[Cite as *Stanford v. Northmont City Schools*, 2021-Ohio-872.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

DWAIN STANFORD, et al.	:	
	:	
Plaintiffs-Appellants	:	Appellate Case No. 28884
	:	
v.	:	Trial Court Case No. 2019-CV-1385
	:	
NORTHMONT CITY SCHOOLS	:	(Civil Appeal from
	:	Common Pleas Court)
Defendant-Appellee	:	
	:	

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O P I N I O N

Rendered on the 19th day of March, 2021.

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CHRISTINE BAKER, Atty. Reg. No. 0088634, 2312 Far Hills Avenue, Box 390, Dayton, Ohio 45419
Attorney for Plaintiffs-Appellants

DAVID J. LAMPE, Atty. Reg. No. 0072890 & JASON R. STUCKEY, Atty. Reg. No. 0091220, 201 East Fifth Street, Suite 1110, Cincinnati, Ohio 45202
Attorneys for Defendant-Appellee

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DONOVAN, J.

{¶ 1} Plaintiffs-appellants Dwain and Sharon Stanford and their son, J.S., appeal from an order of the Montgomery County Court of Common Pleas, which affirmed the decision of the Northmont City School District Board of Education ("Northmont") to suspend J.S. for having the odor of marijuana on his person while at school. The Stanfords filed a timely notice of appeal on August 30, 2020.

{¶ 2} The incident which formed the basis for the suspension occurred on February 19, 2019, when J.S. arrived late to class at Northmont High School. A staff member reported that J.S. smelled of marijuana upon arriving at school. As such, Assistant Principal Chad Kaltenbach removed J.S. from his first period study hall in order to confirm whether J.S. had the odor of marijuana on his person and to determine whether he had any marijuana in his possession.

{¶ 3} In Kaltenbach's office, J.S. was searched for marijuana, but he did not have any marijuana in his possession. Kaltenbach informed J.S. that he would likely be suspended for violating the school's policy against a student arriving at school with the odor of marijuana on his or her person. J.S. responded that his parents instructed him to not respond when questioned by Kaltenbach. Kaltenbach then informed J.S. that he would indeed be suspended for having the odor of marijuana on his person. One of his parents arrived shortly thereafter and took him home. J.S. received a ten-day suspension and was given the opportunity to make up any missed school work assigned during the suspension. At some point during the term of his suspension, J.S.'s parents removed him from Northmont High School and enrolled him in Vandalia Butler Schools. As of the filing of this appeal, J.S. had not reenrolled at Northmont High School.

{¶ 4} After the term of J.S.'s suspension was concluded, the Stanfords appealed

the suspension to Northmont's appeal designee and were allowed to present a defense to the suspension. Northmont's designee affirmed the suspension, and the Stanfords appealed the designee's decision to the Montgomery County Court of Common Pleas. The trial court affirmed the decision of Northmont's appeal designee, finding that any issues with respect to J.S.'s suspension were moot since he was no longer a student at Northmont High School. The trial court also found that Kaltenbach's search of J.S. was justified because of the individualized suspicion of the odor of marijuana on J.S. Finally, the trial court found that there had been a sufficient factual basis for J.S.'s suspension since he had had the odor of marijuana on his person.

{¶ 5} It is from this judgment that the Stanfords now appeals.

Standard of Review

{¶ 6} As an appellate court, our standard of review to be applied in an R.C. 2506.04 administrative appeal is "limited in scope." *Kisil v. Sandusky*, 12 Ohio St.3d 30, 34, 465 N.E.2d 848 (1984). "This statute grants a more limited power to the court of appeals to review the judgment of the common pleas court only on 'questions of law,' which does not include the same extensive power to weigh the preponderance of the substantial, reliable, and probative evidence, as is granted to the common pleas court." *Id*., fn. 4, citing R.C.2506.04. Ultimately, the standard of review for appellate courts in an R.C. 2506 appeal is "whether the common pleas court abused its discretion in finding that the administrative order was or was not supported by reliable, probative, and substantial evidence." *See Weber v. Troy Twp. Bd. of Zoning Appeals*, 5th Dist. Delaware No. 07 CAH 04 0017, 2008-Ohio-1163. "The standard of review for courts of appeals in administrative appeals is designed to strongly favor affirmance" and "permits reversal only

when the common pleas court errs in its application or interpretation of the law or its decision is unsupported by a preponderance of the evidence as a matter of law." *Cleveland Clinic Found. v. Cleveland Bd. of Zoning Appeals*, 141 Ohio St.3d 318, 2014-Ohio-4809, 23 N.E.3d 1161, ¶ 30.

{¶ 7} The Stanfords' first assignment of error is as follows:

THE TRIAL COURT ABUSED ITS DISCRETION BY FINDING THAT THE SUSPENSION APPEAL OF J.S. WAS MOOT.

{¶ 8} In their first assignment, the Stanfords contend that the trial court erred when it found that their appeal of the suspension was moot because J.S. was no longer enrolled at Northmont High School and because the case did not involve a matter of great general interest.

{¶ 9} "The issue of mootness presents a question of law; therefore, we review the trial court's finding under the de novo standard of review." *Athens Cty. Commrs. v. Ohio Patrolmen's Benevolent Assn*., 4th Dist. Athens No. 06CA49, 2007-Ohio-6895, ¶ 45; *see also Tucker v. Leadership Academy for Math and Science of Columbus*, 10th Dist. Franklin No. 14AP-100, 2014-Oho-3307, ¶ 7; *Pla v. Wivell*, 9th Dist. Summit No. 25814, 2011-Ohio-5637, ¶ 7.

{¶ 10} A " 'case is moot when the issues presented are no longer "live" or the parties lack a legally cognizable interest in the outcome.' " *Los Angeles Cty. v. Da*vis, 440 U.S. 625, 631, 99 S.Ct. 1379, 59 L.Ed.2d 642 (1979), quoting *Powell v. McCormack*, 395 U.S. 486, 496, 89 S.Ct. 1944, 23 L.Ed.2d 491 (1969). "It is not the duty of the court to answer moot questions, and when * * * an event occurs, without the fault of either party, which renders it impossible for the court to grant any relief, it will dismiss the petition

* * *." *Miner v. Witt*, 82 Ohio St. 237, 92 N.E. 21 (1910), syllabus; *see also Tschantz v. Ferguson*, 57 Ohio St.3d 131, 133, 566 N.E.2d 655 (1991) ("Ohio courts have long exercised judicial restraint in cases which are not actual controversies. * * * No actual controversy exists where a case has been rendered moot by an outside event."). "Conversely, if an actual controversy exists because it is possible for a court to grant the requested relief, the case is not moot, and a consideration of the merits is warranted." *State ex rel. Gaylor v. Goodenow*, 125 Ohio St.3d 407, 2010-Ohio-1844, 928 N.E.2d 728, ¶ 11; *State v. Consilio*, 114 Ohio St.3d 295, 2007-Ohio-4163, 871 N.E.2d 1167, ¶ 7. These "general precepts" apply to both original actions and appeals. *Coates Run Property LL, LLC v. Athens Bd. of Zoning Appeals*, 4th Dist. Athens No. 15CA5, 2015-Ohio-4732, ¶ 12 (applying the mootness doctrine to an administrative appeal under R.C. 2506.01), citing *Cincinnati Gas & Elec. Co. v. Pub. Util. Comm. of Ohio*, 103 Ohio St.3d 398, 2004-Ohio-5466, 816 N.E.2d 238, ¶ 15 ("an appellate court need not consider an issue, and will dismiss the appeal, when the court becomes aware of an event that has rendered the issue moot").

{¶ 11} Two exceptions exist, however. The first is that "[a] case is not moot if the issues are capable of repetition, yet evading review." *In re Suspension of Huffer from Circleville High School*, 47 Ohio St.3d 12, 546 N.E.2d 1308 (1989), paragraph one of the syllabus. This situation is limited to the following:

> [E]xceptional circumstances in which the following two factors are both present: (1) the challenged action is too short in its duration to be fully litigated before its cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same

action again.

(Citations omitted.) *State ex rel. Calvary v. Upper Arlington*, 89 Ohio St.3d 229, 231, 729 N.E.2d 1182 (2000). The second exception to the mootness doctrine is that jurisdiction will be exercised where the case "involves a matter of public or great general interest." *Suspension of Huffer* at 14.

{¶ 12} In regard to school suspensions, we have stated:

> Cases involving short school suspensions present unique difficulties, because any suspension is typically served long before the court action is resolved. Frequently, as is the case here, the student also graduates or moves on to another school while the case is pending. Courts are, therefore, faced with a choice between ignoring potential defects or intervening where the potential for a meaningful remedy is minimal. This choice, in turn, is further complicated by the fact that many of these lawsuits bring to mind the phrase, "tempest in a teapot." Admittedly, a school suspension is not a completely trivial occurrence, and justice is poorly served when administrators fail to comply with due process requirements. * * *

Siemon v. Bailey, 2d Dist. Clark No. 2002-CA-10, 2002 WL 1438678, *3.

{¶ 13} As previously stated, the first exception to the mootness doctrine is when the issue is "capable of repetition, yet evading review"; the challenged action must be too short in its duration to be fully litigated before its cessation or expiration, and there must be a reasonable expectation that the same complaining party will be subject to the same action again. We find that the first exception does not apply in this case. The Stanfords did not file an appeal with Northmont until approximately two months after J.S. served his

ten-day suspension. They could have requested a stay of his suspension pending their appeal, but they did not. Under these circumstances, we cannot conclude that J.S.'s suspension was too short in its duration to be fully litigated before its expiration.

{¶ 14} Furthermore, there was no reasonable expectation that the same complaining party would be subject to the same action again. As previously stated, after J.S. was suspended, his parents enrolled him in Vandalia Butler Schools, and he did not returned to Northmont. The Stanfords argue that they will be "subject to the same action again," however, because they are still residents of the Northmont City School District and have younger children who could eventually be subject to Northmont's suspension policy. The Stanfords' argument fails for two reasons. First, the parents will never be subject to Northmont's suspension policy. Second, J.S.'s younger siblings, who were not yet school-aged, were not students at Northmont, and therefore were not subject to its suspension policy. Simply put, neither the parents nor J.S. nor his siblings were subject to Northmont's suspension policy. Accordingly, the first exception to the mootness doctrine did not apply.

{¶ 15} We also conclude that this appeal does not involve a matter of public or great general interest. The issue of the authority of local school boards to make rules and regulations is of "great general interest," *Suspension of Huffer* at *14, but here, the Stanfords did not challenge Northmont's rules or its ability to make rules regarding the governance of the student body. They only appealed J.S.'s suspension. The trial court specifically stated:

> Appellants are not challenging the authority of the board, nor are they challenging any school policy applicable to this situation, which courts have

> found to be "of great general interest." Rather, they are arguing that J.S.'s suspension was not supported by sufficient evidence, *which does not involve a matter of public or great general interest.*

(Emphasis added.) Trial Court Decision p. 11. We agree with the trial court; the second exception to the mootness doctrine did not apply since the matter did not involve "a matter of public or great general interest."

{¶ 16} As a final matter, in *Burton v. Cleveland Hts.-Univ. Hts. School Dist*., 8th Dist. Cuyahoga No. 103415, 2016-Ohio-2841, the court concluded that the mootness doctrine precluded a review of the appeal; specifically, it held that graduation from high school did not automatically render an appeal moot, but if the student's permanent record did not contain any reference to the discipline, an administrative appeal after graduation was moot. *Id*. at ¶ 12, citing *Dreyfus v. Lakewood City Schools*, 8th Dist. Cuyahoga No. 70004, 1996 WL 502149, *3-4 (Sept. 5, 1996). *See also Lewis v. Ohio High School Athletic Assn.*, 5th Dist. Stark No. 2015CA00009, 2015-Ohio-3459. Similarly, in *Siemon*, 2d Dist. Clark No. 2002-CA-10, 2002 WL 1438678, we held that the dismissal of a student's appeal of a three-day suspension was moot because the suspension was not recorded in the student's permanent record. *Id*. at *4.

{¶ 17} In this case, J.S. served his ten-day suspension and did not suffer any delay or interruption in his education. Furthermore, in accordance with Northmont's policy, J.S. was permitted to complete all of the work he missed during his suspension and to receive credit for such work. *See* R.C. 3313.66(A)(3)(a)(i). The record also establishes that J.S.'s permanent record contained no mention of the ten-day suspension, and the suspension did not appear on his official transcript. Therefore, none of the exceptions

applied, and the trial court did not err when it held that the Standfords' appeal of J.S.'s suspension was moot.

{¶ 18} The Stanfords' first assignment of error is overruled.

{¶ 19} The Stanfords' remaining assignments of error are as follows:

> THE TRIAL COURT ABUSED ITS DISCRETION BY FINDING THAT THE SUSPENSION OF J.S. WAS SUPPORTED BY A PREPONDERANCE OF THE EVIDENCE UPON REVIEW OF THE WHOLE RECORD.
>
> THE TRIAL COURT ABUSED ITS DISCRETION BY DETERMINING THAT THE SEARCH OF J.S. WAS IN ACCORDANCE WITH FEDERAL AND STATE PROTECTIONS AGAINST UNREASONABLE SEARCH AND SEIZURE.

{¶ 20} In light of our holding in regard to the Stanfords' first assignment of error, we need not address the merits of their second and third assignments.

{¶ 21} The judgment of the trial court is affirmed.

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TUCKER, P. J. and HALL, J., concur.

Copies sent to:

Christine Baker
David J. Lampe
Jason R. Stuckey
Hon. Gregory Singer