

STATE OF MICHIGAN
COURT OF APPEALS

In re E. J. SMITH, Minor.

UNPUBLISHED
June 24, 2021

No. 354881
Grand Traverse Circuit Court
Family Division
LC No. 19-004787-NA

Before: STEPHENS, P.J., and BECKERING and O’BRIEN, JJ.

PER CURIAM.

In this child protective proceeding, the minor child’s nonrespondent father, SMS, appeals by leave granted¹ the trial court’s order denying his petition for rehearing of an order giving petitioner, the Department of Health and Human Services, discretion to allow respondent-mother to have unsupervised or supervised parenting time with the child, EJS. We dismiss the appeal as moot.

This is the second time that this case has been before us. In a prior interlocutory appeal, this Court concluded that a dispute between respondent-mother and SMS with respect to vaccination of EJS was moot because the trial court terminated its jurisdiction over respondent-mother while the appeal advanced and the parties were working to resolve the dispute in a separate proceeding. *In re Smith*, ___ Mich App ___, ___; ___ NW2d ___ (2020) (Docket No. 353861); slip op at 2. This Court also concluded that the “capable-of-repetition-but-evading-review” exception to dismissal of a moot case should not be invoked because the case did not present a legal question that is likely to evade judicial review. *Id.* at 2, 3.

The present appeal arises from the trial court’s September 1, 2020 order denying SMS’s petition for rehearing of a March 17, 2020 order giving petitioner discretion to allow respondent-mother to have unsupervised or supervised parenting time. In a related order entered on August 29, 2020, regarding respondent-mother’s motion to show cause for SMS’s failure to comply with the

¹ *In re Smith*, unpublished order of the Court of Appeals entered December 11, 2020 (Docket No. 354881).

March 17, 2020 order, the court ordered SMS to “follow the orders of this Court as to allowing parenting time between the minor child” and respondent-mother.

As previously noted, on October 22, 2020, the trial court terminated its jurisdiction over respondent-mother and the child. The dispute between now-presumptively fit parents is proceeding in a separate custody proceeding filed by SMS in August 2020. Accordingly, as in the previous appeal in this case, this appeal is moot because it presents only hypothetical questions, rather than an actual, justiciable controversy; there is no claim left for this Court to address in this appeal, and any decision would only serve to instruct future litigants. *Smith*, ___ Mich App at ___; slip op at 3.

This Court can reach the merits of an issue when the case is otherwise moot when a case 1) presents an issue of public significance, and 2) disputes involving the issue are likely to recur, 3) yet evade judicial review. *In re Detmer/Beaudry*, 321 Mich App 49, 56; 910 NW2d 318 (2017). Here, the third condition is not satisfied because this case does not present a legal question that is likely to evade review. Our finding in the previous appeal also applies in this appeal:

The dispute in this appeal has evaded our review because respondent-mother made sufficient progress in a relatively short period of time, and the trial court released her and her child from its jurisdiction. Unfortunately, it is not uncommon for an adjudicated parent to spend considerably longer time under the trial court’s jurisdiction. In those unfortunate cases, the dispute will not be moot by the time this Court is able to resolve it on an expedited basis. [*Smith*, ___ Mich App at ___; slip op at 3.]

Accordingly, we dismiss this appeal as moot.²

/s/ Cynthia Diane Stephens
/s/ Jane M. Beckering
/s/ Colleen A. O’Brien

² We decline to address SMS’s argument that an indigent nonrespondent parent should “be granted access to public funds to appeal orders affecting their fundamental liberty interest in the care, custody, and control of his child.” This issue was not raised in SMS’s application for leave to appeal and supporting brief. Unless otherwise ordered, an appeal on leave granted “is limited to issues raised in the application and supporting brief.” MCR 7.205(E)(4).