

NOTICE

This Order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2024 IL App (4th) 230118-U

NO. 4-23-0118

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

February 22, 2024

Carla Bender

4th District Appellate
Court, IL

REBECCA JONES, *et al.*,¹
Plaintiffs-Appellants,
v.
JAY ROBERT PRITZKER,
Defendant-Appellee.

) Appeal from the
) Circuit Court of
) Sangamon County
) No. 22CH500017
)
) Honorable
) Jennifer M. Ascher,
) Judge Presiding.

PRESIDING JUSTICE TURNER delivered the judgment of the court.
Justices Doherty and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court dismissed plaintiffs' appeal because the underlying counts are moot and no exceptions to the mootness doctrine apply.

¶ 2 In December 2021, plaintiffs, Rebecca Jones, *et al.*, who are educational employees of multiple Illinois school districts, filed a petition for declaratory relief and for a writ of injunction against defendant, Jay Robert Pritzker, the Governor of Illinois, in connection with defendant's use of the Illinois Emergency Management Agency Act (Act) (20 ILCS 3305/1 *et seq.* (West 2020)), and associated executive orders to issue successive 30-day COVID-19 disaster proclamations and set vaccination and testing requirements for school personnel. In counts I and II of their petition, plaintiffs alleged section 7 of the Act (20 ILCS 3305/7 (West 2020)) violated the separation of powers provisions of the Illinois constitution (Ill. Const. 1970,

¹ See the appendix to this order for a list of all plaintiffs-appellants.

art. II, § 1), both facially and as applied, by unconstitutionally delegating legislative authority to the executive. In counts III through V, plaintiffs alleged defendant's Executive Order 2021-22 (EO2021-22) and successive executive orders violated Illinois constitutional provisions related to separation of powers, due process (Ill. Const. 1970, art. I, § 2), and prohibition on unlawful searches and seizures (Ill. Const. 1970, art. I, § 6).

¶ 3 Defendant moved to dismiss, arguing counts I and II failed to state a claim and counts III through V were moot because the orders had since expired. Plaintiffs did not file any written opposition. At the hearing on the matter, plaintiffs argued the public-interest exception to the mootness doctrine applied. The trial court dismissed counts I and II for failure to state a claim and counts III through V as moot.

¶ 4 On appeal, plaintiffs do not address the trial court's finding that counts III through V were moot. Meanwhile, defendant argues all counts are moot. We agree all counts of the petition are moot and no exception applies. Accordingly, we dismiss the appeal.

¶ 5 I. BACKGROUND

¶ 6 In March 2020, defendant issued a disaster proclamation under section 7 of the Act, which remained in effect for 30 days, designating the entire state a disaster area due to COVID-19. Defendant then issued successive 30-day COVID-19 disaster proclamations until the final proclamation expired on May 11, 2023, when federal disaster proclamations also expired.

¶ 7 In September 2021, while a disaster proclamation was in effect, defendant issued EO2021-22, which required all school personnel, including plaintiffs, to either receive a COVID-19 vaccine or undergo weekly testing in light of the continued spread of COVID-19 and the more

aggressive and more transmissible Delta variant. Those requirements expired in September 2022, when defendant did not reissue them.

¶ 8 In December 2021, plaintiffs filed their petition against defendant. In counts I and II, plaintiffs asserted section 7 of the Act violated the separation-of-powers clause of the Illinois Constitution, both on its face and as applied by defendant, by authorizing successive disaster proclamations. In counts III through V, plaintiffs alleged EO2021-22 and related executive orders violated (1) the separation-of-powers clause of the Illinois Constitution by improperly delegating the legislature's authority, (2) due process by failing to provide a process for challenging the requirements for school personnel, and (3) their right to be free from unreasonable searches, seizures, and invasions of privacy. The action was consolidated with other cases challenging the vaccination and testing requirements in EO2021-22.

¶ 9 Defendant filed a combined motion to dismiss under section 2-619.1 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619.1 (West 2022)), arguing counts III through V were moot and counts I and II failed to state a claim. Plaintiffs did not file a response to the motion to dismiss. However, at the hearing on the matter, plaintiffs argued the public-interest exception to the mootness doctrine applied because defendant could exercise his powers under section 7 of the Act again in the future.

¶ 10 The trial court dismissed the petition with prejudice. The court found counts III through V moot because they challenged the legality of executive orders that were no longer in effect. Relying on this court's decision in *Austin v. Board of Education of Community Unit School District 300*, 2022 IL App (4th) 220090-U (cited as persuasive authority under Supreme Court Rule 23(e)), the court found no exception to mootness applied because, as this court

explained in *Austin*, it was unlikely similar requirements would be reinstated where the challenged orders responded to the unique circumstances presented by the COVID-19 pandemic.

¶ 11 On counts I and II, the trial court noted the sole theory raised in the petition was the Act was an unconstitutional delegation of legislative authority. Applying *Stofer v. Motor Vehicle Casualty Co.*, 68 Ill. 2d 361, 369 N.E.2d 875 (1977), the court concluded the Act provided “sufficient detail to pass constitutional muster.” Accordingly, the court dismissed the petition with prejudice.

¶ 12 This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 On appeal, plaintiffs argue the Act allowed an unconstitutional delegation of powers from the legislative branch to the executive branch indefinitely and without any judicial or legislative oversight, especially in regard to counts I and II of the petition. Plaintiffs do not address the trial court’s dismissal of counts III through V as moot. Thus, defendant argues plaintiffs have forfeited any arguments concerning counts III through V. Additionally, defendant argues counts I and II of the petition are also moot.

¶ 15 Section 2-619.1 of the Code (735 ILCS 5/2-619.1 (West 2022)) permits a defendant to file a combined motion to dismiss under sections 2-615 and 2-619 of the Code (735 ILCS 5/2-615, 2-619 (West 2022)). *Brooks v. McLean County Unit District No. 5*, 2014 IL App (4th) 130503, ¶ 14, 8 N.E.3d 1203. “A section 2-615 motion to dismiss ‘tests the legal sufficiency of the complaint,’ while a section 2-619 motion ‘admits the legal sufficiency of the complaint, but asserts affirmative matter outside the complaint that defeats the cause of action.’ ” *Brooks*, 2014 IL App (4th) 130503, ¶ 14. “This court reviews the dismissal under either section *de novo*.” *Brooks*, 2014 IL App (4th) 130503, ¶ 14. “On appeal, we ‘review the trial court’s

judgment, not its rationale,’ and we ‘can affirm for any reason the record supports.’ ” *Brooks*, 2014 IL App (4th) 130503, ¶ 14 (quoting *People v. Reed*, 361 Ill. App. 3d 995, 1000, 838 N.E.2d 328, 332 (2005)).

¶ 16 A. Issues of Forfeiture

¶ 17 We first note plaintiffs on appeal do not argue the trial court erred in finding counts III through V moot. Meanwhile, defendant did not argue in the trial court that counts I and II were moot, but now raises that argument for the first time on appeal.

¶ 18 Generally, points not argued by appellants or appellees in their opening briefs are “forfeited and shall not be raised in the reply brief, in oral argument, or on petition for rehearing.” Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020). Likewise, arguments not raised in the trial court generally are forfeited. *Vantage Hospitality Group, Inc. v. Q Ill Development, LLC*, 2016 IL App (4th) 160271, ¶ 49, 71 N.E.3d 1. However, mootness arguments “may be raised at any time” and cannot be forfeited because they relate to a court’s authority to hear a given controversy. See *In re J.B.*, 204 Ill. 2d 382, 388, 789 N.E.2d 1259, 1262 (2003) (holding arguments the State forfeited a mootness claim ignored basic principles of law). Additionally, a “reviewing court has the duty to raise such issues *sua sponte* if they are not raised by the parties.” *J.B.*, 204 Ill. 2d at 388, 789 N.E.2d at 1262. Thus, it is not appropriate to apply forfeiture to a mootness argument. *Patel v. Illinois State Medical Society*, 298 Ill. App. 3d 356, 364 n.5, 698 N.E.2d 588, 594 n.5 (1998). Given the above principles, we consider the mootness arguments in this case in regard to all counts of the petition.

¶ 19 B. Mootness

¶ 20 We agree with defendant all of the counts in this case are moot.

¶ 21 The existence of an actual controversy is a prerequisite for appellate jurisdiction,

and a reviewing court will generally not decide matters that are abstract, hypothetical, or moot. *In re Andrea F.*, 208 Ill. 2d 148, 156, 802 N.E.2d 782, 787 (2003). An issue is moot where an actual controversy no longer exists between the parties or where events have occurred that make it impossible for the court to grant effective relief. *Andrea F.*, 208 Ill. 2d at 156, 802 N.E.2d at 787. When considering the issue of mootness, the court may take judicial notice of events and materials that do not appear in the record to determine whether an actual controversy exists or whether the matter is moot. *Andrea F.*, 208 Ill. 2d at 156, 802 N.E.2d at 787. We are following our supreme court's guidance not to "review cases merely to establish a precedent or guide future litigation." *Madison Park Bank v. Zagel*, 91 Ill. 2d 231, 235, 437 N.E.2d 638, 640 (1982). "When a decision on the merits would not result in appropriate relief, such a decision would essentially be an advisory opinion." *Commonwealth Edison Co. v. Illinois Commerce Comm'n*, 2016 IL 118129, ¶ 10, 51 N.E.3d 788. See *Austin*, 2022 IL App (4th) 220090-U, ¶ 5 (applying the above principles).

¶ 22 Here, in regard to counts III through V of the petition, because the executive orders concerning vaccination and testing of school personnel are no longer in effect, a controversy regarding the application of those orders no longer exists. Thus, the matter is moot.

¶ 23 We also determine no exception applies. There are three exceptions to the mootness doctrine (1) the public-interest exception, (2) the capable-of-repetition-yet-avoiding-review exception, and (3) the collateral-consequences exception. See *In re Alfred H.H.*, 233 Ill. 2d 345, 351, 910 N.E.2d 74, 78 (2009).

¶ 24 "The public interest exception allows a court to consider an otherwise moot case when (1) the question presented is of a public nature; (2) there is a need for an authoritative determination for the future guidance of public officers; and (3) there is a likelihood of future

recurrence of the question.” *Alfred H.H.*, 233 Ill. 2d at 355, 910 N.E.2d at 80 (citing *People ex rel. Wallace v. Labrenz*, 411 Ill. 618, 622, 104 N.E.2d 769, 772 (1952)). “The ‘public interest’ exception is ‘narrowly construed and requires a clear showing of each criterion.’ ” *Alfred H.H.*, 233 Ill. 2d at 355-56, 910 N.E.2d at 80 (quoting *In re Marriage of Peters-Farrell*, 216 Ill. 2d 287, 292, 835 N.E.2d 797, 800 (2005)).

¶ 25 While the public is rightfully interested in the propriety of the trial court’s determinations concerning executive orders pertaining to COVID-19, that alone does not automatically make the issue one of a public nature as defined by the public-interest exception. Given the changing nature of the COVID-19 pandemic and the end of federal and state emergency declarations, it is not clear the same executive orders would likely be reinstated. See *Austin*, 2022 IL App (4th) 220090-U, ¶ 9. This is especially true here, where the executive orders at issue arose from a concern about the continued spread of COVID-19 related to the more aggressive and more transmissible Delta variant which was prevalent at that time. As a result, we do not find the public-interest exception applies in this case.

¶ 26 For the same reasons, we also find the capable-of-repetition-yet-avoiding-review exception inapplicable.

“The exception for issues capable of repetition yet evading review has two elements: (1) the challenged action must be too short in duration to be fully litigated before its end, and (2) there must be a reasonable expectation that the complaining party will be subject to the same action again.” *In re Craig H.*, 2022 IL 126256, ¶ 20, 215 N.E.3d 143.

Here, there is no reasonable expectation the plaintiffs will be subject to the same action again.

¶ 27 Finally, the collateral-consequences exception is also inapplicable. “[W]here

collateral consequences survive the expiration or cessation of a court order that are likely to be redressed by a favorable judicial determination, appellate review is permissible.” *In re Rita P.*, 2014 IL 115798, ¶ 31, 10 N.E.3d 854. Here, we are unable to identify any collateral consequences surviving the expiration of the executive orders at issue, nor do plaintiffs point to any such consequences. Accordingly, counts III through V are moot and no exception applies.

¶ 28 Regarding counts I and II, plaintiffs alleged section 7 of the Act allowed an unconstitutional delegation of powers from the legislative branch to the executive branch indefinitely and without any judicial or legislative oversight. Unlike the executive orders at issue in counts I and II, section 7 of the Act remains in effect. However, defendant argues, once the executive orders promulgated under that section were no longer in effect, plaintiffs lost standing to argue section 7 of the Act was unconstitutional because there was no longer any actual controversy and a declaratory judgment regarding the Act would be purely advisory. Thus, the matter became moot. We agree.

¶ 29 Generally, a plaintiff has standing to maintain a declaratory judgment action if two requirements are met: (1) there must be an actual controversy, a concrete dispute admitting of an immediate and definitive determination of the parties’ rights, the resolution of which will aid in the termination of the controversy and (2) the party seeking the declaration must be interested in the controversy and must possess a personal claim, status, or right which is capable of being affected. *Illinois Gamefowl Breeders Ass’n v. Block*, 75 Ill. 2d 443, 450-51, 389 N.E.2d 529, 531 (1979); *Sharma v. Zollar*, 265 Ill. App. 3d 1022, 1027, 638 N.E.2d 736, 740 (1994). “To have standing, one must have sustained, or be in immediate danger of sustaining, a direct injury.” *Sharma*, 265 Ill. App. 3d at 1027, 638 N.E.2d at 740. “The actual controversy

requirement of standing cannot be satisfied where the underlying issues of the case are moot or premature.” *Sharma*, 265 Ill. App. 3d at 1027, 638 N.E.2d at 740.

¶ 30 “[W]hen an intervening event makes it impossible for a reviewing court to grant relief to any party, the case is rendered moot because an appellate ruling on the issue cannot have any practical legal effect on the controversy.” *In re Application of the County Treasurer & ex officio County Collector of Cook County*, 2023 IL App (1st) 221366, ¶ 14,. As previously noted, it is inappropriate for this court to issue advisory opinions. “When it becomes apparent that an opinion cannot affect the results as to the parties or the controversy before it, the court should not resolve the question merely for the sake of setting a precedent or to govern potential future cases.” *Sharma*, 265 Ill. App. 3d at 1027, 638 N.E.2d at 740.

¶ 31 Here, plaintiffs lost standing when the disaster proclamations and executive orders requiring vaccination or testing expired, because plaintiffs then were no longer in immediate danger of sustaining a direct injury. At that point, a determination of the constitutionality of the Act, absent an actual controversy, would amount to an advisory opinion. See *Eisenberg v. Industrial Comm’n of Illinois*, 337 Ill. App. 3d 373, 382, 785 N.E.2d 1005, 1012 (2003). Accordingly, the matter is moot. See *Hanna v. City of Chicago*, 382 Ill. App. 3d 672, 676-77, 887 N.E.2d 856, 861 (2008); see also *Lukaszczyk v. Cook County*, 47 F.4th 587 (7th Cir. 2022) (holding federal constitutional issues concerning Illinois state mandates requiring COVID-19 vaccination became moot when the plaintiffs lost standing based on amendment of the executive order at issue). For the same reasons we discussed concerning counts III through V, we also conclude no exception applies. Accordingly, we dismiss the appeal.

¶ 32 III. CONCLUSION

¶ 33 For the reasons stated, we dismiss the appeal as moot.

Plaintiffs-Appellants

REBECCA JONES, KILEY DOCHERTY, SEAN DOCHERTY, JEANETTE ADAMICK, TALON ANDERSON, KARA ANDREWS, RACHEL BAILEY, JEFF BAKER, KENDRA BARNARD, MANDY BATHON, JOHN BOGLE, T.J. BOLIN, MELANIE BOLTON, JOYCE BOWMAN, MISTY BOYD, JENNIFER BOWEN, CHRIS BRADEN, ERIC BRADFORD, ROBIN BRAY, ROBERT BRENNEISEN JR., SHELLY BROOKS, SHELLY BROSE, KENDRA BRYAN, LAURA BRYANT, JOVANNA BAXTER, MANDY BREMMEIER, TRACY BURKETT, VANESSA ANDERSON, MARTHA BURKHAMER-WEBER, AMY CALCATERRA, RHONDA CARLTON, CALEB CARTER, RICHELLE CHOATE, SACHA COBIN, KELLY COMPTON, BRIAN CAROLLO, SARAH CHILDERS, ERICA CURRY, REBECCA DAVIS, NATHAN DIAL, ANDREW DILLMAN, MORGAN DILLMAN, MARK DRENNAN, SYDNEY DUGGAR, JENNIFER ECHOLS, SUSAN EMERY, NOVA EMMONS, JESSICA FAGAN, HANNAH FINNEY, AMANDA FLANIGAN, JAYMA FLETCHER, FAWN FOLKERTS, TIFFANY FRITCH, LISA FUHR, STACEY FULTS, BRITTANY GARRETT, MARSHA GARRETT, DALA GARRETT, BREANNA GEORGE, LESLIE GOINES, KINYON GORTON II, KELSEI GREEN, KELLY GRIFFITH, LACEY HAGERMAN, KELLEY HALL, MICHELLE HAMPTON, AMY HAMSON, JOSH HAMSON, RACHEL HANSON, BRANDY HARLAND, REBECCA HARMS, ALLISON HARPER, KARA HARRISON, JAMIE HART, NEESA HAYES, SARA HAYS, CHRIS HEAD, KENISE HEAD, CRAIG HEADEN, AMANDA HEADEN, MELISSA HEFNER, RUTH HICKS, RACHEL HILL, APRIL HOCKING, MELISSA HOFFMANN, KERRY HUGE, STACY HULBERT, ROBERT HULBERT, GIDEON HUTCHCRAFT, SARA HUTCHCRAFT, KYLE IRWIN, JENNIFER ISSAC, CYNTHIA ISSAC, KRISTA JACKSON, AMANDA JETTON, DENVER COWSERT, BRYAN JOHNSON, MARJORIE JONES, MARCIE JONES, MARJORIE JORDAN, JOHN KABAT, DANA KALAHHER, LAURA KAPP, LISA KARPIEL, SUSAN KARR, TINA KASSA, ABBY KATHALYNAS, ANGELIA KELLY, ANDREW KENDRICK, ROB KIEFER, VALERIE KINSMAN, JOSH KINSMAN, ANGELA KIRKPATRICK, DAVID KLOPE, BRANDILYN KLOPE, MALLORY KNAAK, DERECK KOESTER, NIKKI LABUWI, JESSICA LACKEY, KATE LAIRD, MEREDITH LAMP, KIMBERLY LANGA-LEHMAN, KARI LAPPIN, TONYA LEATHERS, MANDY LEFFLER, TIM LEWIS, KATHY LYBARGER, LORY MAHARREY, GLORIA MANDRELL, CARY MARKUS, LAUREN MARTIN, MARIE MARTIN, MAGGIE MASLOWSKI, STACY MAYS, JENNY MASTERSON, HEATHER MCBRIDE, TRECA MCCONNELL, JASON MCFARLAND, MEGAN MCGINN, TANYA MCPHEETERS, RACHEL MELVIN, ROBERT MENSEN, DANIELLE MEYER, NEL MILAS, RYAN MILLER, KENNA MILLER, MELISSA MILLER, ARIL MINOR, MICHELLE MONTGOMERY, MEGAN MORAN, MELISSA MORRIS, CHARLYNN MUMBOWER, TED MYHRE, AKEELA NABORS, TRACY NASTERNAK, LAURA NELSON, PAIGE NOWLAND, SILVANA O'BRIEN, BECKI OLKOSKI, JULIE OWENS, BETH OZYARZUN, CANDY PANKEY, DAN PARKE, BRENDA PEARSON, KATHY PENNINGTON, TERRI PEMBERTON, JEFFREY PETERSON, CAROLYN PHILLIPS, AMI PIERCE, LISA PINKSTON, CHRISTI POTEET, ELIZABETH

POTOCKI, LORI POWELL, ANGEL PRUSACAYK, BRANDI QUINN, TRACY RACEY, MARK RACEY, BRYANNA RAMSEY, NICOLE RECHSTEINER, GINER RENO, CHRISTINA REXING, SONYA REYNOLDS, AARON ROBINSON, VANESSA RODRIQUEZ, BRIAN BARNES, MARY BENWAY, ELIZABETH BENOIT, KRIS BIGGS, KELSIE BOLDT, BRYANT ROSS, AMY RUSSELL, RITA SAGER, SHERRI SAMUEL, JESSICA SAWYER, DAWN SCARBOROUGH, GINA SCHOCK, STEPHANIE SCHWAPPACH, JASON SEDDON, CARISSA SEIDEL, SCOTT SHAW, SUSAN SHEA, OSCAR SHEW, CALEB SHIPLEY, M. REID SHIPLEY, SHANNON SHIPLEY, HOLLY SHIRLEY, AMANDA SIMMS, LYNN SKAGGS, ANDY SLOAN, GREG SMITH, HEATHER SMITH, BETH SNYDER, KIMBERLY SOWA, AMBER SPREHE, MICHELLE SPRINGER, KIM STALEY, TOM STARK, KATIE STEFFEN, PATRICIA STEINBACH, CHRISTY STEWART, TRACY STONE, STACY STONE, WAYNE STONE, KEYLA STOVER, EVELYN SUGGS, JULIE SWIGONSKI, JACOB TALBERT, JENNA TALBERT, JEFF TARLTON, MARCI TARLTON, KELI TATE, MICHELLE TAYLOR, ABIGAIL TAYLOR, DEANNA THOMAS, RACHEL THOMASON, RENE THOMASON, JESSICA THOMPSON, EMILY TIMMONS, JESSICA TOBIN-SANFILIPPO, SUZY TOMM, ALEXA TRAVELSTEAD, LORA TRIPP, PATRICIA TROUT, MOLLY UHLES, MARY BETH VOSS, AMANDA WATKINS, SARAH WELCH, KALEB WELCH, ASHLEY WHITE, MATALIE WHITLOW, STACY SIELT, BRIAN WIEWIORA, AARON WILLIAMS, ANNA KASHARKO, WILLIAM ZIEGLER, AUTOMN ZIEGLER, JAMI WILLIAMS, SHAWN WILLIAMS, SARA WILSON, PEIGHTON YOUNG, EMILY YORK, ANGELA WOODRING, AMY WILSON, FAITH WILSON, MARIA WILSON, CLINTON WITHROW, TINA WITHROW, LORI REEDS WAGGONER, KENDRA PHILLIPS, COURTNEY PHELPS, CODY PAULS, NYLA MONTGOMERY, KELSEY PAMISANO, PATTY MARTIN, LORA O'DANIEL, JEFFREY NOWLAND, CHRIS COLE, STACTI MAYS, CAROLYN LIEDTKE, SYDNEI KAPLAN, JOHN HYDE, ANGELA HYDE, ALEXA HORTIN, CHERYL HANSEN, JEANENE HALSTED, STEPHANIE GUGLE, CHRIS GRICE, REBECCA GALLOWAY, AUTUMN FUNKHOUSE, SARAH FRANCIS, KAYLA DEVRIES, SANDRA DEVALL, MELISA DAVIDSON, JILL CURRY, CHRISTINA CUMBO, PATTY CROW, KRIST CROMEENES, NICOLE COUNNAYA, TOSHA BOWLIN, AARON WEBB, JANA BRADSHAW, BEVERLY BRAUN, CHERYL CARLSON, JENNIFER LINCOLN, and TAMMY LACY.