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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1403**

C. W., et al.,
Appellants,

vs.

Fulda School District, I. S. D. 505,
Respondent.

**Filed March 5, 2018
Affirmed
Larkin, Judge**

Murray County District Court
File No. 51-CV-16-299

Andrea L. Jepsen, Amy J. Goetz, School Law Center, LLC, St. Paul, Minnesota (for
appellants)

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Considered and decided by Bratvold, Presiding Judge; Larkin, Judge; and Florey,
Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Appellants, a former high-school student and her parents, challenge the district
court's dismissal of their claims challenging the legality of respondent school district's

policy of precluding high-school students participating in courses under the Minnesota Post Secondary Enrollment Options (PSEO) Act from accessing the Fulda High School building during gaps in instruction. Because appellants' requests for declaratory and injunctive relief were rendered moot by appellant-student's graduation and the legislature's amendment of the PSEO Act, and because appellants' motion to amend did not state a cognizable claim for monetary damages, we affirm.

FACTS

During the 2016-2017 school year, appellant C.W. was a senior at Fulda High School (FHS) in respondent Fulda School District, I.S.D. No. 505 (school district). FHS is located in Fulda, a town with a population of approximately 1,300 people. During the 2015-2016 and 2016-2017 school years, C.W. took some classes at FHS for high-school credit. She took other classes at Minnesota West Community and Technical College for dual high-school and college credit under the PSEO Act, Minn. Stat. § 124D.09 (2016). When a student participates in dual-credit instruction under the PSEO Act, the school district loses state funding proportional to the number of dual-credit classes that the student takes from a post-secondary institution, instead of from a school in the school district.

Given the distance between Fulda and Minnesota West, C.W. took her dual-credit courses online. As a result of C.W.'s participation in Minnesota West dual-credit classes, there were gaps in C.W.'s school day when she ordinarily would have had a class at FHS. During gaps in her schedule during the 2015-2016 school year, C.W. studied in the FHS library or in a study hall at FHS. Prior to the 2016-2017 school year, the school district adopted a policy providing that "[s]tudents enrolled in PSEO courses are required to leave

campus for the time they are enrolled in PSEO courses” and that “PSEO students are only to be in the High School building while they are attending Fulda Public School classes or by special permission of the Administration.”

In November 2016, C.W. and her parents sued the school district claiming violations of the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution and the Rights and Privileges Clause of the Minnesota Constitution. Appellants also claimed violations of the PSEO Act and state statutes regarding the availability of school facilities and state aid. Appellants alleged that school officials discouraged FHS students from enrolling in dual-credit classes under the PSEO Act to avoid the associated losses in per-pupil state funding. As support, appellants alleged that on April 12, 2016, the principal of FHS told students interested in PSEO classes that they had only one day to complete paperwork necessary to participate in the PSEO program, when the actual statutory deadline for students to submit their paperwork was May 30, 2016, over a month later.

Appellants alleged that, during the gaps in C.W.’s schedule attributable to her PSEO classes, there were study halls available at FHS that the school district did not allow her to attend. Appellants also alleged that, when C.W. returned to the FHS building to attend a class after leaving in accordance with the school district’s policy, she was required to sit on a bench near the school office and was not allowed to leave the bench until the bell rang. Appellants alleged that students who were home-schooled and participated in activities at FHS were not similarly restricted while waiting for those activities to begin.

Appellants alleged that FHS students were allowed to take distance-learning courses from Southwest Service Cooperative by using interactive television (ITV) technology. The

school district does not lose per-pupil funding when students take ITV courses. Appellants also alleged that the school district had entered into a concurrent enrollment agreement with the Fond du Lac Tribal and Community College to provide dual-credit courses taught by FHS teachers in the FHS building. The school district receives aid from the Minnesota Department of Education for the costs of providing these postsecondary courses at the high school. Appellants alleged that the school district provided a dedicated classroom and necessary technology for students participating in ITV and dual-credit courses in the FHS building. The school district also allowed those students to complete their work in the FHS building.

Appellants alleged that because of Fulda's size and location, there were few places for PSEO students to go when they could not access the high-school building during gaps in their schedule. Appellants alleged that students like C.W. may have been able to go home during gaps in their schedule. But going home resulted in increased travel time, including during inclement weather, and many parents, including C.W.'s parents, did not want their children at home unsupervised during the school day. Appellants further alleged that C.W. requested special permission to continue studying in the library during gaps in her schedule, and the school district denied her request without explanation.

Appellants requested declaratory and injunctive relief, asking the district court to (1) order the school district to allow students taking dual-credit courses under the PSEO Act to remain in the high-school building during gaps in scheduled instruction, (2) order the school district to provide PSEO students with the space and technological resources necessary to complete their work in the FHS building, and (3) enjoin the school district

from instituting any policy that interferes with students' right to participate in PSEO coursework. Appellants also requested attorney fees, costs, and disbursements.

In January 2017, appellants amended their complaint to add a claim under the Equal Protection Clause of the Minnesota Constitution and expand their claim under the PSEO Act, asserting that the school district's policy was both in conflict with and preempted by the act. The district court denied appellants' request for temporary relief. Shortly thereafter, the school district moved to dismiss appellants' amended complaint under Minn. R. Civ. P. 12.02(e), for failure to state a claim upon which relief can be granted. In April 2017, the district court held a hearing regarding the school district's motion to dismiss.

On May 26, 2017, C.W. graduated from high school. By letter request that day, the school district asked the district court to reopen arguments regarding its motion to dismiss and allow it to argue that appellants' claims were moot given C.W.'s graduation. Appellants responded that they did not object, but requested that the court "give them leave to amend their Complaint to include a claim for damages accrued since the filing of the Complaint." The district court granted the school district's request. However, the district court denied appellants' letter request for leave to amend the complaint and directed appellants to file a motion to amend.

Appellants moved "for leave to amend the first amended complaint" to "add a claim for damages." In a memorandum supporting the motion, appellants asserted that the school district's policy resulted in C.W. having ten fewer hours per week to devote to academics and that the lost time made it necessary to enroll in two fewer dual-credit classes during the spring of 2017. Appellants further asserted that C.W. would therefore be required to

take six more credits at the college she planned to attend in the fall and to incur an additional \$7,795 in expenses. Appellants argued that an amended claim for damages would prevent their claims from being moot. In a memorandum in support of its mootness argument, the school district argued that appellants were “merely attempting to overcome the admitted mootness of their claims by adding a new claim for damages.”

The district court dismissed appellants’ first amended complaint for failure to state a claim, concluding that appellants’ claims failed on the merits and that C.W.’s graduation rendered the claims moot. The district court’s order did not refer to appellants’ motion to amend. This appeal follows.

D E C I S I O N

Appellants raise two main arguments on appeal. First, appellants contend that the district court erred in concluding that their PSEO Act and Equal Protection claims failed to state a claim on the merits. Second, appellants contend that the “district court erred by determining that appellants’ claims were moot before hearing appellants’ motion to amend their complaint to add a claim for damages.” We first address the mootness ruling.

The mootness doctrine is based on the principle that “[appellate courts] do not issue advisory opinions, nor do [they] decide cases merely to establish precedent.” *Jasper v. Comm’r of Pub. Safety*, 642 N.W.2d 435, 439 (Minn. 2002). “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).” *Dean v. City of Winona*, 868 N.W.2d 1, 4-5 (Minn. 2015)

(quotation omitted). Because mootness is a jurisdictional issue, we review it de novo. *Id.* at 4.

An action “should be dismissed as moot when a decision on the merits is no longer necessary or an award of effective relief is no longer possible.” *Id.* at 5. However, mootness is a “flexible discretionary doctrine, not a mechanical rule that is invoked automatically.” *Kahn v. Griffin*, 701 N.W.2d 815, 821 (Minn. 2005) (quotation omitted). And courts “will not deem a case moot if it implicates issues that are capable of repetition, yet likely to evade review.” *Id.* An action is “capable of repetition, yet likely to evade review” if “(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.” *Weinstein v. Bradford*, 423 U.S. 147, 149, 96 S. Ct. 347, 348 (1975). A case is not moot if it is “functionally justiciable” and presents an important public issue “of statewide significance that should be decided immediately.” *State v. Rud*, 359 N.W.2d 573, 576 (Minn. 1984).

Declaratory and Injunctive Relief

The district court determined that appellants’ claims for declaratory and injunctive relief were moot. Appellants do not assign error to this determination. Appellants asked the district court to order the school district to allow PSEO students to remain in the FHS building during gaps in scheduled instruction and to provide PSEO students with the space and technological resources necessary to complete their work in the high-school building. Appellants also asked the district court to enjoin the school district from instituting any policy that interferes with students’ right to participate in PSEO coursework. Because

C.W. is no longer a student in the school district and will no longer be subject to the school district's PSEO policies, the district court cannot grant her effective relief by requiring the school district to change its PSEO policies.

Moreover, in May 2017, the legislature amended the PSEO Act to add the following language:

(a) A school district must allow a student enrolled in a course under this section to remain at the school site during regular school hours.

(b) A school district must adopt a policy that provides a student enrolled in a course under this section with reasonable access during regular school hours to a computer and other technology resources that the student needs to complete coursework for a postsecondary enrollment course.

2017 Minn. Laws 1st Spec. Sess. ch. 5, art 2, § 32, at 1524, codified at Minn. Stat. § 124D.09, subd. 11a. (Supp. 2017).

This new legislation plainly prohibits a PSEO policy like the one at issue here and essentially mirrors the equitable relief that appellants requested in their complaint. In fact, appellants assert that the legislature added this provision in direct response to the controversy in this case. As a result of this recent legislation, no PSEO student may be subject to a school-district policy denying access to school sites during regular school hours or reasonable access to computers and technological resources necessary to complete PSEO coursework. Thus, this case does not implicate issues that are capable of repetition yet likely to evade review. Nor does it present an issue of statewide significance that the courts should decide immediately. For these reasons, we hold that appellants' requests for declaratory and injunctive relief are moot.

Motion to Amend to Add Damages Claim

Appellants contend that their claims are not moot because they “could be afforded the effectual relief of their actual damages.” Appellants also contend that they were prejudiced “[w]hen the District Court entirely ignored the fact that [they] were making a claim for damages, a claim that would defeat [the school district’s] mootness argument, and decided that [their] case was moot.”

A party may amend a pleading outside the time period for amendment as a matter of course “only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires.” Minn. R. Civ. P. 15.01. A motion to amend under rule 15.01 “should be freely granted, except where to do so would result in prejudice to the other party.” *Marlow Timberland, LLC v. County of Lake*, 800 N.W.2d 637, 640 (Minn. 2011) (quotation omitted). However, a district court may also properly deny amendment if the proposed amended pleading does not state a cognizable legal claim. *LaFee v. Winona County*, 655 N.W.2d 662, 668 (Minn. App. 2003), *review denied* (Minn. Mar. 27, 2013); *see Eisert v. Greenberg Roofing & Sheet Metal Co.*, 314 N.W.2d 226, 228-29 (Minn. 1982) (holding that district court did not abuse its discretion by denying motion to amend to add a punitive-damages claim where punitive damages could not be awarded as a matter of law).

“The decision whether to permit a party to amend pleadings rests within the discretion of the [district] court and will not be reversed in the absence of clear abuse of such discretion.” *Warrick v. Giron*, 290 N.W.2d 166, 168 (Minn. 1980). Moreover, “on appeal error is never presumed. It must be made to appear affirmatively before there can

be reversal. . . . [And] the burden of showing error rests upon the one who relies upon it.” *Loth v. Loth*, 227 Minn. 387, 392, 35 N.W.2d 542, 546 (1949) (quotation omitted). Thus, even if the district court does not expressly rule on a motion, we do not assume that the district court erred. *Palladium Holdings, LLC v. Zuni Mortg. Loan Tr.* 2006-OA1, 775 N.W.2d 168, 177-78 (Minn. App. 2009), *review denied* (Minn. Jan. 27, 2010). Instead, appellate courts generally treat a district court’s silence on a motion as an implicit denial of the motion. *Id.*

Appellants argue:

It was the height of unfairness for the District Court to grant [the school district’s] letter request to open the record on [the school district’s] motion to dismiss so that it could argue that [their] claims were moot, to require [them] to file a motion to amend their complaint in ways that would defeat [the school district’s] argument, and then to make a decision on [the school district’s] mootness claims while ignoring [their] motion.

Although the district court did not refer to appellants’ motion to amend in its dismissal order, it appears that the district court implicitly denied the motion in granting the school district’s motion to dismiss as moot. In district court, the parties consistently framed appellants’ request to amend the complaint to add a damages claim as a defense to the school district’s argument that C.W.’s graduation rendered appellants’ claims moot. Appellants requested the amendment in a letter responding to the school district’s request to reopen the record for arguments regarding mootness. In the letter, appellants stated that their “claim for attorney’s fees, and a claim for damages, should defeat any mootness defense.” And the district court’s June 2, 2017 order reopening the record addressed both issues.

Appellants and the school district characterized the motion to amend as an attempt by appellants to prevent appellants' claims from being moot. Indeed, appellants argued that if they were "given leave to amend . . . , any argument that their case is moot will evaporate." On appeal, appellants argue "[w]hat the court did . . . , and in doing so abused its discretion, was to treat [their] defense to [the school district's] mootness argument as if it were nonexistent and never had been offered, and make a decision on [the school district's] argument that [their] claims were moot." Given the interrelation of respondent's motion to dismiss as moot and appellants' motion to amend to include a claim for damages, we do not presume that the district court erred by ignoring appellants' motion as appellants assert. Instead, we treat the district court's silence regarding the motion to amend as an implicit denial of the motion.

A "generalized request" for damages "untethered to a specific claim or constitutional provision" is insufficient to put a defendant on notice of a specific cause of action. See *Dean*, 868 N.W.2d at 8 (stating that generalized request for "nominal damages of \$1.00 for violations of [plaintiffs'] constitutional rights" did not put the defendants on notice of a cause of action for nominal damages under the Remedies Clause (quotation marks omitted)). Here, appellants simply requested "leave to amend the first amended complaint in [this] matter to add a claim for damages." Appellants' motion and supporting memorandum did not identify the specific constitutional or statutory claims on which their request for monetary damages was based.

At oral argument, appellants narrowed the scope of their request for damages, acknowledging that the only cognizable basis for monetary damages is their equal-

protection claim. 42 U.S.C. § 1983 (2014) provides a private right of action for violations of constitutional provisions, including the Equal Protection Clause, and a party bringing a § 1983 claim may seek monetary damages for violations of their constitutional rights. However, appellants did not refer to § 1983 as a basis to amend their first amended complaint to add a claim for damages. Nor did appellants refer to § 1983 in their existing pleadings. Because appellants' generalized request for damages was not linked to a specific claim or constitutional provision, we cannot say that the district court abused its discretion by implicitly denying their motion to amend.

In conclusion, the district court did not err by denying appellants' motion to amend and dismissing appellants' first amended complaint as moot. Nevertheless, appellants encourage us to address the merits of their claims, arguing:

Some school districts look for creative ways to interfere with their students' access to the PSEO program as a way to increase school district revenue, and [we] expect this practice to continue, even if it cannot continue in the way the PSEO Act now forbids. A determination that a school district may not single out PSEO students for different treatment to inhibit their involvement in the PSEO program would be of great value to young people interested in the PSEO program, and to the state as a whole.

(Footnote omitted.) Essentially, appellants ask us to make a proclamation regarding actions that may occur in the future. Regardless of the merits of such a proclamation, it would constitute an improper advisory opinion. Appellate courts do not issue advisory opinions. *Jasper*, 642 N.W.2d at 439.

Affirmed.