

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
July 28, 2011

In the Matter of M. P., M. P., and D. R., Minors.

No. 296331
Delta Circuit Court
Family Division
LC No. 09-000506; 09-000507;
09-000508

Before: RONAYNE KRAUSE, P.J., and SERVITTO and GLEICHER, JJ.

RONAYNE KRAUSE, P.J. (*dissenting*)

I respectfully dissent, because I do not agree that the primary issue in this appeal is moot, and even if it was, I do not agree that it is unlikely to recur yet regularly evade judicial review.

First, the offending order in this matter has not been rescinded. The trial court *purported* to rescind it. However, this Court granted leave to appeal that order on June 9, 2010, and the trial court purportedly rescinded it on July 16, 2010. Once a claim of appeal is filed with this Court, the trial court is generally divested of any jurisdiction to amend it or set it aside, at least in the absence of exceptions not present here. MCR 7.208(A); *Ypsilanti Fire Marshal v Kircher*, 273 Mich App 496, 542; 730 NW2d 481 (2007). This Court has not yet filed a mandate with the trial court or returned the record, so the trial court lacks the jurisdiction to rescind the offending order. See *People v Kennedy*, 384 Mich 339, 343; 183 NW2d 297 (1971). In an interlocutory appeal, the trial court would not be divested of jurisdiction over the case itself, but it nonetheless loses jurisdiction over the specific order from which the appeal taken. See *Bass v Combs*, 238 Mich App 16, 23-24; 604 NW2d 727 (1999), overruled in part on other grounds in *Dimmitt & Owens Financial, Inc v Deloitte & Touche (ISC), LLC*, 481 Mich 618, 627-628; 752 NW2d 37 (2008). The offending order remains in effect and is therefore not moot.¹

Second, even if the trial court had properly and validly rescinded the order, the issue in this appeal is not the trial court's specific order, but the fact that the trial court entered the order at all. I believe that the majority misconstrues the issue before this Court; I have no reason to

¹ What apparently *has* been resolved is the significance of certain specific language that the trial court inserted into its 2009 orders. The effect, if any, and propriety of that language is not before this Court.

doubt that no other Michigan court is likely to encounter any future difficulties with the funding or placement language underlying the funding dispute in this matter. The legal issue here pertains to the trial court's review of the DHS's funding decision, not the trial court's use of certain language in its placement orders. The mere possibility that an issue "could" recur yet evade judicial review is insufficient to warrant consideration of an otherwise moot issue. *Dep't of Ed v Grosse Pte Pub Schools*, 474 Mich 1117; 712 NW2d 445 (2006). However, I find persuasive respondent's argument that recurrence of this issue is more than a mere possibility.²

Finally, and at the heart of the matter, the trial court's order was clearly outside its jurisdiction. The trial court's review in January 2010 was pursuant to a motion to review placement under MCR 3.966(A). However, placement was not really at issue—the court's review was, instead, functionally of the DHS denial of Title IV-E funding, notwithstanding the fact that the DHS is responsible for administering the Title IV-E program in the state. 42 USC 671(a). At that time, an administrative appeal had already been commenced with a DHS hearing coordinator, and the trial court acted not only before DHS had rendered a decision, but before DHS was even able to begin the process. Pursuant to 42 USC 671(a)(12), administrative review of a Title IV-E funding decision is required, and the circuit court lacks jurisdiction to interfere with an agency's decision until all administrative remedies have been exhausted.³ *Blair v Checker Cab Co*, 219 Mich App 667, 671; 558 NW2d 439 (1996). The court lacked the jurisdiction to bypass administrative review.

I would hold that the issue is not moot, and I would hold that the trial court exceeded its jurisdiction both by attempting to review the DHS decision regarding Title IV-E funding prior to the exhaustion of available administrative remedies and by purporting to rescind an order from which an appeal had already been taken. Because the trial court lacked the jurisdiction to rescind its January 15, 2010, order, I would now vacate it.

/s/ Amy Ronayne Krause

² Although again, I do not believe this Court even needs to address whether the issue is likely to recur yet evade judicial review, because I would find that the objected-to order still exists.

³ Subject to a number of exceptions, none of which are applicable here.