[Cite as *Althof v. Hudson City School Dist. Bd. of Edn.*, 2023-Ohio-4852.]

STATE OF OHIO))ss: COUNTY OF SUMMIT)	IN THE COURT OF APPEALS NINTH JUDICIAL DISTRICT
SANDRA ALTHOF, et al. Appellants v. HUDSON SCHOOL DISTRICT, et al. Appellee	C.A. No. 30437 APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO CASE No. CV-2022-01-0077

DECISION AND JOURNAL ENTRY

Dated: December 29, 2023

HENSAL, Judge.

{¶1} Appellants, Sandra Althof, Arabella Feil, and George Carson, on behalf of their minor children ("the Parents") appeal an order of the Summit County Court of Common Pleas that dismissed their complaint as moot. This Court reverses.

I.

{¶2} The Parents had minor children enrolled in the Hudson City School District during the 2021-2022 school year. They filed a complaint challenging the masking and quarantine protocols implemented by the Board of Education ("the Board") in response to the COVID-19 pandemic. In an amended complaint filed on February 10, 2022, the Parents alleged that the Board purported to follow guidance from the Summit County Health Department and the Ohio Department of Health. They maintained that the Board's policies violated statutory processes established by the legislature and, contrary to Revised Code Section 3792.04, made distinctions between individuals who had received a COVID-19 vaccination and those who had not.

{¶3} On March 24, 2022, the Board moved to dismiss the amended complaint, alleging that the Parents lacked standing, that their claims were moot, or, in the alternative, that the Parents had failed to state a claim upon which relief could be granted under Civil Rule 12(B)(6). With respect to mootness, the Board argued that "the COVID-19 policies challenged by [the Parents] are no longer in effect and [the Parents'] arguments merely speculate that they will suffer injury in the future." The Board referenced a January 28, 2022, communication attached to the amended complaint in support of the motion, arguing that it was evidence that "[o]n January 28, 2022, the Board updated its COVID-19 policies to implement an optional mask policy." The Parents, in response, maintained that according to the terms of that communication, the policy remained in place and could be implemented again at any time.

{¶4} On August 11, 2022, the trial court granted the motion to dismiss based on its determination that the amended complaint was moot. In doing so, the trial court characterized the January 28, 2022, communication attached to the amended complaint as termination of the masking policy and noted that the Parents had not pointed to specific facts demonstrating that the policy could be reinstated. "[H]aving found that the masking policy at issue ha[d] been ended[,]" the trial court determined that the Parents' claims were moot. The Parents appealed, assigning two errors for this Court's review.

II.

ASSIGNMENT OF ERROR I

> THE TRIAL COURT ERRED IN DISMISSING [THE PARENTS'] FIRST AMENDED COMPLAINT, FINDING THAT [THEIR] CLAIMS WERE MOOT BECAUSE [THE BOARD'S] MASKING POLICY WAS NO LONGER BEING ENFORCED.

{¶5} The Parents' first assignment of error argues that the trial court erred by granting the Board's motion to dismiss. More specifically, the Parents have argued that the trial court erred

by determining that their claims were moot or, in the alternative, by determining that the actions that gave rise to their claims were not capable of repetition but evading review.

{¶6} Consistent with the mootness doctrine, courts cannot decide cases in which no controversy remains. *In re A.G.*, 139 Ohio St.3d 572, 2014-Ohio-2597, 37. Because "a judgment dismissing a complaint as moot means the trial court has declined to exercise jurisdiction over the matter, * * * it necessarily follows that such a dismissal does not reach the issue of whether the complaint failed to state a claim upon which relief can be granted." *Tavenner v. Pittsfield Twp. Bd. of Trustees*, 9th Dist. Lorain No. 22CA011831, 2022-Ohio-4444, ¶ 7. An order dismissing claims as moot presents questions of law, so this Court's review is de novo. *Id*. at ¶ 20.

{¶7} The amended complaint alleged, with reference to the October 27, 2021, communication, that the Board informed parents through email that a "Mask to Stay, Test to Play" policy would be implemented for students. The amended complaint also alleged that the Parents' children had undergone quarantine, masking, and periods of remote learning as a result of that policy. According to the amended complaint, the Board "reversed its policy" on January 28, 2022, and the amended complaint referenced an announcement attributed to the school superintendent on that date. The amended complaint also noted that according to that announcement, further action could again be taken in the event of an outbreak identified by the Health Department and averred that the communication "open[ed] the door to the [p]olicy being reinstated and show[ed] that the same illegal actions may be repeated by the Board." The amended complaint requested declaratory and injunctive relief related to various masking and quarantining requirements.

{¶8} The trial court reasoned that the Board's mask policy had been terminated and that the Parents "ha[d] not demonstrated fact beyond a mere *possibility* of the return" of that policy. (Emphasis in original.) Based on these determinations, the trial court concluded that all of the

Parents' claims were moot. This Court cannot agree, however, that the limited record before the trial court demonstrates that the Parents' claims are moot. Exhibit 1 to the amended complaint is a document on the letterhead of the Ohio Department of Health that explains the "Mask to Stay/Test to Play Option" for local school districts. Exhibit 2 to the amended complaint is a document that appears to have been obtained from the Hudson City School District's website. Dated January 28, 2022, that document explains that in response to updated guidance from the Ohio Department of Health that contact tracing was no longer required, "Hudson City Schools will be following this guidance, effective immediately." Exhibit 2 stated that the Ohio Department of Health had advised schools to continue following the "Mask to Stay/Test to Play" protocol. This document also provided that in response to lower COVID-19 case numbers, "Hudson City Schools will switch to a MASK OPTIONAL policy, effective immediately." The amended complaint also referenced a third exhibit—another document on the letterhead of the Ohio Department of Health—that explained recommendations for those who tested positive for COVID-19 or who had a recent exposure.

{¶9} Two of the three documents referenced by the amended complaint purported to be statements of policy issued by the Ohio Department of Health. These documents do not establish to what extent the Board formally adopted policies consistent with the action recommended by the Ohio Department of Health, nor do they reflect the Board's own action. Although Exhibit 2 is a communication that appears to have been obtained from the Hudson City School District's website, it also does not document any action by the Board that adopts, rescinds, or modifies a policy. The responsibility for governing a school district, however, is vested in the board of education. *Cincinnati City School Dist. Bd. of Edn.*, 122 Ohio St.3d 557, 2009-Ohio-3628, ¶ 17.

{¶10} Based on the record before the trial court when it ruled on the motion to dismiss, therefore, the trial court erred by determining that the Parents' complaint is moot and dismissing it on that basis. This Court takes no position with respect to whether, upon consideration of a more fully developed record, the trial court should dismiss the complaint as moot. The Parents' first assignment of error is sustained.

ASSIGNMENT OF ERROR II

> THE TRIAL COURT ERRED IN DISMISSING [THE PARENTS'] FIRST AMENDED COMPLAINT BECAUSE [THE PARENTS] STATED VALID CLAIMS FOR RELIEF.

{¶11} The Parents's second assignment of error argues that the trial court erred by dismissing their amended complaint because they stated claims that survive dismissal under Rule 12(B)(6). Based on the conclusion that the Parents' claims were moot, the trial court did not consider the merits of the Board's motion under Rule 12(B)(6). This Court declines to do so in the first instance. *See Jacobs v. Equity Trust Co.*, 9th Dist. Lorain No. 20CA011701, 2021-Ohio-4349, ¶ 45. The Parents' second assignment of error is overruled solely on that basis.

III.

{¶12} The Parents' first assignment of error is sustained. Their second assignment of error is overruled. The judgment of the Summit County Court of Common Pleas is reversed, and this matter is remanded to the trial court for proceedings consistent with this opinion.

Judgment reversed,
and cause remanded.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellee.

JENNIFER HENSAL
FOR THE COURT

CARR, J.
CONCURS.

SUTTON, P. J.
DISSENTING.

{¶13} I respectfully dissent from the judgment of the majority as I would conclude the Parents lacked standing to sue the Hudson City School District Board of Education regarding its "Mask to Stay, Test to Play" policy. "The Ohio Supreme Court has firmly held that to establish traditional, common-law standing, a party must show, at a minimum, that they have suffered '(1) an injury (2) that is fairly traceable to the defendant's allegedly unlawful conduct and (3) is likely to be redressed by the requested relief.'" *Petty v. Lorain*, 9th Dist. Lorain No. 23CA011949, 2023-Ohio-4080, ¶ 19, quoting *Ohioans for Concealed Carry, Inc., v. Columbus*, 164 Ohio St.3d 291,

2020-Ohio-6724, ¶ 12. "These three elements are 'the irreducible constitutional minimum of standing.'" *Petty* at ¶ 19, quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

{¶14} Here, in their amended complaint, the record indicates the Parents sought declaratory and injunctive relief regarding the "Mask to Stay, Test to Play" policy, which, at the time, was no longer being implemented by the Hudson City School District Board of Education. As such, because the "Mask to Stay, Test to Play" policy was no longer in effect, and there was no actual present harm to students, any alleged past or future injury suffered would not likely be redressed by the requested relief. *See Petty* at ¶ 19. "[S]tanding to sue is part of the common understanding of what it takes to make a justiciable case." *Petty* at ¶ 17, quoting *Federal Home Loan Mortg. Corp. v. Schwartzwald*, 134 Ohio St.3d 13, 2012-Ohio-5017, ¶ 21, quoting S*teel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 102 (1998). Therefore, because the Parents lacked standing, this is not a justiciable controversy and must be dismissed.

APPEARANCES:

WARNER MENDENHALL and BRIAN UNGER, Attorneys at Law, for Appellants.

COLIN JENNINGS AND ELIZABETH A. SAFIER, Attorneys at Law, for Appellee.