COLORADO COURT OF APPEALS

DATE FILED: September 3, 2020
CASE NUMBER: 2019CA136

Court of Appeals No. 19CA0136
El Paso County District Court No. 18CV30549
Honorable Eric Bentley, Judge

Saul Cisneros and Rut Noemi Chavez Rodriguez, on Behalf of Themselves and Others Similarly Situated,

Plaintiffs-Appellees,

v.

Bill Elder, in his Official Capacity as Sheriff of El Paso County, Colorado,

Defendant-Appellant.

APPEAL DISMISSED AND JUDGMENT VACATED

Division III
Opinion by JUDGE BERGER
Furman and Grove, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)
Announced September 3, 2020

Holland & Hart LLP, Stephen G. Masciocchi, Denver, Colorado; American Civil Liberties Union Foundation of Colorado, Mark Silverstein, Denver, Colorado, for Plaintiffs-Appellees

Diana K. May, County Attorney, Mary Ritchie, Assistant County Attorney, Colorado Springs, Colorado, for Defendant-Appellant

¶ 1 Bill Elder, the elected sheriff of El Paso County, detained inmates of the El Paso County Jail, after they were entitled to release under Colorado law, based on detainer requests and civil administrative warrants from United States Immigration and Customs Enforcement (ICE). Two classes of plaintiffs moved for declaratory, mandamus, and injunctive relief, claiming that Elder's practice violated the Colorado Constitution. The district court agreed and entered a permanent injunction against Elder. Elder appealed to this court.

¶ 2 While Elder's appeal was pending, Governor Jared Polis signed House Bill 19-1124, codified at sections 24-76.6-101 to -103, C.R.S. 2019, which expressly prohibits Colorado law enforcement officers from detaining inmates based on ICE detainer requests or administrative warrants. § 24-76.6-102(2), C.R.S. 2019.

¶ 3 The intervening legislation moots this appeal. We therefore dismiss the appeal and, for the reasons articulated below, vacate the district court's judgment.

I. Relevant Facts and Procedural History

¶ 4 These facts are based on the parties' stipulations in the district court.[1]

¶ 5 Under federal law, ICE may request state or local law enforcement to continue to detain an inmate after the state's authority to imprison the inmate has expired by issuing an immigration detainer (ICE Form I-247A) or an administrative warrant (ICE Form I-200), or sometimes both together. An immigration detainer requests a state or local jail to continue to detain an inmate for up to forty-eight hours past when he would otherwise be released based on ICE's belief that the inmate may be removable from the United States. The additional forty-eight hours allows ICE officials to take the inmate into federal custody. Administrative warrants identify an inmate that ICE believes is removable and directs ICE officials (but not state officers) to arrest the person. Neither of these ICE documents are reviewed, approved, or signed by a judicial officer and, by their terms, are

---

[1] Elder seeks in this court to disavow some of his district court stipulations. In view of our mootness determination, we need not address whether a party may stipulate to facts in the district court and then, when inconvenient, disavow them in this court.

only requests for assistance; they are not purported commands or mandates.

¶ 6 Sheriff Elder created a written policy and practice of complying with these requests. Upon receipt of either an immigration detainer or an administrative warrant, Elder continued to detain inmates who had posted bond, completed their sentences, or otherwise resolved their criminal case. Elder's original practice was to detain inmates indefinitely until ICE agents arrived to take the inmate into federal custody. Later, Elder modified his practice to reduce the immigration detention to forty-eight hours after the inmate was entitled to release under state law.

¶ 7 Elder detained the named plaintiffs, Saul Cisneros and Rut Noemi Chavez Rodriguez, in accordance with this practice. Elder detained Cisneros at the jail for nearly four months after he had posted bond because ICE sent an immigration detainer and an administrative warrant to the jail. Elder did not detain Rodriguez after she was entitled to be released under state law, but the parties stipulated that, had Rodriguez posted bond, she would not have been released because ICE had named her in an immigration detainer and an administrative warrant.

¶ 8 The plaintiffs filed a class action complaint and moved for declaratory, mandamus, and injunctive relief, alleging that Elder's practice violated the Colorado Constitution's protection against unreasonable seizures, right to bail, and right to due process. The district court entered a preliminary injunction against Elder.

¶ 9 Then, after a hearing, the court certified two plaintiff classes of similarly situated inmates: (1) the "ICE Hold Class," defined as all current and future prisoners in the jail "who are, or will be, the subjects of immigration detainers . . . and/or administrative warrants"; and (2) the "Bond Class," defined as all current and future pretrial detainees in the jail "for whom a court has set bond, and who are the subjects of immigration detainers . . . and/or administrative warrants," (collectively, the plaintiff classes). Elder does not challenge class certification.

¶ 10 The parties stipulated to all relevant facts. The parties agreed that a trial was unnecessary and asked the court to decide the case on the undisputed facts. The class moved for summary judgment.

¶ 11 In a comprehensive and thoughtful written order, the district court found that Elder's hold policy violated the Colorado Constitution's protections against unreasonable seizures, right to

bail, and right to due process. The court granted all of the relief requested by the classes, including a permanent injunction enjoining Elder from engaging in the detainment practices. Elder appealed.

¶ 12 After the appeal was filed, the Governor signed House Bill 19-1124 into law. *See* §§ 24-76.6-101 to -103. The statute states, "[r]equests for civil immigration detainers are not warrants under Colorado law" and "continued detention of an inmate at the request of federal immigration authorities beyond when he or she would otherwise be released constitutes a warrantless arrest, which is unconstitutional." § 24-76.6-102(1)(b). The statute further states, *"[a] law enforcement officer shall not arrest or detain an individual on the basis of a civil immigration detainer request*." § 24-76.6-102(2) (emphasis added). Under the act, "[c]ivil immigration detainer" includes both immigration detainers and administrative warrants. § 24-76.6-101(1), C.R.S. 2019.

II. The Appeal is Moot

¶ 13 The plaintiff classes argue that the intervening legislation renders this appeal moot. We agree.

¶ 14 We review de novo whether an appeal is moot. *Colo. Mining Ass'n v. Urbina*, 2013 COA 155, ¶ 23.

¶ 15 "A case is moot when the relief sought, if granted, would have no practical legal effect on the controversy." *Gresh v. Balink*, 148 P.3d 419, 421 (Colo. App. 2006). "[N]ew legislation can cause a case to be moot when it forecloses the prospect of meaningful relief." *Giuliani v. Jefferson Cty. Bd. of Cty. Comm'rs*, 2012 COA 190, ¶ 14. When new legislation "definitively resolves the issues a litigant seeks to put before us, the claims are moot and we are precluded from deciding them." *Urbina*, ¶ 31 (quoting *Nuclear Energy Inst., Inc. v. Envtl. Prot. Agency*, 373 F.3d 1251, 1309 (D.C. Cir. 2004)). When a claim is moot, we dismiss the appeal and, ordinarily, vacate the lower court's judgment. *Van Schaack Holdings, Ltd. v. Fulenwider*, 798 P.2d 424, 427 (Colo. 1990); *see also Davidson v. Comm. for Gail Schoettler, Inc.*, 24 P.3d 621, 624 (Colo. 2001).

¶ 16 Section 24-76.6-102(2) prohibits Elder from detaining individuals based on ICE detainers or administrative warrants. That was the precise relief granted by the district court. A judgment by this court either affirming or reversing the district

court's judgment would have no effect because section 24-76.6-102(2) now governs. Therefore, this appeal is moot. *Gresh*, 148 P.3d at 421.

¶ 17 Elder argues against mootness because he says that the plaintiff classes may obtain an award of attorney fees on the basis of the district court judgment. We reject this argument because the plaintiff classes concede that they are not seeking attorney fees or damages of any kind in this litigation.

¶ 18 Elder further contends that the appeal is not moot because Cisneros brought a separate civil action against him for false imprisonment, claiming damages and other relief. He asserts that, absent judicial review in this case, issue preclusion will prevent him from fairly litigating the false imprisonment case.

¶ 19 The possibility of a damage award in a separate case does not make this case a live controversy. The supreme court reasoned in *Davidson* that "other pending litigation in which the constitutionality of the prior statutes may be raised is collateral to our present case." 24 P.3d at 624. Other pending litigation against Elder is similarly collateral and does not affect the analysis here.

¶ 20 Furthermore, issue preclusion will not preclude Elder's right to litigate the separate case because "[w]hen a case becomes moot on appeal, the usual practice is to dismiss the appeal and vacate the lower court's judgment." *Van Schaack*, 798 P.2d at 427; *see also Davidson*, 24 P.3d at 624 ("By our ruling today, we do not impact other litigants' rights to raise the constitutionality of the prior statutes in the context of a live controversy."). The reason for vacatur is precisely to avoid prejudice to a litigant who otherwise must face the consequences of the lower court's judgment. We therefore vacate the district court's judgment.[2]

¶ 21 Finally, Elder argues that this case survives mootness analysis because it meets one of the established mootness exceptions: it concerns a matter of public importance. *See Gresh*, 148 P.3d at 422. This exception is inapplicable here. Admittedly, whether a sheriff may detain a suspected alien on the basis of an immigration detainer or an administrative warrant is a question of substantial public importance, but the General Assembly has definitively answered that question.

---

[2] In vacating the district court's judgment, we express no opinions on the district court's analysis or conclusions.

III. Conclusion

¶ 22 The appeal is dismissed as moot, and the district court's judgment is vacated.

JUDGE FURMAN and JUDGE GROVE concur.

Court of Appeals

STATE OF COLORADO
2 East 14th Avenue
Denver, CO 80203
(720) 625-5150

PAULINE BROCK
CLERK OF THE COURT

NOTICE CONCERNING ISSUANCE OF THE MANDATE

Pursuant to C.A.R. 41(b), the mandate of the Court of Appeals may issue forty-three days after entry of the judgment. In worker's compensation and unemployment insurance cases, the mandate of the Court of Appeals may issue thirty-one days after entry of the judgment. Pursuant to C.A.R. 3.4(m), the mandate of the Court of Appeals may issue twenty-nine days after the entry of the judgment in appeals from proceedings in dependency or neglect.

Filing of a Petition for Rehearing, within the time permitted by C.A.R. 40, will stay the mandate until the court has ruled on the petition. Filing a Petition for Writ of Certiorari with the Supreme Court, within the time permitted by C.A.R. 52(b), will also stay the mandate until the Supreme Court has ruled on the Petition.

BY THE COURT: Steven L. Bernard
Chief Judge

DATED: March 5, 2020

***Notice to self-represented parties**: The Colorado Bar Association provides free volunteer attorneys in a small number of appellate cases. If you are representing yourself and meet the CBA low income qualifications, you may apply to the CBA to see if your case may be chosen for a free lawyer. Self-represented parties who are interested should visit the Appellate Pro Bono Program page at https://www.cobar.org/For-Members/Committees/Appellate-Pro-Bono*