IN THE CIRCUIT COURT OF THE TWENTY THIRD JUDICIAL CIRCUIT, COUNTY OF JEFFERSON, HILLSBORO, STATE OF MISSOURI

SHANNON OTTO ET AL Plaintiffs, vs. JEFFERSON COUNTY HEALTH DEPT Defendant.	21JE-CC00682 Division 5

TEMPORARY RESTRAINING ORDER

Cause called on November 12, 2021, to take up Plaintiffs' request for a Temporary Restraining Order. Parties each appear by counsel. Arguments were heard and the matter was taken under advisement.

The primary purpose of an injunction is to maintain the *status quo* and prevent irreparable injury. ***Glenn v. City of Grant City***, 69 S.W.3d 126, 130 (Mo. App. W.D. 2002) To show entitlement to injunctive relief, a petition must plead facts that show (1) the plaintiff has no adequate remedy at law, and (2) irreparable harm will result if the relief is not granted. ***Id***. Specifically, Missouri Supreme Court Rule 92.02(a)(1) provides that a court "shall not grant a temporary restraining order unless the party seeking relief demonstrates that immediate and irreparable injury, loss, or damage will result in the absence of relief." Factors to be considered before granting injunctive relief include "(1) the likelihood that the party seeking the stay will prevail on the merits; (2) the likelihood that the moving party will be irreparably harmed absent a stay; (3) the prospect that others will be harmed if the court grants the stay; and (4) the public interest in granting the stay." ***DOR v. Gabbert***, 925 S.W.2d 838, 839–40 (Mo. banc 1996).

There is no dispute with regard to what documents are at issue. On August 11, 2021, Defendants implemented an "Operational Policy for K-12 Age Children" (Plt Ex E). On September 9, 2021, an updated policy was adopted by Defendants (Plt. Ex. C). For ease of reference, the Court will collectively refer to these documents as the "School Policies."

Request to set aside or vacate the School Policies

Plaintiffs' first argument for relief revolves around the application of §67.265, RSMo, a statute which took effect in June 2021. Plaintiffs assert that this statute imposes limitations and requirements on Defendant with regard to public health orders which might affect the ability of students in Jefferson County to attend in-person classes. Plaintiffs further assert that the School Policies adopted by

Defendants on August 11, 2021, and September 21, 2021, do not comply with the requirements of §67.265.

Defendant does not dispute that it generated and disseminated the School Policies to the K-12 schools in Jefferson County. However, Defendant asserts that the School Policies were merely recommendations, and were not mandatory or binding in any way. Defendant argues that non-binding recommendations and guidelines are not "orders" which would trigger the requirements of §67.265.

Plaintiffs additionally argue that the School Policies deprive them both of their "property interest in an education," ***State ex rel. Yarber v. McHenry***, 915 S.W.2d 325, 328 (Mo. 1995), as well as their "right peaceably to assemble for the common good." **Constitution of Missouri, Article I, Section 9**. Defendants again respond that those rights are not implicated due to the School Policies being non-binding recommendations.

The Court has considered the documents in the record before it, including both the language included in various exhibits presented by Plaintiff, as well as the on-the-record assertions of Defendant's counsel. The Court is willing to accept for the purpose of this motion that the official position of Defendant is that the School Policies are not mandatory or binding on local schools, and that adoption of the guidelines was a choice for the various schools to make. It is possible that further development of the record may call that into question, at which point the Court would revisit the issue. Similarly, it is possible that relief under some theory could apply even if the School Policies are non-binding. However, to the extent that the requested relief is that the Court enter a temporary restraining order vacating those School Policies, relief under Rule 92.02(a) is not appropriate.

Notice of Quarantine form

There remains one issue which troubles the Court. While the Court is accepting for the purposes of this motion that the School Policies are non-binding recommendations, it appears that some actions by Defendant are inconsistent with this official stance.

Specifically, the Court is referring to the "Notice of Quarantine" form given to parents when their child has been determined to meet the quarantine criteria (Plt. Ex. A). It appears to be undisputed that this form was developed by Defendant and then provided to the schools as a sample form.

The problem is that the language on the form, when viewed as a whole, gives the distinct impression to parents that the decision to quarantine was made by Defendant and pursuant to the governmental authority of Defendant, when, at least according to Defendant, that is a decision made by the school (though the decision may be made in part in reliance on the guidance and recommendations in the School Policies). The notice is on Defendant's letterhead, not the school's. The notice includes Defendant's contact information, not the school's. The notice purports to restrict activity entirely unrelated to the school. The second line of the notice clearly states, in bold type, that the quarantine is "per the Jefferson County Health department."

The form disseminated to the schools by Defendant misleads parents as to whether they are being ordered to quarantine as a matter of school policy, or as the result of an order from a government agency (and the accompanying government enforcement powers implicated thereby). The question is whether relief on this narrow point is appropriate under Rule 92.02(a).

The first question is whether the harm is immediate and irreparable. On the question of immediacy, there is no question that parents are receiving these notices and making decisions in reliance on them. The immediacy requirement is met.

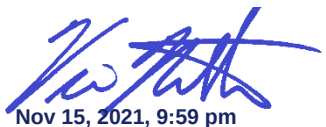
On the question of irreparable harm, the parental decisions being made in reliance on the notices involve lost child schooling and activities. Those losses are not easily remedied through an award of money damages. Far better to put the parents in a position as quickly as possible to make decisions based upon an accurate understanding of the circumstances.

Finally, as a matter of balancing potential harm to Defendant against public interest, the result is clear. Defendant cannot plausibly suggest that they will be harmed by an order directing them to provide accurate information to the public.

Accordingly, the Court enters the following orders:

1. No later than Thursday, November 18, the Jefferson County Health Department is to send clarification to all Jefferson County schools on the following points:
   a. That the recommended quarantine procedures and protocols of the Health Department are guidelines only, and are not binding or mandatory (consistent with the official position of Defendant).
   b. That the previously disseminated form is not to be used. Defendant may provide an updated form to the schools if it wishes, but any such form should make it clear that the quarantine order is being made pursuant to the school's authority, not Defendant's.
2. Plaintiff is ordered to post a bond in the amount of $25 with the Court.
3. Matter set for Preliminary Hearing at **1:00pm on Thursday, December 9, 2021**. The Court is aware of the Rule 92 provision that a hearing should be held within 15 days. However, the Court's schedule (between holidays and a scheduled jury trial) will make it very difficult to schedule a hearing within that timeframe. If either party believes it to be essential to have a hearing earlier than December 9, a motion can be filed and the Court will attempt to accommodate.

So Ordered:



Victor J. Melenbrink
Circuit Judge, Div. 5