STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0014

Deklin Darren Goeden,
Respondent,

vs.

The Minnesota State High School League,
Appellant.

Filed August 16, 2021
Appeal dismissed
Bratvold, Judge

Hennepin County District Court
File No. 27-CV-20-13661

Justin M. Page, Mid-Minnesota Legal Aid and Minnesota Disability Law Center, Minneapolis, Minnesota (for respondent)

Kevin M. Beck, Joseph A. Kelly, Patrick J. Kelly, Kelly & Lemmons, P.A., St. Paul, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Connolly, Judge; and Bratvold, Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

This appeal challenges a temporary restraining order that enjoined appellant Minnesota State High School League (the league) from enforcing a bylaw preventing respondent Deklin Darren Goeden from participating in high school sports during his senior year. Because respondent graduated from high school during the pendency of this

appeal, we conclude that the appeal is moot. And because no exception to the mootness doctrine applies, we lack jurisdiction and dismiss the appeal.

FACTS

The pertinent facts are undisputed and summarized in the district court's order granting a temporary restraining order. When this appeal was filed, Goeden was a senior at Ashby High School who sought to continue to participate in extracurricular athletics governed by the league. Goeden is diagnosed with a "mixed receptive/expressive language disorder," and has been on an Individualized Education Plan since second grade. Goeden first entered seventh grade in 2014. The district court found that Goeden was required to repeat his seventh year of education because of his learning disability. In other words, he attended seventh grade twice, from 2014 to 2016.

Goeden also began playing extracurricular sports governed by the league during his first year enrolled in seventh grade. He participated in football in the fall, wrestling in the winter, and track and field in the spring. Goeden continued to participate in league sports during his repeated year in seventh grade, eighth grade, and throughout high school. Goeden, however, only participated in wrestling during his junior year in 2019-2020.

Before he started his senior year, Goeden asked the league for two additional semesters of eligibility to allow him to participate in sports. Goeden sought an exception from the league's eligibility bylaws. The league's bylaws "restrict or grant eligibility to high school student[s] to participate in high school extracurricular activities based on," among other things, the student's enrollment in a school, age, grade level, seasons of participation, and semesters enrolled.

Bylaw 110, which is the focus of this appeal, states that "[s]tudents shall be eligible for participation in League-sponsored activities for twelve consecutive semesters (six years) beginning with their initial entrance into the 7th grade." The bylaw explains that "[a] student's eligibility begins when the student enters 7th grade for the first time and continues, without interruption, for 12 consecutive semesters." Because Goeden began playing league sports in seventh grade and repeated the seventh grade, the district court found that "[u]nder the plain language of Eligibility Bylaw 110 Goeden is ineligibl[e] to participate in [league] activities during the 2020-2021 academic year," his senior year.

The league denied Goeden's request for an exception. Goeden appealed to the league board, which also denied his request. Goeden then sued the league, alleging that enforcement of bylaw 110 violated the Minnesota Human Rights Act (MHRA) and requesting declaratory judgment and a permanent injunction "directing the [league] to permit Goeden to participate in [league] activities during the 2020-2021 academic year." He then moved for a temporary restraining order "to allow him to play one additional semester of high school sports." Following briefing by the parties and a hearing, the district court issued written findings of fact, conclusions of law, and an order temporarily enjoining the league "from applying Rule 110 of its Eligibility Bylaws as it applies to . . . Goeden." The league appealed.

Neither party addressed mootness in its briefing to this court. During oral argument, we questioned whether this appeal would become moot when Goeden graduated. We ordered supplemental briefing on the issue, and Goeden later informed us that he graduated from high school on May 30, 2021 and finished his track season on June 11, 2021.

DECISION

Minnesota courts "require the presence of a justiciable controversy as essential" to the exercise of appellate jurisdiction. *Schowalter v. State*, 822 N.W.2d 292, 298 (Minn. 2012). "The doctrine of mootness requires that [appellate courts] decide only actual controversies and avoid advisory opinions." *In re McCaskill*, 603 N.W.2d 326, 327 (Minn. 1999). A moot appeal will be dismissed unless an exception applies. *Wayzata Nissan, LLC v. Nissan North America, Inc.*, 875 N.W.2d 279, 283 (Minn. 2016). "It is not necessary that a party raise the issue of mootness; appellate courts must address the issue because it is a constitutional prerequisite to the exercise of jurisdiction." *Farm Bureau Mut. Ins. Co. v. Schwan*, 687 N.W.2d 388, 391 (Minn. 2004) (quotation omitted).

We first consider whether the league's appeal raises a moot issue, and then determine whether any exception to the mootness doctrine applies.

I. The league's appeal is moot because the district court's temporary restraining order has expired.

"It is well settled that if, pending an appeal, an event occurs which renders it impossible to grant any relief to appellant, or which makes a decision unnecessary, the appeal will be dismissed as presenting a moot question." *Village of Savage v. Minn. Mun. Comm'n (In re Resolution for Consolidation)*, 180 N.W.2d 925, 927 (Minn. 1970). "An appeal is moot when a decision on the merits is no longer necessary or an award of effective relief is no longer possible." *State ex rel. Ford v. Schnell*, 933 N.W.2d 393, 401 (Minn. 2019) (quotation omitted). "But an appeal is not moot when a party could be afforded

effective relief." *Wayzata Nissan, LLC*, 875 N.W.2d at 283. Mootness is a legal issue which this court addresses de novo. *Dean v. City of Winona*, 868 N.W.2d 1, 4 (Minn. 2015).

"Mootness has been described as 'the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness).'" *Id.* at 4-5 (quoting *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 189, 120 S. Ct. 693, 708-09 (2000)). The test for mootness is "a comparison between the relief demanded and the circumstances of the case at the time of decision in order to determine whether there is a live controversy that can be resolved." *In re Application of Minnegasco*, 565 N.W.2d 706, 710 (Minn. 1997). "Issues which have no existence other than in the realm of future possibility are purely hypothetical and are not justiciable." *Lee v. Delmont*, 36 N.W.2d 530, 537 (Minn. 1949).

In their supplemental briefing filed with the court, the parties agree that Goeden's high school graduation and completion of participation in league-sponsored sports makes this appeal moot. We also agree. The temporary restraining order on appeal is specific to Goeden because it enjoins the league "from applying Rule 110 of its Eligibility Bylaws as it applies to . . . Goeden." While the temporary restraining order has no express expiration date, the league acknowledges that Goeden can no longer participate in league-sponsored sports after he graduates from high school.[1] Because Goeden has graduated from high

[1] The league's supplemental brief to this court states that "it is unclear when [mootness] will occur" because the temporary restraining order is in effect "as long as [Goeden] is in high school."

school, the temporary restraining order has effectively expired. If we compare the relief demanded by the league, i.e. reversal of the temporary restraining order, to the circumstances of the case after Goeden's graduation, i.e. expiration of the temporary restraining order, there is no live controversy. *See Minnegasco*, 565 N.W.2d at 710. Thus, the league's appeal is moot.[2]

II. No exception to the mootness doctrine applies.

"The mootness doctrine is not a mechanical rule that is automatically invoked whenever the underlying dispute between the parties is settled or otherwise resolved." *Dean*, 868 N.W.2d at 4. Rather, our caselaw recognizes two exceptions to the jurisdictional rule requiring dismissal of a moot appeal: (1) "when an issue is capable of repetition, yet will evade judicial review," *State v. Brooks*, 604 N.W.2d 345, 347 (Minn. 2000), and (2) when a case is "functionally justiciable" and of "statewide significance." *State v. Rudd*, 359 N.W.2d 573, 576 (Minn. 1984). Both exceptions are discretionary. *See Dean*, 868 N.W.2d at 4-5.

[2] We note that our determination is in accord with similar federal cases considering other students' challenges under the Americans with Disabilities Act (ADA) to other leagues' eligibility rules for participation in high school sports. *See McPherson v. Mich. High Sch. Athletic Ass'n, Inc.*, 119 F.3d 453, 455, 458-59 (6th Cir. 1997) (determining appeal was moot as to high school student athlete who had graduated, but also that "the case as a whole is not moot" because the association had been enjoined from taking action against the school and team); *see also Bingham v. Ediger*, 20 Fed. Appx. 720, 721 (9th Cir. 2001) (vacating temporary injunction for mootness after determining that high school student had graduated and the association had complied with the temporary injunction); *Pottgen v. Mo. State High Sch. Activities Ass'n*, 40 F.3d 926, 928 (8th Cir. 1994) (determining appeal was moot as to high school student athlete who had graduated, but also live controversy existed over the association's ability to sanction high school). In contrast to other injunctions that affected the student's school or team, the district court's temporary restraining order applies only to Goeden and does not affect other parties.

The league argues that both exceptions apply, so we address each in turn.

A. A future appeal involving the same issue is not likely to evade review.

Issues are "capable of repetition, yet evading review" when two elements are met: "(1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable expectation that the same complaining party would be subjected to the same action again." *Kahn v. Griffin*, 701 N.W.2d 815, 821 (Minn. 2005) (quoting *Weinstein v. Bradford*, 423 U.S. 147, 149, 96 S. Ct. 347, 349 (1975)).

1. Capable of repetition

Minnesota Supreme Court precedent instructs that appellate courts must conduct a "careful analysis of all aspects of the issues presented before we determine whether to dismiss the case or exercise our discretion to consider the appeal as an exception to the mootness doctrine." *In re Guardianship of Tschumy*, 853 N.W.2d 728, 738 (Minn. 2014). The key legal issue raised by the league's appeal centers on the MHRA's application to bylaw 110. Goeden argues that the bylaw 110, as applied to him, violates the MHRA's prohibition on discrimination. *See* Minn. Stat. § 363A.11 (2020) (by a public accommodation); Minn. Stat. § 363A.13, subd. 1 (2020) (by an educational institution "in any manner"). According to the league, the exception process and bylaw 110 did not violate the MHRA as to Goeden because he had equal opportunity to participate in high school sports for six years.

The league argues that, if we dismiss this appeal as moot, "there is a reasonable expectation that the [league] will be subjected to the same action again." Goeden argues

that there is no likelihood of repetition, because he is the "complaining party, not the [league]" and he will never again participate in high school sports.

We agree with the league. While Goeden will not make another challenge to bylaw 110, there is a reasonable expectation that the league may face a similar challenge in the future: a student may repeat a year between seventh and twelfth grade due to a disability, and may request an exception from the league to play additional semesters. The league points to two district court cases, three news articles, and the district court's finding that the league "has provided exceptions to Bylaw 110 to high school students in the past," as evidence that the issue will likely recur. While the league does not detail the allegations in those cases, the parties also cite federal opinions considering similar discrimination and reasonable accommodation claims by high school students to similar eligibility rules. *See Washington v. Ind. High Sch. Athletics Ass'n, Inc.*, 181 F.3d 840, 842 (7th Cir. 1999) (student's challenge to Indiana High School Association's semester eligibility rule under the ADA); *McPherson*, 119 F.3d at 455 (same challenge to Michigan association); *Pottgen*, 40 F.3d at 928 (same challenge to Missouri association). Although these challenges involved the ADA and not the MHRA, they show that an issue like the one involved in this appeal is capable of repetition.

2. Unlikely to evade review

While the issue on appeal is capable of repetition, it is not likely to evade review. "Traditionally, cases that have been found to evade review involve disputes of an inherently limited duration . . . ." *Dean*, 868 N.W.2d at 5-6 (determining that case initiated three years before appeal was not sufficiently "short-lived" to evade review). The league

claims that challenges to the bylaw 110 eligibility rule "almost always presents itself during a student-athlete's senior year when they have exhausted their semester eligibility." Here, Goeden requested a modification of the bylaw in early 2020, the spring of his junior year, and filed his district court action in October 2020, the fall of his senior year.

The league argues that it was "not possible to fully litigate this case prior to [Goeden's] likely graduation date/the end of the spring sports season." We disagree. An appellant may seek expedited review from the court of appeals by motion. *See* Minn. R. Civ. App. P. 127. We may expedite the scheduling of a case "based on a showing of good cause." Minn. App. Spec. R. Prac. 1; *see Leonard, St. & Deinard v. Marquette Assocs.*, 353 N.W.2d 198, 199 (Minn. App. 1984). The league could have sought expedited scheduling of this appeal, but it did not.[3] Had the league sought expedited review, this court may have found good cause to issue a decision before Goeden graduated. Thus, future appeals challenging the validity of bylaw 110 will not likely evade review.

B. The appeal does not have statewide significance because it is limited to Goeden's participation in high school sports.

Minnesota caselaw also provides appellate courts with "authority to decide cases that are technically moot when those cases are functionally justiciable and present important questions of statewide significance." *Tschumy*, 853 N.W.2d at 736. Appellate

[3] The league submits that "[a] motion for expedited review was not made because this appeal has proceeded in an expedient fashion," with the league initiating its appeal eight days after the district court's order, and the transcripts delivered two days later. While true, this appeal could have avoided becoming moot had it been expedited at the league's request.

courts "apply this exception narrowly." *Dean*, 868 N.W.2d at 6. Each requirement is addressed in turn.

1. Functionally justiciable

"A case is functionally justiciable if the record contains the raw material (including effective presentation of both sides of the issues raised) traditionally associated with effective judicial decision-making." *Rud*, 359 N.W.2d at 576. The supreme court has determined that this requirement is met when both parties "made outstanding oral arguments in support of their respective positions, and, *significantly*, both agreed that the appeal should not be dismissed." *Id.* (emphasis added). Goeden does not dispute that the appeal is functionally justiciable. We conclude that the parties made helpful arguments, both in writing and orally, in support of their positions on the merits. Thus, the appeal is functionally justiciable.

2. Statewide significance

The supreme court has described cases that have statewide significance as those that present "urgency or significance." *Dean*, 868 N.W.2d at 7. In *Jasper v. Comm'r of Pub. Safety*, for example, the supreme court determined the issue on appeal was not moot, in part, because the issue had statewide significance. 642 N.W.2d 435, 439-40 (Minn. 2002). The appeal centered on the suitability of "the only breath-testing instrument currently in use in this state." *Id.* at 439. The supreme court also noted that "there has been substantial litigation in the district courts as to whether the instrument was properly approved." *Id.* Thus, the court reasoned, "the issue is one of public importance and statewide significance that should be decided immediately." *Id.* at 439-40. Similarly, in *Brooks*, the supreme court

addressed a cash-only bail issue even though the controversy had been mooted by the appellant's release, in part because the unsettled issue could have "create[d] a class of defendants with constitutional claims but no remedy." 604 N.W.2d at 348. And in *Tschumy*, the supreme court addressed a moot issue about a guardian's authority to end life support for an incapacitated person partly because the case presented "issues of life and natural death and the ability of incapacitated Minnesotans to exercise self-determination when it comes to declining further medical treatment."[4] 853 N.W.2d at 740. The issue here, in contrast, is far less significant.

We recognize that the league governs an important aspect of life for high school students, parents, and faculty. The league bylaws affect high school sports across the state, with more than 500-member high schools. But even if we assume, as the league argues, that "application of bylaw 110 affects more than 200,000 [Minnesota high school athletes]," the league only identifies a few isolated incidents in which students have requested an exception to bylaw 110. And it is unclear on this record if any previous challenges have been similar to Goeden's MHRA argument. Thus, we cannot conclude that the issue raised by this appeal is of statewide importance.

Also, the issue is not urgent. The MHRA was adopted in 1973. 1973 Minn. Laws, ch. 729, § 2, at 2160. Based on our research and the parties' briefs, we conclude that the MHRA's application to bylaw 110 is an issue of first impression. While the league requests

[4] The supreme court's decision to address the moot issue in *Tschumy* was not without controversy: two justices dissented from the majority's opinion to hear the appeal, arguing that it "stretches the mootness doctrine beyond mere flexibility, into the realm of infinite elasticity." *Tschumy*, 853 N.W.2d at 763 (Stras, J., dissenting) (joined by Page, J.).

guidance for future cases, appellate courts do "not issue advisory opinions, nor decide cases merely to establish precedent." *In re Schmidt*, 443 N.W.2d 824, 826 (Minn. 1989).

In sum, a future appeal involving the same issue is likely, but probably will not evade review given the availability of expedited consideration. Also, this appeal, while functionally justiciable, lacks statewide significance and urgency because the temporary restraining order was limited to Goeden. Because the league failed to show the applicability of any exception to the mootness doctrine, we lack jurisdiction over this appeal.

Appeal dismissed.