IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 13-14950

D.C. Docket No. 1:08-cv-02930-TWT

M. H.,
a minor child, by and through his mother
and legal guardian, Thelma Lynah,

Plaintiff - Appellee,

versus

DAVID A. COOK,
Commissioner of the Georgia Department of Community Health,

Defendant - Appellant.

Appeal from the United States District Court
for the Northern District of Georgia

Before WILSON, ROSENBAUM, and BLACK, Circuit Judges.

ROSENBAUM, Circuit Judge:

Appellant David Cook,[1] in his official capacity as Commissioner of the Georgia Department of Community Health, appeals an injunction entered by the district court prohibiting him from reducing the number of private-duty nursing hours that the State of Georgia provided to the medically fragile minor child M.H. for 180 days—a period that expired on March 26, 2014.[2] Because, by its terms, the injunction has not affected the parties since March 26, 2014, and cannot govern their dealings in the future, the expiration of the injunction has rendered this appeal moot and has divested this Court of jurisdiction. Nor does any exception to the mootness doctrine apply in this case. As a result, this appeal must be dismissed.

I.

M.H., a medically fragile child, initiated this lawsuit against the Commissioner of Georgia's Department of Community Health ("DCH") through his adoptive mother Thelma Lynah in September 2008. M.H.'s complaint, as amended, sought declaratory and injunctive relief under 42 U.S.C. § 1983, alleging that DCH's policy of reducing or weaning nursing-care hours as a patient remained stable and as his or her caregiver became more adept at performing care functions violated the Early and Periodic Screening, Diagnostic, and Treatment provision of

[1] David Cook is no longer the Commissioner of Georgia's Department of Community Health ("DCH"), having been succeeded by Clyde Reese, III, in 2013. In fact, DCH has had several Commissioners during the course of this litigation. For the sake of simplicity, the Appellant will be referred to as DCH throughout this opinion.

[2] Two other Appellees who were awarded relief in the district court have been dismissed from this appeal. Only M.H. remains a party.

the Medicaid Act, 42 U.S.C. § 1396d(r), and Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12132.

The district court conducted a three-day bench trial on the claims of M.H. and another plaintiff in September 2013. In its findings of fact and conclusions of law issued on September 27, 2013, the district court concluded that "Plaintiffs have established by a preponderance of the evidence that, based on medical necessity, Plaintiff [M.H.] requires 18 hours per day of private duty skilled nursing hours," and that DCH's application of its weaning policies to M.H. had violated the Medicaid Act and ADA. Based on the violations of the Medicaid Act and the ADA, the district court granted "declaratory permanent injunctive [*sic*]" for Plaintiffs, enjoining, in relevant part, DCH "from reducing the skilled nursing care hours provided to Plaintiff [M.H.] below 18 hours of skilled nursing care per day for 180 days from the date of this Order or until further Order of this Court."[3] The district court did not modify the injunction in any manner, and the injunction expired by its terms on March 26, 2014.

[3] DCH advances an argument that the district court's phrase "until further Order of this Court" can be read as extending the injunction indefinitely until the district court orders otherwise. Such a reading would render the 180-day limit superfluous. We decline to construe the district court's injunction in such a way when the natural reading of the injunction—to allow for the injunction to be modified by further order of the district court issued only within the six-month period—allows each term of the injunction to have meaning.

II.

The jurisdiction of this Court, like any Article III court, is limited to live cases and controversies. *Dow Jones & Co., Inc. v. Kaye*, 256 F.3d 1251, 1254 (11th Cir. 2001). A justiciable controversy is a "'real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.'" *Id.* (quoting *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 241, 57 S. Ct. 461, 464 (1937)).

An appeal is moot "when it no longer presents a live controversy with respect to which the court can give meaningful relief." *Ethredge v. Hail*, 996 F.2d 1173, 1175 (11th Cir. 1993). When a case becomes moot while an appeal is pending, we are divested of jurisdiction. *Id.*; *see also Al Najjar v. Ashcroft*, 273 F.3d 1330, 1335-36 (11th Cir. 2001) (per curiam). This Court is obligated "to consider issues of mootness *sua sponte* and, absent an applicable exception to the mootness doctrine, to dismiss any appeal that no longer presents a viable case or controversy." *Pacific Ins. Co. v. Gen. Dev. Corp.*, 28 F.3d 1093, 1096 (11th Cir. 1994) (per curiam).

Because the district court's injunction has expired by its own terms, we can provide no meaningful relief in this case. *See id.* at 1096. A reversal of the expired injunction would leave DCH in the same position that it currently stands: able to

reduce or alter M.H.'s skilled-nursing care hours based, of course, on compliance with applicable Medicaid and ADA law.[4] So, unless an exception to the mootness doctrine applies, this appeal is moot and must be dismissed.

III.

DCH asserts that the recognized exception to the mootness doctrine for cases that are capable of repetition yet evading review applies in this case. Because DCH and M.H. have had disagreements in the past over DCH's determination of M.H.'s medically necessary nursing hours, DCH contends that similar cases are likely to arise in the future. In DCH's view, the district court in any future cases may grant similar 180-day injunctions, so this case falls within the repetition-and-evasion exception. We disagree.

Courts have long recognized that otherwise-moot cases may be considered when the issues involved are capable of repetition but, because of their short duration, are likely to evade judicial scrutiny. *See B & B Chem. Co., Inc. v. U.S.*

[4] DCH contends that the district court awarded M.H. not only an injunction, but also entered a declaratory judgment that DCH's actions violated both the ADA and Medicaid Act, and it argues that we have jurisdiction to reverse this purported declaration. But although M.H. originally sought both declaratory and injunctive relief, the record reflects that the district court awarded him only injunctive relief. The district court concluded that DCH had violated the relevant statutes in applying its policies to determine M.H.'s then-current medical needs and, consequently, granted only the limited-duration injunction. Although the district court's Opinion and Order granted "declaratory permanent injunctive [*sic*]," the relief section was devoid of anything even purporting to be declaratory relief for M.H. and instead detailed just the 180-day injunction. Similarly, the final judgment entered in the case mentioned only an injunction with respect to M.H., while, significantly, it entered what it described as a declaratory judgment with respect to another plaintiff in the case. Moreover, M.H. has conceded that the district court did not award him a declaratory judgment. Accordingly, the only relief entered against DCH by the district court that DCH can challenge on appeal is the now-expired injunction.

EPA, 806 F.2d 987, 990 (11th Cir. 1986). This exception is limited to circumstances where "1) the challenged action is too short in duration to be fully litigated prior to its cessation or termination, and 2) there is a reasonable expectation that the same complaining party will be subject to the same action again." *Id.* (citing *Fla. Farmworker's Council v. Marshall*, 710 F.2d 721, 731 (11th Cir. 1983)).

Here the "challenged action" is the district court's injunction prohibiting DCH from reducing M.H.'s nursing hours for a period of 180 days. We do not believe it is reasonable to expect that DCH will be subjected to repeated 180-day injunctions regarding M.H.'s nursing care. To hold otherwise would require finding a reasonable expectation that DCH will disagree with M.H.'s physicians' determination of his medical needs in the future, that M.H. will challenge DCH's decision in federal court and proceed to trial, that a fact finder will necessarily find against DCH on the facts relevant to M.H.'s medical condition at that time, and that the district court will impose a substantially similar, limited-duration injunction against DCH as a remedy. Finding that such a chain of circumstances may recur is entirely speculative, especially given the evolving nature of M.H.'s medical needs. A "theoretical possibility" that this situation may recur is not enough to bring this case within the exception to the mootness doctrine. *See B & B Chem. Co.*, 806 F.2d at 990.

To the extent that DCH suggests that, in a case like this, a district court's legal conclusions regarding the Medicaid Act or ADA will always evade review, the very existence of our precedent on such issues forecloses that notion. *See, e.g.*, *Moore ex rel. Moore v. Reese*, 637 F.3d 1220, 1255-61 (11th Cir. 2011). Accordingly, the exception to the mootness doctrine for cases that are capable of repetition while evading review does not apply here. DCH's appeal is moot.

IV.

Because DCH's appeal is moot, and, for the reasons stated above, no exception applies, this appeal is **DISMISSED**.