STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2158

C. I. H., by and through his parents and legal guardians
Joe Hays and Julie Miller-Hays,
Appellants,

vs.

Anoka-Hennepin Public Schools,
Independent School District No. 12,
Respondent,

The Minnesota State High School League,
Respondent.

Filed June 25, 2012
Appeal dismissed
Stoneburner, Judge

Anoka County District Court
File No. 02-CV-11-1944

Margaret O'Sullivan Kane, Kane Education Law, LLC, St. Paul, Minnesota (for appellants)

Margaret A. Skelton, Trevor S. Helmers, Ratwik, Roszak & Maloney, P.A., Minneapolis, Minnesota (for respondent Anoka-Hennepin Public Schools)

Patrick J. Kelly, Kevin M. Beck, Kelly & Lemmons, P.A., St. Paul, Minnesota (for respondent Minnesota State High School League)

Considered and decided by Peterson, Presiding Judge; Stoneburner, Judge; and Hudson, Judge.

U N P U B L I S H E D O P I N I O N

STONEBURNER, Judge

Appellant student, through his parents, challenges the district court's dismissal on the pleadings of his complaint, asserting breach-of-contract, promissory-estoppel, and violation-of-due-process claims based on respondent school district's denial of a hearing on its determination that student was ineligible to participate in interscholastic sports. The school district cancelled a scheduled hearing after determining that no relief could be granted because student had transferred to a school that does not participate in interscholastic sports. On appeal, the school district asserts that the appeal is moot, but argues in the alternative that the district court did not err in dismissing the complaint for failure to state a claim on which relief can be granted. Because the appeal is moot, we dismiss the appeal.

FACTS

Appellant C.I.H. is the minor child of appellants J.H. and J.M.-H. Appellants sued respondents Anoka-Hennepin Public Schools Independent School District No. 12 (school) and The Minnesota State High School League (league), asserting claims of promissory estoppel, breach of contract, and violation of due process. Appellants sought a judgment enjoining the school and the league "from prohibiting [C.I.H.] from

participating in [league] activities and non-[league] activities."[1] For purposes of this appeal, we assume that the following relevant facts alleged in the complaint are true.

C.I.H. was a student at the school and paid activity fees for the right to participate and invested substantial time in participating in league activities. The school, a public school program in Anoka County, is a member of the league, a Minnesota nonprofit corporation.

The league's handbook states that "Section 211.02.8 of the Constitution of the [league] provides a Fair Hearing Procedure for a student, parent or guardian to appeal a school's determination of ineligibility of a student pursuant to the student's violation of a [l]eague bylaw." The league's handbook requires that the "written notification [of ineligibility] must also include a copy of the Fair Hearing Procedure [FHP] and the Acknowledgement of Rights [AOR]," which must be sent via certified mail or hand delivered. The school's handbook provides for a hearing and appeal for any disciplinary action that results in expulsion or exclusion.

The complaint states that on December 1, 2010, C.I.H. was falsely accused of putting illegal drugs into a casserole that a class was making. On December 6, 2010, C.I.H. received correspondence from the school's activities director informing him that he was reputed to have violated league policy 205.00 and was placed on suspension from athletic activities. The letter did not provide the FHP or AOR, and neither the school nor the league has subsequently provided C.I.H. with a copy of these documents.

[1]The complaint also contained a claim for damages for negligent infliction of emotional distress, but appellants did not defend against respondents' motions to dismiss this claim in the district court and have not challenged dismissal of this claim on appeal.

On December 13, 2010, C.I.H. transferred to a charter school resulting in C.I.H. being unable to wrestle due to (1) league policies that require that students who transfer from one school to another be ineligible for league activities for one year and (2) the fact that the charter school does not have a wrestling program and is not a league-member school. Were C.I.H. to transfer back to another public school, he would again be ineligible to wrestle under the league's transfer policies.

On January 12, 2011, the school activities director, for the first time, told C.I.H.'s father of C.I.H.'s right to request a hearing related to the league suspension. C.I.H.'s father requested a hearing on C.I.H.'s eligibility to participate in league activities. A hearing was set for January 25, 2011. Appellants retained counsel who requested rescheduling. But on January 24, 2011, counsel for the school denied the requested hearing.

In response to the complaint, the school and the league moved to dismiss the complaint under Minn. R. Civ. P. 12.02(a), asserting that C.I.H.'s voluntary transfer to a nonleague school makes him ineligible to participate in league activities and that he therefore lacked standing to assert the claims stated in his complaint, thereby depriving the district court of jurisdiction. The school and the league also sought dismissal of the complaint under rule 12.02(e) for failure to state a claim on which relief can be granted. The district court granted the motions to dismiss under Minn. R. Civ. P. 12.02(e) without reaching the issue of standing, and this appeal followed. On appeal, the school and the league assert that the appeal is moot.

D E C I S I O N

The issue of mootness may be raised at any time 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. App. 2004). "The mootness doctrine demands appellate courts hear only live controversies, and they may not issue advisory opinions." *Id.* If this "court is unable to grant effectual relief," the issue must be dismissed as moot. *Id.*

The school and the league argue that appellants' claims on appeal are moot because C.I.H. is no longer a student at a school that participates in league-sponsored activities and because the requested order enjoining the school and the league from prohibiting C.I.H.'s participation in league activities would not affect C.I.H.'s inability to participae in league-sponsored activities.[2]

Appellants' complaint admits that C.I.H.'s current ineligibility to participate in league activities results from his voluntary transfer to a nonleague school and that a transfer back to a league-participating school would trigger an additional period of ineligibility under the league's rules. Given these circumstances, we conclude that the school and the league are correct in that even if this court were to remand the case to the district court and the district court were to ultimately grant the relief requested, C.I.H. would not be eligible to participate in league activities.

[2] At oral argument on appeal, appellants argued that the only relief they sought was a hearing on the school's determination that, based on the marijuana allegation, C.I.H. was ineligible to participate in league activities. But the complaint asserts that the relief sought is an order enjoining the school and the league from prohibiting C.I.H.'s participation in league activities.

Appellants did not respond in writing to the school's and the league's argument that the appeal is moot. At oral argument on appeal, appellants asserted that the issue of C.I.H.'s right to a hearing on league eligibility is not moot because it is capable of repetition. A court will not dismiss an issue as moot if it is capable of repetition and likely to evade review. *Id.* But this doctrine is limited to situations where the challenged action is, in its duration, too short to be fully litigated prior to its cessation or expiration and there is 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). Because the circumstances of this case are unique and not likely to be repeated, we dismiss the appeal as moot.

Dismissed.