or declaratory relief, she appears to make a sufficiently reasonable argument for an extension of existing law such that the circuit court did not abuse its discretion in denying defendants' motion for sanctions.

¶ 35 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 36 Affirmed.