STATE OF MICHIGAN

COURT OF APPEALS

MOORE MURPHY HOSPITALITY, LLC, doing business as IRON PIG SMOKEHOUSE,

Plaintiff-Appellant,

v

HEALTH DEPARTMENT OF NORTHWEST MICHIGAN,

Defendant-Appellee.

UNPUBLISHED
December 22, 2025
1:35 PM

No. 371026
Otsego Circuit Court
LC No. 2023-019393-CZ

Before: SWARTZLE, P.J., and O'BRIEN and BAZZI, JJ.

PER CURIAM.

In this declaratory judgment action, plaintiff, Moore Murphy Hospitality, LLC, doing business as Iron Pig Smokehouse, appeals as of right the trial court's opinion and order granting summary disposition in favor of defendant, the Health Department of Northwest Michigan, under MCR 2.116(C)(10) (no genuine issue of material fact), regarding plaintiff's challenge to the constitutionality of MCL 333.2451 of the Public Health Code, MCL 333.1101 *et seq*. We reverse the trial court's determination that the issue was not moot, vacate the portion of the trial court's opinion ruling on the merits of the constitutionality of MCL 333.2451, and remand for further proceedings.

Plaintiff operates a barbeque restaurant, the Iron Pig, in Gaylord, Michigan, which was subject to an emergency order defendant entered in November 2020 in response to the coronavirus (COVID-19) pandemic. In late 2023, plaintiff filed the instant lawsuit challenging, in part, the constitutionality of MCL 333.2451, on which the subject order was partially based, contending that the statute violated separation-of-powers principles. Although the emergency COVID-19 order underlying the litigation had been rescinded, the trial court determined that plaintiff's declaratory judgment action was not moot on the basis of this Court's decision in *T & V Assoc v Director of Dep't of Health & Human Servs*, 347 Mich App 486; 15 NW3d 313 (2023), and it reached the merits of plaintiff's claim.

After issuance of the trial court's order, the Michigan Supreme Court peremptorily reversed this Court's decision in *T & V*, which likewise involved a long-since rescinded emergency COVID-19 order issued under another provision of the Public Health Code. *T & V Assoc v Director of Dep't of Health & Human Servs*, ___Mich___, ___; 12 NW3d 594, 596 (2024). The Michigan Supreme Court determined that this Court had erred by concluding that the case was not moot, reasoning that "the instant case presents nothing but abstract questions and does not rest on existing facts or rights," and therefore that "[a] judgment would have no practical effect on an existing controversy." *Id*. The Court further explained that the exception to the mootness doctrine for when an issue is both of public significance, and likely to recur while otherwise evading judicial review, was inapplicable because "the COVID-19 emergency has ended, and there are . . .more effective treatments available," and the issuance of a similar order was unlikely. *Id*.

The same analysis applies in the instant matter. There is no dispute that the authority under which defendant issued the contested order, MCL 333.2451, was rescinded before plaintiff commenced this action. It follows that it was impossible for the trial court, and now for this Court, to grant plaintiff any relief, because plaintiff presently continues to operate its Iron Pig restaurant unabated. Like the trial court, this Court cannot undo, or otherwise involve itself in the enforcement of, a public health order that no longer exists. Further, as in *T & V*, circumstances related to COVID-19 have drastically changed since defendant issued the subject order, such that COVID-19 no longer presents an urgently pressing public health crisis. And, as in *T & V*, it is merely a hypothetical possibility that a similar order may issue again one day, the mere "possibility that an issue will recur is not sufficient." *Id*.

Accordingly, plaintiff's claim for declaratory relief to the effect that MCL 333.2451 is unconstitutional was, and remains, moot. We therefore reverse the trial court's determination that plaintiff's action was not moot, and vacate the portion of the trial court's decision ruling on the constitutionality of MCL 333.2451.

Vacated in part, reversed in part and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Colleen A. O'Brien
/s/ Mariam S. Bazzi

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SWARTZLE, P.J., (*concurring in the judgment only*).

Although I cannot take issue with the majority's judgment, if we were able to write on a blank slate today, I would address the merits of plaintiff's claims challenging the constitutionality of § 2451 of the Public Health Code, MCL 333.2451 (authorizing local-health departments to issue orders regarding an "imminent danger" to public health). And yet, because any decision by this panel on the merits of those claims would be summarily vacated by our Supreme Court, per its order in *T & V Assoc v Director of Health & Human Servs*, ___ Mich ___, ___; 12 NW3d 594, 596 (2024) (involving a parallel statute operating at the state level), there is little to be gained by this panel reaching the merits. But make no mistake, this is an unjust state of affairs.

In *T & V Assoc*, a majority of our Supreme Court concluded that a case similar to this one was moot, and the case did not meet one of the exceptions to the mootness doctrine, specifically whether the constitutionality of the statute posed an issue of public significance likely to recur but evade judicial review. *Id*. The statute's constitutionality was unquestionably a matter of public significance, so the only real question was whether the controversy was likely to recur but evade judicial review. *Id.* On this question, the majority concluded, "[T]he COVID-19 emergency has ended, and there are higher vaccination rates as well as more effective treatments available"—and this purportedly justified the majority's decision not to reach the merits of the claims. *Id*. at 596-597. The majority's statement is accurate as far as it goes, though it goes hardly anywhere.

There will be more public-health emergencies in the future, as sure as the thunder follows the lightning. We live in increasingly global, inter-connected societies, with emerging biohazards and technologies for which we have few effective guardrails. Moreover, even if the absolute level of a particular risk is no higher today than a half century ago, we appear to be living in increasingly risk-averse communities, which suggests that there will be more vocal calls demanding public action during the next emergency, with the concomitant support and criticism (measured and not-so-measured) that come with such calls. This is all to say that I am not as sanguine as the Supreme Court majority in *T & V Assoc* that—at the moment—there is nothing to see here.

Next July, we celebrate the 250th anniversary of the grandest and most audacious experiment in social-contract theory that the world has ever run. See Second Continental Congress, The unanimous Declaration of the thirteen united States of America (1776). As one aspect of the social contract, individuals and businesses are supposed to follow the laws and orders of their governments, and the governments are supposed to give those individuals and businesses the opportunity to challenge the laws and orders in a court of law. Given the exigencies of practical life, the legal challenge usually must come after the time when the individual or business must act—comply first, challenge later. Fair enough . . . so long as each side holds up its end of the bargain.

By applying the mootness doctrine to cases like this, however, our Judiciary has not held up its end of the bargain. Individuals and businesses are expected to follow the law and government orders during an emergency, but when, after the emergency has subsided, an individual or business seeks to challenge the constitutionality of a particular law or order, courts now say that the challenge is moot. This bait-and-switch is a breach of our social contract.

Mootness is not a jurisdictional doctrine, but merely a prudential one. See *People v Richmond*, 486 Mich 29, 37; 782 NW2d 187 (2010). Prudence counsels in favor of taking up plaintiff's claims *now*, precisely because the COVID-19 emergency appears to be over and the claims can be given measured, dispassionate study by judges and justices of various philosophies and backgrounds. Under my preferred approach, the Judiciary would provide a definitive ruling with clear guidance for the next emergency. Instead, it has become increasingly obvious that questions like this will be pushed aside as moot. See *T & V Assoc*, 12 NW3d at 596-597.

For these reasons, as well as those set forth by both (1) the Court of Claims and (2) this Court of Appeals in the *T & V Assoc* litigation, see *T & V Assoc, Inc v Director of Health & Human Servs*, 347 Mich App 486, 493-498; 15 NW3d 313 (2023), I would prefer that we reach the merits of plaintiff's claims here. With that said, my fellow panel members are correct that there is nothing material that distinguishes this case from *T & V Assoc*, and because of our Supreme Court's peremptory order in that case, any opinion on the merits here would be a dead letter almost as soon as it was issued.

Accordingly, I concur in the majority's judgment.

/s/ Brock A. Swartzle