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IN THE
COURT OF APPEALS OF INDIANA

Yergy's State Road BBQ, LLC,
Appellant-Plaintiff,

v.

Wells County Health Department; Eric Holcomb, in his official capacity of Governor of the State of Indiana; and State of Indiana,
Appellees-Defendants.

May 19, 2022

Court of Appeals Case No. 21A-PL-2593

Appeal from the Wells Circuit Court

The Honorable Kenton W. Kiracofe, Judge

Trial Court Cause No. 90C01-2012-PL-15

Pyle, Judge.

Statement of the Case

[1] Yergy's State Road BBQ, LLC ("Yergy") appeals the trial court's order dismissing Yergy's complaint against the State of Indiana ("the State") and Governor Eric Holcomb ("the Governor") (collectively, "the State Defendants") and the Wells County Health Department ("the County Health Department"). Yergy argues that the trial court erred by dismissing its complaint as moot. Concluding that the trial court did not err, we affirm the trial court's order dismissing Yergy's complaint.

[2] We affirm.

Issue

Whether the trial court erred by dismissing Yergy's complaint as moot.

Facts

[3] On March 6, 2020, in response to the Covid-19 pandemic, the Governor issued Executive Order 20-02, declaring a public health emergency in Indiana. Thereafter, the Governor issued subsequent executive orders to address the various public health and safety issues inherent in the Covid-19 pandemic. For example, Executive Order 20-32, issued on June 6, 2020, provided, in relevant part, that "all [restaurant] employees and staff sh[ould] wear face coverings" and that the capacity limits for a restaurant's in-person dining was limited to 75% of a restaurant's maximum capacity. (App. Vol. 2 at 99). The Governor's various executive orders cite to his authority to issue the orders pursuant to Emergency Management and Disaster Law ("EMDL"). *See* IND. CODE § 10-14-3 *et seq.*[1]

[4] Yergy is a restaurant in Blufton, Indiana, which is in Wells County. On August 28, 2020, the County Health Department issued an Order to Abate ("the Health Department Order") to Yergy. The County Health Department issued the

[1] The legislature enacted the EMDL in 2003. In relevant part, the EMDL provides that the Governor "shall declare a disaster emergency by executive order or proclamation if the governor determines that a disaster has occurred or that the occurrence or the threat of a disaster is imminent." I.C. § 10-14-3-12(a). The EMDL also provides that the Governor "has general direction and control of the agency and is responsible for carrying out [the EMDL]" and "may assume direct operational control over all or any part of the emergency management functions within Indiana." I.C. § 10-14-3-11(a). Additionally, the EMDL provides that "[a] state of disaster emergency may not continue for longer than thirty (30) days unless the state of disaster emergency is renewed by the governor" and that "[t]he general assembly, by concurrent resolution, may terminate a state of disaster emergency at any time." I.C. § 10-14-3-12(a).

Health Department Order pursuant to INDIANA CODE § 16-19-3-11 and various executive orders issued by the Governor in response to the Covid-19 pandemic.[2] The Health Department Order informed Yergy that the restaurant was required to "immediately close and terminate violative operations" due to the restaurant's failure to comply with face-covering requirements for employees and due to the failure to comply with the required in-person dining capacity limits. (App. Vol. 2 at 44, 45) (quote modified to lower case). The Health Department Order also informed Yergy that the restaurant was "ordered closed for a period of 24 hours" and that it would "be allowed to re-open after an inspection" by the County Health Department and a "signed statement by [Yergy] of [its] intent to comply" with the employee face-covering requirement and seating limit requirement. (App. Vol. 2 at 45). Additionally, the Health Department Order informed Yergy of its right to seek administrative review of the order.

[5] Thereafter, Yergy petitioned for review of the Health Department Order, and a panel from the County Health Department held a hearing ("the hearing panel"). The hearing panel found in favor of the County Health Department. However, the hearing panel modified the Health Department Order by

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2 INDIANA CODE § 16-19-3-11 provides that "[t]he state [health] department may issue an order condemning or abating conditions causative of disease." The executive orders listed in the Health Department Order included Executive Orders 20-04, 20-10, 20-14, 20-18, 20-22, 20-32, 20-41, and 20-42.

removing the allegation that Yergy had violated the in-person dining capacity limit.

[6] Thereafter, on December 15, 2020, Yergy filed, in the trial court, a complaint seeking: (1) judicial review of the Health Department Order; (2) declaratory and injunctive relief challenging the constitutionality of the EMDL as applied; and (3) declaratory and injunctive relief challenging the Governor's executive orders as violating the EMDL. In all three claims, Yergy's ultimate request for relief was to have the trial court order the County Health Department to "vacate the [Health Department] Order" and to "enjoin the [County Health Department] from enforcing any aspect" of that order. (App. Vol. 2 at 38, 40, 42).

[7] On March 15, 2021, the State Defendants filed a motion to dismiss under Indiana Trial Rule 12(B)(6). Thereafter, on May 11, 2021, the State Defendants supplemented their motion, adding an argument that the trial court should dismiss Yergy's complaint because Yergy's request for relief had been rendered moot by the Governor's Executive Order 21-09 (issued on March 31, 2021) and Executive Order 21-12 (issued on April 29, 2021), which had eliminated the mandate for face coverings for restaurant employees.

[8] Thereafter, the County Health Department joined in the State Defendants' motion to dismiss based on mootness. The County Health Department argued that Yergy's case had also been rendered moot by the legislature's passage of various public laws during the 2021 session. Specifically, the County Health

Department pointed to Public Law 64-2021, which enacted INDIANA CODE § 2-2.1-1.2 *et seq.* (relating to the legislature convening an emergency session), and Public Law 219-2021, which amended INDIANA CODE § 16-20-1-19 and enacted INDIANA CODE § 16-20-5.5 *et seq.* (providing for a party to appeal a local health department's enforcement action, which had been issued in response to a disaster emergency declared by the governor or resulted from a declared local public health emergency, to the board of county commissioners).

[9] In response to the defendants' mootness argument, Yergy argued that its case was not moot because the Governor could potentially issue another executive order in the future and could re-impose face-covering requirements for restaurant employees. Specifically, Yergy asserted that the Governor "may simply issue another executive order that re-imposes onerous mandates on restaurants[.]" (App. Vol. 2 at 233). Yergy alternatively argued that even if its case were moot, Yergy's case should not be dismissed because it presented an issue of great public importance that could occur in a future pandemic.

[10] The trial court held a hearing on the motion to dismiss in July 2021. Thereafter, in October 2021, the trial court issued an order, concluding that Yergy's case was moot and granting the motion to dismiss Yergy's complaint. Yergy now appeals.

Decision

[11] Yergy argues that the trial court erred by dismissing Yergy's complaint as moot. "'The long-standing rule in Indiana courts [is] that a case is deemed moot when

no effective relief can be rendered to the parties before the court.'" *T.W. v. St. Vincent Hosp. & Health Care Ctr., Inc.*, 121 N.E.3d 1039, 1042 (Ind. 2019) (quoting *Matter of Lawrance*, 579 N.E.2d 32, 37 (Ind. 1991)), *reh'g denied*. "When the concrete controversy at issue has been ended or settled, or somehow disposed of so as to render it unnecessary to decide the question involved, the case will be dismissed." *T.W.*, 121 N.E.3d at 1042.

[12] Here, Yergy filed a complaint seeking to have the trial court set aside the Health Department Order that required Yergy to comply with the face-covering requirement for Yergy's employees. In the complaint, Yergy sought judicial review of the Health Department Order, and it sought declaratory relief, which was based on having the trial court declare that the executive orders, upon which the Health Department Order was based, were invalid and thereby invalidating the Health Department Order. The ultimate request for relief in Yergy's complaint was to have the trial court order the County Health Department to "vacate the [Health Department] Order" and to "enjoin the [County Health Department] from enforcing any aspect" of that order. (App. Vol. 2 at 38, 40, 42).

[13] It is undisputed that there is no longer an executive order requiring restaurant employees to wear face coverings. Thus, the basis of the issuance of the challenged Health Department Order no longer exists. Because there is "no effective relief [that] can be rendered" to Yergy on its complaint, the trial court properly determined that the case was moot. *See T.W.*, 121 N.E.3d at 1042. *See also Liddle v. Clark*, 107 N.E.3d 478, 481-82 (Ind. Ct. App. 2018) (holding that

the appellant's claim for declaratory relief was moot where the challenged emergency rules had expired and were no longer in effect), *trans. denied*.

[14] However, Yergy also argues that the trial court should have reviewed the issues in Yergy's complaint pursuant to the public interest exception to mootness. Yergy contends that its case falls within the public interest exception because the Governor could issue a future executive order that imposes further mandates on restaurants as part of this pandemic or could do so in response to a future pandemic.

[15] It is true, Indiana "recognizes a public interest exception to the mootness doctrine, which may be invoked when the issue involves a question of great public importance which is likely to recur.'" *T.W.*, 121 N.E.3d at 1042 (quoting *Matter of Tina T.*, 579 N.E.2d 48, 54 (Ind. 1991). *See also I.J. v. State*, 178 N.E.3d 798, 799 (Ind. 2022). In determining what factors are considered when determining whether a question is of great public importance which is likely to reoccur, it is helpful to describe issues of great public importance as extraordinary issues needing resolution. *See Commitment of E.F. v. St. Vincent Hospital and Health Care Center, Inc.,* 179 N.E.3d 1017, 1019 (Ind. Ct. App. 2021). However, the exception should not be invoked when "for all practical purposes," a decision on the merits results in the issuance of an "advisory opinion[]." *I.J.*, 178 N.E.3d at 799 (cleaned up). This Court has explained that appellate courts do "not engage in discussions of moot questions or render advisory opinions." *Irwin v. State*, 744 N.E.2d 565, 568 (Ind. Ct. App. 2001) (cleaned up).

[16] While the restrictions imposed in response to the Covid-19 pandemic certainly present extraordinary issues involving the limits of executive power during a health emergency, they are not issues, at least as applied to Yergy, that currently need to be resolved. The legal framework governing the review and issuance of emergency orders has changed. As the State Defendants and the County Health Department point out, the challenged executive orders upon which the Health Department Order was based are no longer in effect and, more importantly, "[t]he General Assembly has changed the legislative framework for both states of emergency and review of orders issued by local health officials to enforce restrictions imposed in a public health emergency like those Yergy[] challenges." (State Defendants' Br. 14). As a result, we decline to apply the public interest exception to this case or to issue an advisory opinion. Accordingly, we affirm the trial court's determination that Yergy's request for relief was moot and affirm the trial court's order dismissing Yergy's complaint. *See, e.g.*, *I.J.*, 178 N.E.3d at 799 (vacating the Court of Appeals' opinion that addressed a moot issue under the public interest exception and holding that the appeal should be simply dismissed as moot); *Liddle*, 107 N.E.3d at 482 (explaining that this Court would not issue an advisory opinion on the appellant's moot claim, declining to apply the public interest exception, and affirming the trial court's determination that the appellant's claim for declaratory relief was moot).

[17] Affirmed.

Robb, J., and Weissmann, J., concur.