[Cite as *Martin v. Ohio Univ.*, 2023-Ohio-2511.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ATHENS COUNTY

Bailey Martin, et al.,	:	Case No. 22CA14
Plaintiffs-Appellants,	:	
v.	:	
Ohio University, et al.,	:	DECISION AND JUDGMENT ENTRY
Defendants-Appellees,	:	**RELEASED 7/19/2023**

APPEARANCES:

Thomas W. Connors, Warner Mendenhall, and John Pfleiderer, Mendenhall Law Group, Akron, Ohio for plaintiffs-appellants.

Michael H. Carpenter, Michael N. Beekhuizen, and Gregory R. Dick, Carpenter Lipps and Leland LLP Columbus, Ohio Special Counsel for defendants-appellees.

Hess, J.

{¶1} Plaintiffs-Appellants Bailey Martin along with 13 other Ohio University students and Mary Thomas, an Ohio University employee, appeal the trial court's judgment in favor of the appellees-defendants Ohio University and members of the Board of Trustees of the Ohio University dismissing the amended complaint on the grounds that appellants lack standing, their claims are moot, and they fail to state a claim upon which relief can be granted. Appellants contend the trial court erred on all three bases: standing, mootness, and failure to state a claim.

{¶2} We find that the trial court erred when it dismissed appellants' discrimination claim under R.C. 3792.04(B)(2) and sustain in part the portion of appellants' assignments of error that contend that this claim was improperly dismissed. However, the trial court

properly dismissed all the remaining claims because the appellants lacked standing to bring them. We affirm in part and reverse in part the judgment of the trial court.

I. FACTS AND PROCEDURAL BACKGROUND

{¶3} On August 31, 2021, Ohio University, a state institution of higher education, issued "Community Health Directives" for "[a]ll community members at any Ohio University campus or location" and amended the prior Directives issued November 16, 2020. The Directives covered masks, physical distancing, symptom assessment, quarantine and isolation, tracing efforts, COVID-19 testing, and the COVID-19 vaccine requirement. All individuals were required to wear masks (which were defined as surgical, N95, or two-layered, washable, handmade cloth) indoors on public campus spaces and on public transportation. Persons could apply for an exemption to the mask requirement "due to extraordinary circumstances" or, if disabled, could apply for a reasonable accommodation as needed. All individuals were required to physically distance by following posted seating arrangements in classrooms. In all other indoor public university spaces only unvaccinated persons were required to maintain a distance of at least six feet from others. All individuals had to measure their body temperature and complete a daily COVID symptom assessment. All individuals were required to participate in tracing efforts and to comply with directives and guidelines related to quarantine or isolation. All individuals were required to select one of two testing "pathways": (1) fully vaccinated persons would not be required to participate in weekly asymptomatic testing if they selected the "Vaccination Pathway" and provided proof of vaccination or (2) vaccinated persons who select "Weekly Testing Pathway," unvaccinated persons, and undecided

persons must participate in weekly asymptomatic testing until further notice under the Weekly Testing Pathway.

{¶4} The Directives also included the following COVID-19 vaccination requirement:

> Ohio University requires all students, faculty, and staff to be vaccinated against COVID-19 by November 15, 2021 or have an approved exemption. For vaccines that require two doses, both doses must be complete by November 15. This applies to all employees, including those working remotely, and all students except those enrolled exclusively in fully online programs and coursework who will not access University facilities on any campus in person. Students, faculty and staff can apply for an exception for the vaccine requirement for medical reasons or *for reasons of conscience, including ethical and moral belief or sincerely held religious beliefs.* Any exemption request must be approved and confirmed in writing prior to November 1, 2021. (Emphasis sic.)

{¶5} The Directives warned that student violations of any of the terms of the Directives "will be adjudicated through the Student Code of Conduct, thereby incurring disciplinary action up to and including suspension or expulsion." Faculty and staff violations "will be addressed through the appropriate University disciplinary processes based on an employee's classification. Disciplinary action may vary, up to and including termination of employment."

{¶6} Ohio University issued an additional Community Health Directives on January 6, 2022 which stated that it amended "the prior Directives issued November 16, 2020 Directive." No specific reference was made to the August 31, 2021 Directives. The January 6, 2022 Directives maintained the same mask mandate and exemptions as the August 31, 2021 Directives (but changed the definition of mask to "a surgical, KN95[,] N95, or KF94 mask or a similarly fitted face covering that is made of three or more layers of fabric or other material"). Physical distancing requirements were removed. All

individuals were still required to select one of two testing "pathways" but those who selected the "Weekly Testing Pathway" were now required to have an approved vaccination exemption: (1) fully vaccinated persons would not be required to participate in weekly asymptomatic testing if they selected the "Vaccination Pathway" and provided proof of vaccination or (2) vaccinated persons who select "Weekly Testing Pathway," unvaccinated persons, and undecided persons must have an approved exemption from the university's COVID-19 vaccination requirement[1] and must participate in weekly asymptomatic testing. The COVID-19 vaccination requirement was not substantively modified, except that the November 1 and 15, 2021 deadlines were eliminated, and it clarified that those without vaccinations would be required to participate in weekly asymptomatic testing, unless otherwise notified. However, weekly asymptomatic testing of the unvaccinated was also required by the August 31, 2021 Directives. As under the August 31, 2021 Directives, student violations could result in disciplinary action up to and including suspension or expulsion. The language governing faculty and staff violations was the same as under the August 31, 2021 Directives, except that the sentence that advised faculty and staff that their discipline could include termination of employment was omitted from the January 6, 2022 Directives.

{¶7} An additional "updated COVID-19 guidance for Spring Semester" was shared with the Ohio University community three days later on January 9, 2022. It announced that weekly asymptomatic testing would begin on January 14, 2022 for all students in university housing and all residents of sorority/fraternity properties, regardless of their vaccination status. Weekly asymptomatic testing would continue as previously

[1] Presumably vaccinated individuals who selected the Weekly Testing Pathway were not required to have an approved exemption, but the Directives do not expressly state this.

required for students and employees with a vaccination exemption and those who have not acted on the vaccination requirement or are in the process. Vaccinated persons not living in university housing or sorority/fraternity properties were, as before, not required to submit to weekly testing.

{¶8} The university also provided COVID-19 protocol concerning what to do if a person tests positive, experiences symptoms, or is exposed to COVID-19. Protocols for persons testing positive or experiencing symptoms were the same for all. However, the protocols for persons exposed to COVID-19 differed depending upon whether the person was vaccinated and/or boosted, and the time periods that had expired since vaccination. Unvaccinated persons and those who had been vaccinated over six months ago and not boosted (in the case of Pfizer or Moderna) or those who had been vaccinated over two months ago and not boosted (Johnson & Johnson (J&J)) were all required to quarantine for five days and mask for the remaining five days (assuming negative asymptomatic test results on day five post exposure). Those who had been boosted or vaccinated within the past six months (Pfizer and Moderna) or two months (J&J) were not required to quarantine but were required to mask for 10 days (assuming negative asymptomatic test results on day five post exposure).

{¶9} On December 7, 2021, appellants (plus two others who have since dismissed their claims) filed a complaint against the appellees, the appellees filed a motion to dismiss the complaint, and the appellants filed an amended complaint on January 19, 2022. The amended complaint sought declaratory and injunctive relief against the appellees.

{¶10} It alleged that the appellees lacked statutory authority to order appellants to wear a mask, undergo weekly testing, or limit their activities. It also alleged that appellees discriminated against appellants in violation R.C. 3792.04 (governing discrimination related to vaccines that have not been granted full Food and Drug Administration (FDA) approval) to the extent they are mandating vaccines that are not fully approved by the FDA. Third, it alleged that the mask mandates violated their Ohio constitutional right to refuse medical treatment. And last it alleged appellees violated R.C. 2905.12 (criminal coercion) to the extent that appellants are being threatened to take actions over which they have a legal freedom of choice.

{¶11} Thirteen appellants described themselves as students and one described herself as an employee. All alleged that they had applied for and received either religious, conscious, or medical exemptions from the vaccination requirement. They alleged, "No Plaintiffs have received a religious or medical exemption from the masking or testing mandate because they do not have a medical or religious reason to qualify for such exemptions under the Mandates."[2]

{¶12} The amended complaint contained a claim for declaratory judgment and sought injunctive relief. The claim for declaratory judgment sought a judicial declaration on four issues: (1) that appellees lacked authority under R.C. 3337.01 (establishing Ohio University board of trustees), R.C. 3345.021 (giving trustees the full power and authority on all matters relative to the administration of the university) and R.C. 3709.212 (regulating boards of health) to issue directives on vaccines, masking, and testing; (2)

[2] Although appellants refer to a "testing exemption" in their allegations, they cite to no testing exemption in the record and we could not find one. Additionally, the mask exemption is allowed "due to extraordinary circumstances" and the vaccine exemption is allowed "for medical reasons, or for reasons of conscious * * * or sincerely held religious beliefs."

that appellees had discriminated against them in violation of R.C. 3792.04, which prohibits the university from requiring an individual to receive a vaccine that has not been granted full approval by the FDA and prohibits discrimination against an individual for not receiving that vaccine; (3) that appellees violated appellants' constitutional right to refuse medical treatment by forcing them to wear masks, which they allege is a form of medical treatment; and (4) the appellees have engaged in criminal coercion by forcing appellants to provide proof of vaccination or exemption and requiring them to mask under threat of expulsion or termination. The claim for injunctive relief sought to have the appellees prohibited from enforcing the vaccine, mask, and testing requirements.

{¶13} The amended complaint included four exhibits: (1) the August 31, 2021 Community Health Directives; (2) the January 6, 2022 Community Health Directives; (3) the January 9, 2022 updated COVID-19 guidance for spring semester; and (4) the university protocol for positive tests, symptoms, and exposure. These four exhibits were collectively referred to by appellants as the "Mandates."

{¶14} Appellees filed a motion to dismiss the amended complaint. The appellees argued that the appellants lacked standing because they all applied for and received vaccination exemptions and they failed to allege whether they had applied for a mask exemption. The appellees also contended that the complaint failed to state a claim for which relief can be granted. They argued that the Moderna and Pfizer vaccines have both received full FDA approval and therefore R.C. 3792.04, which prohibits discrimination against persons who have not received a vaccination that has not been fully approved, is inapplicable. Even if R.C. 3792.04 applied, appellees contended that they have not discriminated against unvaccinated persons because an exemption is available, and the

masking and quarantine periods for persons who test positive are applied equally to those who are vaccinated and those who have exemptions. The appellees argued that R.C. 3709.212 (governing boards of health) is inapplicable to the university and R.C. 2905.12 (criminal coercion) does not create a private right of action. Last, the appellees argued that the mask requirement is not medical treatment. As evidence that the Pfizer and Moderna vaccinations had full approval, the appellees included as exhibits to their motion the FDA press announcements released on August 23, 2021 (Pfizer/Comirnaty) and January 31, 2022 (Moderna/Spikevax) which stated that the vaccinations had received full FDA approval for use in individuals 16 years of age and older (Pfizer/Comirnaty) or 18 years of age and older (Moderna/Spikevax).

{¶15} Appellants opposed the motion and argued that even though they have all received vaccine exemptions, they have standing to assert their discrimination claim and their claims that the mask and testing requirements violate their constitutional right to refuse medical treatment and constitute criminal coercion. Appellants assert that, contrary to appellees' assertions, masks are medical devices intended for a medical purpose which are regulated by the FDA and, as such, are a form of medical treatment they have a constitutional right to refuse. Appellants also argued that only the Pfizer, Moderna, and J&J vaccines are currently available and are not fully FDA approved. They contended that "[t]wo COVID-19 vaccines that have been fully authorized by the FDA, Comirnaty on August 23 ,0221 and Spikevax on January 31, 2022, but are not currently available."

{¶16} Appellants submitted a number of additional documents with their opposition memorandum including: (1) an FDA letter concerning "filtering facepiece respirators"; (2) a CDC document discussing masks and respirators; (3) an FDA

memorandum dated April 24, 2020 concerning face masks; (4) an FDA memorandum dated August 5, 2020 concerning surgical masks; (5) an FDA August 23, 2021 letter to Pfizer stating that the FDA had approved the biologics license application Pfizer had submitted for Comirnaty and stating that the Pfizer vaccine and the Comirnaty vaccine are the same formulation and can be used interchangeably; (6) an FDA August 23, 2021 letter to Pfizer issuing a biologics license application approval to manufacture the COVID-19 vaccine and specifying manufacturing locations, labeling under the proprietary name "Comirnaty," and specifying dating periods; (7) an announcement posted September 13, 2021 stating that Pfizer does not plan to produce Comirnaty over the next few months "while EUA [emergency use authorization] product is still available and being made available for U.S. distribution"; (8) a COVID-19 vaccination chart identifying 11 different COVID-19 vaccinations and the status of their FDA approval, among other things; (9) a January 31, 2022 FDA letter to Moderna stating that the FDA had approved the biologics license application Moderna had submitted for Spikevax and stating that the Moderna vaccine and the Spikevax vaccine have the same formulation and can be used interchangeably; (10) a January 31, 2022 FDA letter to Moderna issuing a biologics license application approval to manufacture the COVID-19 vaccine and specifying manufacturing locations, labeling under the proprietary name "Spikevax," and specifying dating periods.

{¶17} The trial court granted appellees' Civ.R. 12(B)(6) motion and dismissed the appellants' first amended complaint. The trial court's rationale was:

> For the reasons advanced by defendants in their motion, and finding itself concurring with the well-reasoned opinions of several other courts dismissing identical, or nearly identical, claims against other Ohio public universities, the Court hereby dismisses plaintiffs' claims in their entirety.

> Plaintiffs lack standing, their claims are moot, and they state no viable claims based upon constitutional grounds, Ohio statutory law, or otherwise. *See Siliko v. Miami University, Butler Co.* C.P. No. CV2021 10 1467 (Dec. 6, 2021*); Lipp v. University of Cincinnati, Hamilton Co* C.P. No. A2104238 (June 14, 2022); and *Hoerig v. Bowling Green State University*, Wood Co. C.P. No. 2021CV0456 (Feb. 28, 2022 & July 15, 2022).
>
> Accordingly, defendants' motion is granted, and plaintiffs' amended complaint is dismissed without prejudice.

II. ASSIGNMENTS OF ERROR

{¶18} Appellants identify three assignments of error for review:

> I. The trial court erred in dismissing appellants' first amended complaint for failure to state facts establishing standing, since there is a set of facts consistent with the complaint which would establish such standing.
>
> II. The trial court erred in dismissing appellants' first amended complaint for mootness, since the University did not meet its heavy burden of showing that it is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur.
>
> III. The trial court erred in dismissing appellants' first amended complaint for failure to state a claim for declaratory relief.

For convenience, we will address appellants' assignments of error together.

III. Review of Civ.R. 12(B)(6) Motion to Dismiss

A. Jurisdiction over a "Without Prejudice" Dismissal Entry

{¶19} Before we address the merits of the appeal, we must decide whether we have jurisdiction to do so. Appellate courts "have such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district[.]" Section 3(B)(2), Article IV, Ohio Constitution; *see, also,* R.C. 2505.03(A); R.C. 2953.02. If a court's order is not final and appealable, we have no jurisdiction to review the matter and must dismiss the appeal. If

the parties do not raise the jurisdictional issue, we must raise it sua sponte. *State v. Gibson*, 4th Dist. Highland No. 09CA16, 2010-Ohio-5632, ¶ 4.

{¶20} Here the trial court dismissed appellants' amended complaint pursuant to appellees' "Civ.R. 12(B)(6) motion to dismiss" and stated that the dismissal was "without prejudice."[3] Ordinarily a dismissal of a complaint "without prejudice" is not a final, appealable order because it is not an adjudication on the merits and does not prevent the party from refiling. *State ex rel. DeDonno v. Mason,* 128 Ohio St.3d 412, 2011-Ohio-1445, 945 N.E.2d 511, ¶ 2 ("*See* Civ.R. 41(B)(3). 'Ordinarily, a dismissal "other than on the merits' does not prevent a party from refiling and, therefore, ordinarily, such a dismissal is not a final, appealable order." ' ").

{¶21} Despite the trial court's statement that the order was "without prejudice," the Supreme Court of Ohio has held, "[A] dismissal grounded on a complaint's 'failure to state a claim upon which relief can be granted' constitutes a judgment that is an 'adjudication on the merits.' As a result, res judicata bars refiling the claim." *State ex rel. Arcadia Acres v. Ohio Dept. of Job & Family Servs.*, 123 Ohio St.3d 54, 2009–Ohio–4176, 914 N.E.2d 170, ¶ 15. Thus, *Arcadia Acres* held that a dismissal pursuant to Civ.R. 12(B)(6) is with prejudice to refiling. However, the Court's analysis in *Arcadia Acres* made no reference to, nor did it expressly overturn, its prior ruling about a year earlier in *Fletcher v. Univ. Hosps. of Cleveland*, 120 Ohio St.3d 167, 2008-Ohio-5379, 897 N.E.2d 147.

{¶22} In *Fletcher,* the Court held that "a dismissal for failure to state a claim is without prejudice except in those cases where the claim cannot be pleaded in any other

[3] The trial court's ruling also included a notation that "this is a judgment or final order, which may be appealed." But a trial court's own determination concerning whether an order is final and appealable is not determinative of the issue. *Bland v. Toyota Motor Sales*, 2018-Ohio-1728, 111 N.E.3d 933, ¶7, fn. 1. (2d Dist.).

way." *Id.* at ¶ 17. The Court found that the dismissal there was based on the failure to include an affidavit of merit, therefore "[i]n this particular case, the dismissal was not on the merits of [plaintiff's] claim. Instead, it merely went towards the sufficiency of the complaint—namely, the complaint's failure to include an affidavit of merit. Thus, the dismissal should have been without prejudice." *Id.* at ¶ 18, 897 N.E.2d 147; *Parker v. Ford Motor Co.*, 2019-Ohio-882, 124 N.E.3d 893, ¶ 7 (1st Dist.) ("an order granting a motion to dismiss for failure to state a claim upon which relief can be granted, even if dismissed without prejudice, may still be a final, appealable order if the claims cannot be pled any differently to state a claim for relief."); *Dugas v. Ohio Adult Parole Auth.,* 10th Dist. Franklin No. 21AP-491, 2022-Ohio-1923, ¶ 19-20 (comparing *Fletcher* and *Arcadia Acres* and discussing the Tenth District's precedent following *Arcadia Acres* and finding that a Civ.R. 12(B)(6) dismissal is a final appealable order); *see also Sultaana v. Horseshoe Casino*, 8th Dist. Cuyahoga No. 102501, 2015-Ohio-4083, ¶ 17 (providing a string citation of cases from the Second, Eighth, Tenth, Eleventh, and Twelfth Districts that have held, "A dismissal under Civ.R. 12(B)(6) operates as an adjudication on the merits and properly results in a dismissal with prejudice.").

{¶23} Based on the Supreme Court of Ohio precedent, we find that the trial court's order granting appellees' Civ.R. 12(B)(6) motion to dismiss is a final, appealable order even though it stated it was "without prejudice." We agree with the approach adopted by the Second District Court of Appeals in a similar case, *Bland v. Toyota Motor Sales*, 2018-Ohio-1728, 111 N.E.3d 933 (2d Dist.). In *Bland,* the trial court granted a Civ.R. 12(B)(6) motion to dismiss a complaint and used the phrase "without prejudice" in the order. The Second District held that the order was a final, appealable order despite the "without

prejudice" language. It noted the general rule announced by *Fletcher* and recited by the First District in *Parker, supra,* and *Hulsmeyer v. Hospice of Southwest Ohio*, *Inc.*, 2013-Ohio-4147, 998 N.E.2d 517, ¶ 11 (1st Dist.) that a Civ.R. 12(B)(6) dismissal without prejudice "may be appealable 'if the plaintiff cannot plead the claims any differently to state a claim for relief.' " *Bland* at ¶ 7, quoting *Hulsmeyer* at ¶ 11. The Second District acknowledged it would be somewhat speculative to guess whether the plaintiffs might plead differently to overcome their deficiencies and thus presumed they would not:

> Here it is unclear whether Bland and Lasky potentially could plead differently to state a breach-of-contract claim against Toyota Motor Sales. Resolution of that issue likely depends, at least in part, on the existence or non-existence of facts that are known to them. For present purposes, however, we will presume that Bland and Lasky are incapable of pleading differently to overcome the deficiencies found by the trial court. If that were not so, they likely would have re-filed their complaint rather than appealing the dismissal. Accordingly, we will proceed to the merits of the appeal.

Bland at ¶ 8. Similarly, here though we cannot decisively determine whether the appellants might conceivably plead their claims differently, we note they filed an amended complaint in response to appellees' first motion to dismiss, which shows that they have already attempted to do so. We presume that appellants put forth their most capable efforts in re-filing their amended complaint and are incapable of pleading differently to overcome the deficiencies found by the trial court. This is particularly true where the deficiencies are in the appellants' standing to bring the claims. Accordingly, we find that the trial court's order was a final, appealable order notwithstanding the "without prejudice" language and we will proceed to the merits of the appeal.

B. Standard of Review

{¶24} We review dismissals pursuant to Civ.R. 12(B)(6) de novo, presume the truth of all material factual allegations in the complaint, and make all reasonable

inferences in plaintiff's favor. *State ex rel. Yost v. Rover Pipeline, L.L.C.*, 167 Ohio St.3d 223, 2022-Ohio-766, 191 N.E.3d 421, ¶ 6. " 'In order for a trial court to dismiss a complaint under Civ.R. 12(B)(6) for failure to state claim upon which relief can be granted, it must appear beyond doubt that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to the relief sought.' " *Id.* at ¶ 18, quoting *Ohio Bur. of Workers' Comp. v. McKinley*, 130 Ohio St.3d 156, 2011-Ohio-4432, 956 N.E.2d 814, ¶ 12; *Williams v. MJS Enterprises, Ltd.*, 2022-Ohio-3695, 199 N.E.3d 132, ¶ 20 (4th Dist.).

{¶25} Even though appellees filed a Civ.R. 12(B)(6) motion to dismiss – which is limited to the allegations set forth in the complaint – they submitted three documents to their motion: two FDA press releases about the Pfizer and Moderna vaccine approvals and an FDA question and answer sheet about Comirnaty. Appellants likewise submitted ten documents to their opposition memorandum.[4] Yet, there was no indication anywhere in the record that the trial court had converted the Civ.R. 12(B)(6) motion to a summary judgment motion. As we explained recently in *Williams, supra*:

> When a trial court considers a Civ.R. 12(B)(6) motion to dismiss, it * * * "cannot rely on evidence or allegations outside the complaint to determine a Civ.R. 12(B)(6) motion." When a party presents evidence outside the pleadings, the trial court bears the "responsibility either to disregard [the] extraneous material or to convert [the] motion to dismiss into a motion for summary judgment * * *." If the court converts the motion to dismiss to one for summary judgment, the court must give the parties notice and a reasonable opportunity to present all of the available evidence that Civ.R. 56(C) permits. Civ.R. 12(B).

Williams at ¶ 26.

[4] To clarify, in addition to the 13 additional extraneous documents we identified, the parties submitted copies of decisions from various Ohio common pleas courts. It was not improper for the parties to submit copies of those decisions with their briefings, or as supplemental authority, and the trial court could consider those nonbinding decisions in its analysis.

{¶26} Here, the trial court neither converted the Civ.R. 12(B)(6) motion to a motion for summary judgment nor did it consider the extraneous material submitted by the parties. The trial court's decision makes no reference to any of the documents the parties submitted with their briefings. Thus, without an indication in the record to the contrary, a presumption of validity attends the trial court's action and we will presume the trial court disregarded the materials submitted, except those submitted with the amended complaint. *Volodkevich v. Volodkevich*, 48 Ohio App.3d 313, 314, 549 N.E.2d 1237, 1238 (9th Dist.1989) (a presumption of validity attends the trial court's actions). Likewise, we will not rely on any of the extraneous materials the parties submitted.

C. Standing

{¶27} Before a court can consider the merits of a legal claim, "the person or entity seeking relief must establish standing to sue." *Ohio Pyro, Inc. v. Ohio Dept. of Commerce, Div. of State Fire Marshal*, 115 Ohio St.3d 375, 2007-Ohio-5024, 875 N.E.2d 550, ¶ 27. Under common-law standing, a plaintiff must demonstrate: (1) an injury; (2) that is traceable to the defendant's allegedly unlawful conduct, and (3) is likely to be redressed by the requested relief. *Ohioans for Concealed Carry, Inc. v. Columbus,* 164 Ohio St.3d 291, 2020-Ohio-6724, 172 N.E.3d 935, ¶ 12. "[T]he question of standing depends upon whether the party has alleged such a 'personal stake in the outcome of the controversy,' as to ensure that 'the dispute sought to be adjudicated will be presented in an adversary context and in a form historically viewed as capable of judicial resolution.' " (Citations omitted.) *Sierra Club v. Morton*, 405 U.S. 727, 732, 31 L.Ed.2d 636, 92 S.Ct. 1361, 1364 (1972). Standing "must be demonstrated for each claim and each form of relief." *Ohioans for Concealed Carry* at ¶ 13. " '[S]tanding is to be determined as of the commencement

of the suit.' *" Fed. Home Loan Mtge. Corp. v. Schwartzwald*, 134 Ohio St.3d 13, 2012-Ohio-5017, 979 N.E.2d 1214, ¶ 24. The amended complaint was filed on January 19, 2022, which is the date we use as the "commencement of the suit" for purposes of our standing analysis.

{¶28} Appellants assert they have standing under common-law standing principles and under the Declaratory Judgment Act, R.C. 2721.03, which provides:

> * * * any person whose rights, status, or other legal relations are affected by a constitutional provision, statute, rule as defined in section 119.01 of the Revised Code, municipal ordinance, township resolution, contract, or franchise may have determined any question of construction or validity arising under the instrument, constitutional provision, statute, rule, ordinance, resolution, contract, or franchise and obtain a declaration of rights, status, or other legal relations under it.

"The three prerequisites to declaratory relief include '(1) a real controversy between the parties, (2) justiciability, and (3) the necessity of speedy relief to preserve the parties' rights.' " *Ohioans for Concealed Carry* at ¶ 30, quoting *ProgressOhio.org, Inc. v. JobsOhio*, 139 Ohio St.3d 520, 2014-Ohio-2382, 13 N.E.3d 1101, ¶ 19.

> Although a declaratory-judgment action generally contemplates that the action is brought before an injury-in-fact has occurred, a plaintiff must nonetheless demonstrate "actual present harm or a significant possibility of future harm to justify pre-enforcement relief." *Peoples Rights Org., Inc. v. Columbus*, 152 F.3d 522, 527 (6th Cir.1998). Certain impending injury is sufficient to obtain preventative relief; a plaintiff need not wait for an injury to actually occur. *Id*.

Ohioans for Concealed Carry, Inc. at ¶ 32.

{¶29} Appellants' claim for declaratory relief sought four different declarations: (1) that the appellees lacked authority under R.C. 3337.01 and R.C.3345.021 to issue the Mandates (the Community Health Directives and related communications attached to the amended complaint), which they alleged were "manifestly unreasonable and is beyond

[appellees] authority under Ohio case law"; (2) the Mandates violate R.C. 3792.04, which prohibits discrimination between an unvaccinated person and a person vaccinated against COVID-19 with a vaccine not fully approved by the FDA; (3) the portion of the Mandates that require the wearing of masks violates the right to refuse medical treatment under Article I, Section I of the Ohio Constitution; (4) the appellees violated R.C. 2905.12, the criminal prohibition on coercion.

1. University Authority under R.C. 3337.01, R.C. 3345.021 and R.C. 3709.212

{¶30} Appellants alleged that the university lacked authority to issue the Mandates under R.C. 3337.01 and R.C. 3345.021. R.C. 3337.01 establishes a university board of trustees and R.C. 3345.021 gives the board of trustees "full power and authority on all matters relative to the administration of such college or university." They also allege that the appellees exceeded the public policy limits on local boards of health as enacted in R.C. 3709.212. The Mandates contain: (1) a vaccine requirement and exemption; (2) masking requirements and exemptions; and (3) testing requirements if a person is positive, symptomatic, or exposed to COVID-19. As of the date of the filing of the first amended complaint, all physical distancing requirements had been eliminated.

{¶31} First, we can readily dispense with the claim involving R.C. 3709.212. That statute governs orders or regulations "issued by a board of health of a city or general health district." The statute has nothing to do with the authority of Ohio University or its Trustees to administer the university. *Siliko v. Miami Univ.*, 12th Dist. No. CA2021-12-162, 2022-Ohio-4133, ¶ 40-44 (discussing an identical claim brought against Miami University and its Board of Trustees and rejecting it: "The university's vaccination policy

is not a public health order or regulation and the university's board of trustees is not a local health department.")

{¶32} As for the claims involving R.C. 3337.01 and R.C. 3345.021, we find, as the Twelfth District did in *Siliko*, that the appellants lack standing. The appellants applied for and received vaccine exemptions and did not apply for mask exemptions.[5] Therefore, they lack standing to challenge the vaccine and masking Mandates because they lack an injury or a real justiciable controversy. *See Siliko v. Miami Univ.*, 12th Dist. No. CA2021-12-162, 2022-Ohio-4133, ¶ 28-32, *appeal not accepted*, 169 Ohio St.3d 1459, 2023-Ohio-758 (Mar. 14, 2023). In *Siliko*, two university employee-plaintiffs had sought and obtained religious exemptions to the vaccination policy prior to the filing of the case and the remaining employee-plaintiff had not applied for an exemption as of the filing of the amended complaint. The appellate court reviewed three recent federal decisions, *Bare, Wade,* and *Klaassen, infra,* and determined that the plaintiffs all lacked standing due to lack of injury or real justiciable controversy between the parties. Where a party has received an exemption from the vaccination policy, the party has not suffered any injury. And, where a party has "failed to avail herself of the process that would allow her to avoid the vaccination requirement" then she "has not suffered an injury that the law recognizes." *Siliko* at ¶ 32; *Bare v. Cardinal Health, Inc*., 6th Cir. Case No. 22-5557, 2023 WL 395026 (Jan. 25, 2023) (employee who received religious exemption from vaccine mandate did not have "a cognizable injury" and thus lacked standing to bring suit); *Calderwood v. United States,* 623 F.Supp.3d 1260 (N.D. Ala. 2022) (federal contractors who submitted

[5] The amended complaint alleged that the appellants had not received a mask exemption but did not specifically allege whether they had applied for a mask exemption. At oral argument, counsel for appellants clarified that the appellants had not applied for a mask exemption.

religious exemption requests that were pending at the time the amended complaint was filed lacked standing because they did not carry their burden that they faced "certainly impeding threat of forced vaccination" or adverse employment action; federal contractor who submitted an application for a medical exemption after the amended complaint was filed could have done so before it was filed and also lacked standing because plaintiffs "cannot manufacture standing merely by inflicting harm on themselves based on fears of hypothetical future harm"); *Pavlock v. Perman*, D. Md. Civ. Action No. RDB-21-2376, 2022 WL 3975177 (Sept. 1, 2022) (university students and university employee who applied for and received vaccine exemptions did not suffer "an injury in fact required for standing"); *Pelekai v. Hawai'i*, D. Haw. Case No. 21-cv-00343-DKW-RT, 2021 WL 4944804, (Oct. 22, 2021) (plaintiff-employees of Honolulu and Maui who all received various vaccination exemptions failed to establish injuries sufficient to survive motion to dismiss on standing and mootness grounds); *Wade v. Univ. of Connecticut Bd. of Trustees,* 554 F.Supp.3d 366 (D. Conn., 2021) (university students who received exemptions from the vaccination requirement or who declined to seek an exemption, failed to establish an injury and therefore lacked standing); *Klaasen v. Trustees of Indiana Univ.*, 549 F.Supp.3d 836 (N.D. Ind. 2021) (six students who received vaccine exemption lacked standing, but could proceed since at least one of the other students did not have an exemption and could allege an injury traced to the vaccine mandate).

{¶33} Here, not only have none of the appellants sought a mask exemption, but they also failed to allege that it would be futile to do so. The Mandates provide for a mask exemption "due to extraordinary circumstances." Appellants alleged that they had no "religious" or "medical" basis to apply for a mask exemption, but the amended complaint

does not contain allegations that it would be futile for appellants to apply for the mask exemption (i.e., that they had no "extraordinary circumstances" that would make them eligible for a mask exemption). "As a general matter, to establish standing to challenge an allegedly unconstitutional policy, a plaintiff must submit to the challenged policy * * * a plaintiff who fails to submit to the procedural requirements of a law or policy that offers an exemption or other relief from its mandate does not have standing to challenge the restrictions imposed by the law or policy." *Wade,* 554 F.Supp.3d at 377. A plaintiff may be excused of the requirement to submit to the procedural requirements of law, policy, or exemption if to do so would be futile. *Id*. ("It is true that a plaintiff need not seek an exemption from a policy if to do so would be futile. * * * But there is no basis to suggest it would be futile for Wade to seek an exemption.") Thus, we find that appellants lack standing to challenge the mask Mandates because they failed to avail themselves of the mask exemption policy or plead facts demonstrating the futility of seeking such an exemption.

{¶34} This leaves only the question of whether the appellants have standing to challenge the Mandates' testing requirements as being beyond the scope of appellees' authority under R.C. 3345.021. Based on the materials submitted with the amended complaint, there was no exemption for testing requirements. In their amended complaint, appellants alleged that the Mandate requires "every unvaccinated person and others within the university submit to weekly COVID-19 testing" and is a health regulation that "exceeds Defendants' general authority to administer the University." The amended complaint contains no allegations that the appellants suffered injury from the testing and no allegations that they have been expelled, suspended, or disciplined in any manner

arising from the testing requirements. Several cases have held that the act of testing is not an injury. *Calderwood v. United States*, 623 F.Supp.3d 1260 (N.D. Ala. 2022) (weekly COVID-19 testing does not support standing because "even if weekly testing 'causes inconvenience, stress and fear,' those feelings aren't concrete injuries"); *Pavlock v. Perman*, D. Md. Civ. Action No. RDB-21-2376, 2022 WL 3975177 (Sept. 1, 2022) (university students' complaints that they were required to undergo COVID-19 testing multiple times per week did not have an injury required for standing because "such protective measures * * * do not present an injury in fact.")

{¶35} In their brief, appellants argue that to show "standing for claims of lack of authority, the U.S. Supreme Court has 'found it sufficient that the challenger "sustain[s] injury" for an executive act that allegedly exceeds authority.' " They cite *Seila Law LLC v. Consumer Fin. Protection Bur.*, 207 L.Ed.2d 494, 140 S.Ct. 2183, 2196 (2020) and contend that their injury is the threat of "suspension or expulsion if they don't comply with the Mandates." However, they do not allege that they have been expelled or suspended or – much less – that any disciplinary procedures have been initiated against them.

{¶36} *Seila* does not help appellants because the *Seila* case requires an actual concrete injury, which appellants do not have. *Seila* is the Supreme Court decision that held that the structure of the Consumer Financial Protection Bureau (CFPB) violated the separation of powers because the President could not fire the director at will. When Congress created the CFPB, it was given broad regulatory powers over consumer financial transactions, including fair debt collection practices and consumer credit. "The CFPB Director has no boss, peers, or voters to report to. Yet the Director wields vast rulemaking, enforcement, and adjudicatory authority over a significant portion of the U. S.

economy." *Id.* at 2191. Seila was a law firm that was allegedly engaged in consumer credit services. CFPB believed Seila was violating CFPB's consumer protection regulations, initiated an investigation into Seila, and issued a "demand" (like a subpoena) requiring Seila to produce documents in response to CFPB's investigation. Seila challenged CFPB's legitimacy under the separation of powers doctrine. CFPB challenged Seila's standing to challenge CFPB's legitimacy. The Court found:

> [P]etitioner's [Selia's] appellate standing is beyond dispute. Petitioner is compelled to comply with the civil investigative demand and to provide documents it would prefer to withhold, a concrete injury. That injury is traceable to the decision below and would be fully redressed if we were to reverse the judgment of the Court of Appeals and remand with instructions to deny the Government's petition to enforce the demand.

Seila Law LLC v. Consumer Financial Protection Bur., 207 L.Ed.2d 494, 140 S.Ct. 2183, 2196.

{¶37} Here, although appellants allege they are under the authority of a questionable Mandate and Selia alleged it was under the authority of a questionable federal bureau, that is where the similarities end. Selia had been placed under investigation for allegedly violating a regulation enforced by the questionable bureau and was being compelled to respond to its document demands. Appellants, to the contrary, have not alleged that they are being investigated or disciplined for violating the testing Mandates. Unlike the Seila law firm, appellants have alleged no concrete injury. A concrete injury or "injury in fact" is "(a) concrete and particularized, and (b) 'actual or imminent,' not 'conjectural' or 'hypothetical,' " (Citations omitted.) *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61, 119 L.Ed.2d 351, 112 S.Ct. 2130, 2136 (1992). Appellants do not have standing to challenge the appellees' Mandates as it relates to the testing

requirements because they have alleged no concrete injury. Their contention that their injury is the *threat* of expulsion or suspension is conjectural and hypothetical.

{¶38} In sum, appellants do not have standing to challenge the appellees' vaccine and mask Mandates because they have obtained vaccine exemptions and have not sought mask exemptions and therefore do not have an injury or real justiciable controversy. Appellants do not have standing to challenge the testing Mandates because they have alleged no injury traceable to the testing Mandates. The "testing" itself is not an injury and the possible threat of expulsion or suspension is purely conjectural. The trial court properly dismissed appellants' claim for declaratory relief based on lack of authority under R.C. 3339.01, R.C. 3345.021, and R.C. 3709.212.

2. Discrimination under R.C. 3792.04[6]

{¶39} In October 2021, R.C. 3792.04, a statute prohibiting discrimination based on vaccination status, became effective. It provides, in relevant part:

> (B) Notwithstanding any conflicting provision of the Revised Code, a public school or state institution of higher education shall not do either of the following:
>
> (1) Require an individual to receive a vaccine for which the United States food and drug administration has not granted full approval;
>
> (2) Discriminate against an individual who has not received a vaccine described in division (B)(1) of this section, including by requiring the individual to engage in or refrain from engaging in activities or precautions that differ from the activities or precautions of an individual who has received such a vaccine.

[6] R.C. 3792.04 does not expressly provide for a civil remedy to a private party. Neither one of the statutory provisions in Chapter 3792 concerning vaccinations expressly creates a private right of action. Other chapters within Title 37 contain criminal fines and/or civil penalties and enforcement is provided by the state or its administrative agencies. *See Doe v. Adkins*, 110 Ohio App.3d 427, 435, 674 N.E.2d 731, 736 (4th Dist.1996) (applying a three-prong test to determine whether to imply a private right of action). However, the parties did not raise this below, therefore we need not address it on appeal.

> (C) This section does not apply to a hospital or other health care facility that is owned or operated by, or affiliated with, a state institution of higher education.

{¶40} Appellants alleged that the COVID-19 vaccines currently available to be administered as of January 19, 2022 when they filed their amended complaint were J&J, Moderna, and Pfizer and those vaccines had only received emergency use authorization (EUA) from the FDA. They alleged Comirnaty was a COVID-19 vaccine that was fully approved by the FDA on August 23, 2021, but that it was not available. They alleged, "The only COVID-19 vaccines available to fulfill the Mandates are EUA vaccines that have not been fully approved by the FDA." For purposes of analyzing a Civ.R. 12(B)(6) motion, we take this factual allegation to be true.

{¶41} Appellants alleged that appellees discriminated in violation of R.C. 3792.04 because the Mandates do not require persons to submit to weekly testing who have been vaccinated with EUA vaccines and do not live in university housing or sorority/fraternity properties. Weekly testing is required of those who are unvaccinated, including the appellants, and those living in university housing or sorority/fraternity properties regardless of vaccination status. Appellants also alleged that the Mandates do not require all persons vaccinated with EUA vaccines to submit to a negative COVID-19 test prior to attending school sponsored functions (like plays) but required all others to submit to testing prior to attending an event like a play. Similarly, there were quarantine distinctions between the vaccinated and unvaccinated that appellants alleged were discriminatory in violation of R.C. 3792.04.

{¶42} In their motion to dismiss, appellees argued that R.C. 3792.04 applied only to vaccines that had not been fully approved by the FDA. They argued that the Moderna

and Pfizer vaccines were fully approved by the FDA, Moderna as of January 31, 2022 (which was after the amended complaint was filed) and Pfizer as of August 31, 2021. Therefore, appellees argued, R.C. 3792.04 was inapplicable to the case. Appellees submitted FDA press releases about the vaccines' approvals as evidence to support their Civ.R. 12(B)(6) motion to dismiss. However, a Civ.R. 12(B)(6) motion is limited to the allegations in the complaint and documents that are submitted with the complaint. Based on the allegations in the complaint, the vaccines were not fully approved by the FDA. The trial court did not convert the Civ.R. 12(B)(6) motion to dismiss into a summary judgment motion. Therefore, any evidence that the vaccines had been fully approved by the FDA could not be considered in determining the motion. And because standing is determined at the time the amended complaint was filed, subsequent approvals (such as Moderna/Spikevax) would not impact the standing analysis.

{¶43} Appellees also argued that R.C. 3792.04(B)(1) was not applicable because the appellants were granted exemptions from the vaccination. And, for purposes of R.C. 3792.04(B)(2), they contended that some of the testing requirements applied regardless of vaccination status and that appellants did not allege that they were subject to the testing. However, the allegations and documents submitted with the amended complaint show that appellants did allege that they were subject to discriminatory testing and that the testing requirements discriminated based on vaccination status. A person who lived off campus and was vaccinated was subjected to different testing requirements than someone who lived off campus and was unvaccinated.

{¶44} Based on the allegations set forth in the amended complaint, we find that appellants have sufficiently alleged facts establishing standing to bring a discrimination

claim under R.C. 3792.04(B)(2). Appellants' amended complaint sets forth allegations addressing the three factors of common-law standing – injury, causation, and redressability. Appellants allege that appellees implemented a COVID-19 policy that treats them, as unvaccinated students and employees, differently than those who have received the EUA COVID-19 vaccines. Appellants' amended complaint alleges that they must comply with different testing requirements that are not required of vaccinated students and employees and it seeks relief in the form of injunctive relief from discriminating against appellants.

{¶45} The trial court erred in dismissing this claim for lack of standing or for failure to state a claim upon which relief can be granted. Additionally, to the extent the trial court dismissed this discrimination claim under R.C. 3792.04(B)(2) as moot, it erred. There was nothing within the allegations of the amended complaint or the documents submitted with it from which the trial court could find the discrimination claim moot. Moreover, appellees' motion to dismiss did not even raise "mootness" as a legal basis to dismiss the amended complaint.

3. Mask Mandates and the Right to Refuse Medical Treatment

{¶46} For their third claim for declaratory relief, appellants alleged that they have a right under Article I, Section 1 of the Ohio Constitution to refuse medical treatment. They also allege, "The Mandates' requirement to wear masks is a form of medical treatment." Appellants alleged that they are entitled to refuse to wear a mask based on their constitutional right to refuse medical treatment. Appellants alleged (and confirmed at oral argument) that they did not seek or receive a mask exemption.

{¶47} The Supreme Court of Ohio recognized the right to refuse medical treatment and the right to determine what shall be done with one's own body:

> The right to refuse medical treatment is a fundamental right in our country, where personal security, bodily integrity, and autonomy are cherished liberties. These liberties were not created by statute or case law. Rather, they are rights inherent in every individual. Section 1, Article I of the Ohio Constitution provides that "[a]ll men are, *by nature,* free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety." (Emphasis added.) Our belief in the principle that "[e]very human being of adult years and sound mind has a right to determine what shall be done with his own body," is reflected in our decisions.

(Citations omitted.) *Steele v. Hamilton Cty. Community Mental Health Bd.,* 90 Ohio St.3d 176, 180–81, 736 N.E.2d 10, 15–16 (2000). Appellants couched their mask claim in the context of an Ohio constitutional right to refuse medical treatment as there is no general constitutional right to refuse to wear a mask:

> [T]here is no general constitutional right to wear, or to refuse to wear a face mask in public places. While the government typically does not regulate what an individual must wear in the privacy of his or her own home, federal, state and local governments may govern what must be worn in public spaces, particularly when the health and safety of the general public are at issue. Wearing a face mask in the time of a global pandemic is a matter of public health. In fact, other federal courts that have considered the mask requirement have upheld it.

(Citations omitted.) *Whitfield v. Cuyahoga Cty. Pub. Library Found*., N.D.Ohio No. 1:21 CV 0031, 2021 WL 1964360, *2 (May 17, 2021); *Klaassen v. Trustees of Indiana Univ*., 549 F.Supp.3d 836, 889 ("there is no fundamental constitutional right to not wear a mask * * * nor is there a fundamental constitutional right not to be tested for a virus before entering a place of public accommodation.")

{¶48} We find that appellants lack standing to bring their claim that the mask Mandate violates their constitutional right to refuse medical treatment because they did not avail themselves of the mask exemption. Thus, appellants lack standing to bring this claim for the same reason appellants lack standing to bring a claim that the mask Mandate exceeds the university's authority under R.C. 3345.021 – they did not apply for an exemption to the mask requirement. Having failed to avail themselves of a simple process that may allow them to avoid the mask requirement, they have not suffered an injury that the law recognizes as the basis for a right to complain in court. *Siliko v. Miami Univ*., 12th Dist. No CA2021-12-162, 2022-Ohio-4133, ¶ 31; *Wade v. Univ. of Connecticut Bod. of Trustees,* 554 F.Supp.3d 366, 368 (D. Conn. 2021).

{¶49} The trial court properly dismissed this claim for lack of standing.

4. Coercion under R.C. 2905.12

{¶50} For their fourth and last claim, appellants seek a declaration that the appellees are coercing them in violation of the criminal coercion statute, R.C. 2905.12, which establishes a second-degree misdemeanor for coercion:

> (A) No person, with purpose to coerce another into taking or refraining from action concerning which the other person has a legal freedom of choice, shall do any of the following: * * * (5) Take, withhold, or threaten to take or withhold official action, or cause or threaten to cause official action to be taken or withheld.

{¶51} The appellants' amended complaint alleges, "The Mandates involves [sic] taking or withholding official action to coerce Plaintiffs to accept medical treatment which Plaintiffs have the legal freedom to refuse under Article I, Section 1 of the Ohio Constitution * * * and therefore violates R.C. 2905. The Mandates provide that Plaintiffs must either provide proof of Covid-19 vaccination or obtain an exemption with related

restrictions, including but not limited to, masking or be subject to expulsion or termination of employment." Appellants cite no authority to support their contention that they have standing to seek a declaration that they are the victims of coercive acts.

{¶52} The coercion statute is a criminal statute. It gives rise to a right of prosecution by the state but does not create a private right of action.

> "[A] claim of coercion is not a 'cognizable civil cause of action.' " "In the absence of a specific provision to the contrary, criminal statutes generally do not create a private cause of action, but give rise only to a right of prosecution by the state."

(Citations omitted.) *Siliko v. Miami Univ*., 12th Dist. Butler No. CA2021-12-162, 2022-Ohio-4133, ¶ 37*, appeal not allowed*, 169 Ohio St.3d 1459, 2023-Ohio-758; *Klaassen,* 549 F.Supp. at 870-871 ("The university is presenting the students with a difficult choice – get the vaccine or else apply for an exemption * * * or forego school for the semester or altogether. But this hard choice doesn't amount to coercion."). A claim of coercion is not a cognizable civil cause of action, appellants do not have standing to bring a claim under R.C. 2905.12, and the trial court properly dismissed it.

{¶53} We sustain in part and overrule in part appellants' first assignment of error. To the extent that appellants have sufficiently alleged facts establishing standing to bring their discrimination claim under R.C. 3792.04(B)(2), the trial court erred in dismissing that claim. The trial court properly dismissed the remaining claims because appellants lack standing.

{¶54} We have addressed appellants' second and third assignment of errors as they relate to the discrimination claim under R.C. 3792.04(B)(2). We sustain those two assignments of error to the extent they challenge the Civ.R. 12(B)(6) dismissal of the

discrimination claim as moot or for failure to state a claim upon which relief may be granted. We find appellants' remaining assignments of error moot.

> App.R. 12(A)(1)(c) states that "[u]nless an assignment of error is made moot by a ruling on another assignment of error," a court of appeals shall "decide each assignment of error and give reasons in writing for its decision." An assignment of error is moot when it cannot have " 'any practical legal effect upon a then-existing controversy.' " *Culver v. Warren*, 84 Ohio App. 373, 393, 83 N.E.2d 82 (7th Dist.1948), quoting *Ex parte Steele*, 162 F. 694, 701 (N.D.Ala.1908). Put differently, an assignment of error is moot when an appellant presents issues that are no longer live as a result of some other decision rendered by the appellate court.

State v. Gideon, 165 Ohio St.3d 156, 2020-Ohio-6961, 176 N.E.3d 720, ¶ 26. Because we find that the appellants' remaining claims were properly dismissed by the trial court because appellants lacked standing, it is not necessary to determine whether they were improperly dismissed on other grounds. *In re D.H.*, 4th Dist. Gallia No. 09CA11, 2009-Ohio-6009, ¶ 54; *BND Rentals, Inc. v. Dayton Power & Light Co*., 2020-Ohio-4484, 158 N.E.3d 993, ¶ 65 (2d Dist.) ("A decision that achieves the right result must be affirmed, even if the wrong reasoning is used to justify the decision, because an error in reasoning is not prejudicial.").

IV. CONCLUSION

{¶55} We sustain appellants' assignments of error in part and overrule in part. To the extent appellants have sufficiently alleged facts establishing standing to bring their discrimination claim under R.C. 3792.04(B)(2), we reverse the trial court's decision as to this claim only and remand the matter for further proceedings. In all other respects, the trial court's judgment is affirmed because appellants lack standing to bring their claims that (1) appellees lacked authority under R.C. 3337.01, R.C. 3345.021, and R.C. 3709.212 to issue the Mandates; (2) appellees violated appellants' constitutional right to

refuse medical treatment when appellees issued mask Mandates; and (3) appellees violated the criminal coercion statute, R.C. 2905.12, when they issued the Mandates.

JUDGMENT AFFIRMED IN PART,
REVERSED IN PART, AND MATTER
REMANDED FOR FURTHER PROCEEDINGS.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED IN PART, REVERSED IN PART, AND MATTER REMANDED FOR FURTHER PROCEEDINGS, and that appellee and appellant shall pay the costs equally.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Athens County Court of Common Pleas to carry this judgment into execution.

Any stay previously granted by this Court is hereby terminated as of the date of this entry.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Smith, P.J. & Wilkin, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
Michael D. Hess, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.