



Court: Shawnee County District Court
Case Number: 2021-CV-000459
Case Title: Jill Foster-Koch - obo vs. Shawnee County Health Department
Type: MEMORANDUM DECISION AND ORDER

SO ORDERED.

A handwritten signature in black ink, appearing to read "T. Watson", is written over a large, stylized circular flourish.

/s/ Honorable Teresa L Watson, District Court Judge

**IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION THREE**

JILL FOSTER-KOCH,

Petitioner

2021-CV-459 and
2021-CV-460

SHAWNEE COUNTY HEALTH DEPARTMENT,

Respondent

MEMORANDUM DECISION AND ORDER

This case involves a challenge to quarantine orders issued to two students in Unified School District 450 (Shawnee Heights), in Shawnee County, Kansas. Petitioner Jill Foster-Koch seeks review of the quarantine orders on behalf of her minor children, J.K. and J.K., pursuant to K.S.A. 65-129c(d). Koch filed a separate petition for each child, and these matters were consolidated for hearing and decision.

Procedural history.

Koch filed her petitions on August 31, 2021, and initially the only named respondent was USD 450. Koch made clear in her petitions that she sought to appeal quarantine orders under K.S.A. 65-129c. On September 1, 2021, Koch amended her petitions to add the Shawnee County Health Department as a respondent. The court appointed an attorney to represent Koch in the quarantine appeals as required by K.S.A. 65-129c(d)(10). The hearing date was scheduled by agreement of the parties for September 14, 2021.

The Shawnee County Health Department filed a motion to dismiss the appeals as moot because the quarantine periods for both of Koch's children had expired. At the hearing on September 14, 2021, the court took the motion under advisement and went forward with the hearing. The court granted Koch's motion to dismiss USD 450 from the case without prejudice. The hearing spilled over into a second day, September 23, 2021. After presentation of evidence at the hearing, the court took the matter under advisement. The court granted the parties' requests to submit briefs prior to its decision.

FINDINGS OF FACT

Shawnee County Health Officer.

Dr. Erin Locke is the Shawnee County Health Officer. She was appointed by the Shawnee County Board of County Commissioners in February 2021. She has a medical degree and a master's degree in public health, is board certified in family medicine, and is licensed to practice medicine in the state of Kansas.

Dr. Locke testified that COVID-19 is the disease caused by the novel virus SARS-CoV-2. It is considered novel because it has not been observed in humans before. She said this means humans do not have historical immunity to the virus, and as a result, it has spread rapidly across the globe. The SARS-CoV-2 virus has an incubation period of 14 days, and those infected are contagious two days before symptoms appear. During the incubation period, the virus can be present but not rise to the level of producing noticeable symptoms.

Dr. Locke testified that, at the time of hearing, the Delta variant was the latest version or mutation of the virus. She said the Delta variant was more contagious than earlier versions of the virus and had been the dominant variant in Shawnee County and statewide for several weeks. She

said that there were more cases of school-aged children infected with the Delta variant and hospitalized than with prior versions of the virus.

Dr. Locke testified that certain measures are taken to slow the spread of the virus, including vaccination, wearing masks, physical distancing, hand washing and general disinfection, improving ventilation, and imposing isolation for those infected and quarantines for those exposed to the virus. These measures are part of the guidance given to local health departments by the Kansas Department of Health and Environment (“KDHE”) for controlling the spread of the virus.

Dr. Locke said isolation is a ten-day period of separation for those who have tested positive for COVID-19. The ten-day period is based on studies that suggest that most people are infectious to others for no more than ten days once symptoms have started, with some exceptions. Quarantine is a 14-day period of separation for those who have been exposed to the virus “who now have a high chance that [the] virus is inside their body but they have not yet been tested positive.” The isolation and quarantine timelines come from the Centers for Disease Control (“CDC”) at the federal level, down to KDHE, and then are passed on to local health departments. The court takes judicial notice that CDC guidelines regarding isolation and quarantine have changed since the hearing in this matter, but the details of such changes are not relevant to the analysis here.

Guidelines for Shawnee County schools.

Dr. Locke testified that the Shawnee County Health Department provided a set of COVID-19 guidelines to Shawnee County K-12 schools prior to the beginning of the 2021-22 school year. There are six public school districts in Shawnee County, including USD 450, with 65 different schools. There are 10 additional private schools. Altogether there are 30,000 school children and 6,500 school staff members in Shawnee County. The K-12 guidelines state that they are

“recommendations” that contain “the key COVID-19 control measures that should be considered by school district leaders as they prepare for the 2021-22 school year.” The guidelines were developed based on a review of other federal government, state government, and private entity guidelines, and vetted through the Shawnee County Public Health Technical Advisory Board. The Advisory Board was created by the Board of County Commissioners to assist the Shawnee County Health Officer, and it included a local physician and representatives of two hospitals and a mental health and substance abuse treatment center.

Dr. Locke said the Shawnee County Health Department has a liaison to local schools. There is a weekly meeting involving the Shawnee County Health Department and local school officials to share information on spread of the virus in the community and discuss how to implement the K-12 guidelines in the schools. The liaison is available to schools at any time to answer questions or discuss how to apply the guidelines to specific scenarios in the school setting.

Dr. Locke described the then-current K-12 guidelines for quarantine as follows. Under the guidelines, a close contact with someone who is infectious means being within six feet of that person for ten minutes or more (cumulative) over a 24-hour period. If the person exposed is fully vaccinated or has tested positive for COVID-19 in the past six months, the person does not have to quarantine. Those with close contacts outdoors do not have to quarantine. Where both parties were wearing masks during close contact, the exposed person need not quarantine. Otherwise, an exposed student is offered the Test to Learn, Test to Play option where the student comes to school but must take a COVID test each morning, and with a negative test the student is allowed to stay if the student wears a mask.

Dr. Locke testified that when the school becomes aware of a positive COVID test, the school conducts the contact tracing to determine the existence of close contacts. The school reports to the Shawnee County Health Department the identity of those who test positive for COVID as well as that person's close contacts. Dr. Locke provided the schools with an electronically fillable quarantine order with her pre-printed signature to issue to students and parents when the school determines the student is a close contact. This form is described in greater detail below. Dr. Locke said she authorized the schools to fill in the date blanks on the quarantine form with her pre-printed signature, then provide it to the affected students and parents. She said she only occasionally asks law enforcement to serve a copy of the quarantine order on the affected students and parents, leaving it to the schools to do so in most cases.

Dr. Locke testified that she relied on the schools to issue these quarantine orders because the Shawnee County Health Department cannot investigate close contacts for every positive case of COVID-19. She said at the time there were approximately 90 cases of COVID-19 reported each day in Shawnee County, many of which were never investigated because of the lack of resources to do so. She testified that in the school setting "it's a matter of being able to get them the order that they need at the time that they need it," and by "attempting to utilize the resources that we have, we partner with the schools."

Quarantine of Child 1.

J.K. is 13 years old and is a student in the eighth grade at Shawnee Heights Middle School, part of USD 450. The school district at the time required that students wear masks at school. The school district excused J.K. from the mask requirement because she brought a doctor's note indicating that she should be exempt from wearing a mask.

On Monday, August 23, 2021, J.K. attended an honors math class in person with other students. The middle school later discovered that one of the students in the class tested positive for COVID-19. J.K testified that she did not sit next to this student. She said she sat a couple of feet in front of the student during class. She said she did not have any other contact with this student.

On Friday, August 27, 2021, J.K was called to the principal's office via the school intercom. She was placed in a room by herself in the administrative office area. She texted Koch, her mother, to come pick her up. J.K. talked to the principal who said she was being quarantined because someone in her class tested positive for COVID-19. J.K. said she was not told what day she was exposed. J.K. did not receive a copy of a quarantine order. J.K had attended school all week until she was sent home on August 27.

J.K. returned to school on Monday, August 30, 2021. Koch testified that she sent J.K. back to school because J.K. had no symptoms of illness. J.K. was once again called to the principal's office and put in a room by herself. The principal told her she could not be in school. J.K. said she was told she was exposed to COVID-19 because she did not wear a mask. J.K. said no one asked her about where she was sitting in relation to the infected student or any other details. The principal said she could come back to school the next week.

Tim Urich is the principal of Shawnee Heights Middle School. In cases where a student tests positive for COVID-19, he does not do the contact tracing but does much of the communication among the students, parents, teachers, and other staff involved. He testified that concerning J.K.'s possible exposure, he talked to the math teacher and learned that J.K. sat next to the student who tested positive and sat next to that person during math class on August 23 and 24

for two 45-minute class periods. He learned that J.K. was not wearing a mask during that time, and J.K. and the positive student sat 17-24 inches apart during class.

Urich said the student tested positive for COVID-19 using a home test on Wednesday, August 25, 2021. He called Koch to give her notice about J.K.'s possible exposure. The student's positive PCR test result was not available until Thursday, August 26, at 6 p.m. On Friday, August 27, at 8:30 a.m., the school nurse emailed the quarantine orders to Koch.

J.K. said the school staff knew she had a doctor's note allowing her not to wear a mask, and J.K. had never been required to wear one at school. J.K. did not know if anyone else from the honors math class had been quarantined. J.K. was not tested for COVID-19 and did not know if she had it after the alleged August 23, 2021, exposure.

Koch received documents regarding J.K.'s quarantine on Friday, August 27. She received them via email from the school district and they were tacked on the door of her ex-husband's home. The first document was addressed to J.K. on USD 450 letterhead dated August 27. It was signed by Jennifer O'Neal, RN, the school nurse. It said in pertinent part:

“Shawnee Heights USD 450 and the Shawnee County Health Department have identified you as a possible close contact of someone who tested positive for COVID-19. Please refer to the attached Shawnee County Public Health Order for quarantine protocols.

...

Your incubation quarantine period can be ten (10) days or seven (7) days, as outlined in the attached Public Health Order.

For the ten (10) day incubation quarantine period, you will be confined to your home from 08/25/2021 to 09/04/2021, at which time you may return to your regular routine.

For the seven (7) day incubation quarantine period, if you are asymptomatic, you may get a PCR test on 8/30/21 or 8/31/21 and return 9/1/21 if the test is negative.

You must provide a copy of your test results to your school nurse before you can return to class.”

Attached to this was a three-page document addressed to J.K. on Shawnee County Health Department letterhead dated August 27. It was signed by Erin Locke, MD, MPH, Shawnee County Health Officer. Dr. Locke testified that she did not fill out the form or personally sign it. It said in pertinent part:

“The Shawnee County Health Officer believes you to be at high risk of developing COVID-19 as a result of one or more of the following: An exposure to infectious COVID-19 from a non-household contact on 8/24/21.

...

You are exempted from this quarantine if you have COVID-19 immunity [vaccine immunity or natural immunity documented by a PCR or antigen test] and do not have symptoms.

Terms of Quarantine

1. You are confined to your home at [address omitted] for the duration of the quarantine period identified below.
2. You may not have visitors to your home unless authorized by SCHD.

...

Quarantine Law

It is very important that you comply with this quarantine order. Your health and the health of others depends upon it. If necessary, this quarantine order may be enforced by law enforcement at the direction of the Shawnee County Health Officer.

...

If you have any questions regarding this quarantine order, please contact the Shawnee county Health Department at 785-251-5668 or the Shawnee County COVID-19 Hotline at 785-251-4949."

Quarantine of Child 2.

J.K. is 15 years old and is a student in the tenth grade at Shawnee Heights High School, part of USD 450 in Shawnee County, Kansas. The school district at the time required that masks be worn at school. The school district excused J.K. from the mask requirement because she brought a doctor's note indicating that she should be exempt from wearing a mask.

J.K. is a member of the dance team at the high school. On Thursday morning, August 26, 2021, J.K. went to dance team practice before school and attended school that day. On Thursday evening, August 26, J.K. went to a slumber party at a teammate's house. There were 14 or 15 other girls at the party, all of them members of the dance team. The girls were sitting on the living room floor, and no one wore masks. Later the group went to the store together and came back to the house to sleep. J.K. went to school as usual on Friday, August 27.

J.K. went to school on Monday, August 30. The dance team was scheduled to take team photos after school at practice. When J.K. arrived at practice, she was told by adults to stay six feet away from others because she was not wearing a mask and a member of the team had tested positive for COVID-19. Practice was then dismissed, and J.K. went home.

J.K. went to school on Tuesday, August 31. During second hour J.K. was told to get her things and go to the principal's office. The principal said it was not safe for J.K. to be in school. J.K. testified that she was not asked any questions about the slumber party and not given any sort of quarantine order. J.K. said she was given a paper with COVID-19 testing locations. Koch picked up J.K. from school. J.K. testified that some of the girls at the slumber party were quarantined and some were not.

Koch received documents regarding J.K.'s quarantine on Tuesday, August 31. She received them via email from the school district and they were tacked on the door of her ex-husband's home.

The first document was addressed to J.K. on USD 450 letterhead dated August 31. It was signed by Jennifer Schultz, LPN, SHHS Health Room. It said in pertinent part:

“Shawnee Heights USD 450 and the Shawnee County Health Department have identified you as a possible close contact of someone who tested positive for COVID-19. Please refer to the attached Shawnee County Public Health Order for quarantine protocols.

...

Your incubation quarantine period can be ten (10) days or seven (7) days, as outlined in the attached Public Health Order.

For the ten (10) day incubation quarantine period, you will be confined to your home from 08/27/2021 to 09/05/2021. You may return to your regular routine on 09/06/2021.

For the seven (7) day incubation quarantine period, if you are asymptomatic, you may get a PCR test on 09/01 or 09/02 and return 9/3 if the test is negative. You must provide a copy of your test results to your school nurse before you can return to class.”

Attached to this was a three-page document addressed to J.K. on Shawnee County Health Department letterhead dated August 31. It was signed by Erin Locke, MD, MPH, Shawnee County Health Officer. Dr. Locke testified that she did not fill out the form or personally sign it. It said in pertinent part:

“The Shawnee County Health Officer believes you to be at high risk of developing COVID-19 as a result of one or more of the following: An exposure to infectious COVID-19 from a non-household contact on 8/26/21.

...

You are exempted from this quarantine if you have COVID-19 immunity [vaccine immunity or natural immunity documented by a PCR or antigen test] and do not have symptoms.

Terms of Quarantine

1. You are confined to your home at [address omitted] for the duration of the quarantine period identified below.
2. You may not have visitors to your home unless authorized by SCHD.

...

Quarantine Law

It is very important that you comply with this quarantine order. Your health and the health of others depends upon it. If necessary, this quarantine order may be enforced by law enforcement at the direction of the Shawnee County Health Officer.

...

If you have any questions regarding this quarantine order, please contact the Shawnee county Health Department at 785-251-5668 or the Shawnee County COVID-19 Hotline at 785-251-4949."

J.K testified that the principal changed the exposure date to the morning of Thursday, August 26, so that members of the dance team who were quarantined could return (if they tested negative for COVID-19) in time to perform at the high school football game on Friday, September 3. Koch testified that this change did not come from the Shawnee County Health Officer. J.K. testified that she returned to school on Tuesday, September 7. J.K. was not tested for COVID-19 and did not know if she had it after the alleged August 26, 2021, exposure.

Dr. Locke testified that she was not aware of the underlying facts of either student's exposure before the school issued the orders. She said the Shawnee County Health Department did not participate in the contact tracing or review the quarantine orders before the school issued them via email. Dr. Locke said she had the quarantine orders served by the sheriff as an additional

precaution after hearing from others that Koch’s children had either broken or threatened to break the quarantine orders issued by the school.

CONCLUSIONS OF LAW

Before addressing the arguments made by the parties, it is necessary to understand the contours of Kansas law relating to the powers and duties of certain government officials and others at the state and local levels when it comes to matters of public health.

A. OVERVIEW.

1. KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT – DUTIES AND POWERS.

The secretary of KDHE “shall exercise general supervision of the health of the people of the state.” K.S.A. 65-101. The secretary has the power to, among other things, “investigate the causes of disease, including especially, epidemics and endemics” and “take action to prevent the introduction of infectious or contagious disease into this state and to prevent the spread of infectious or contagious disease within this state.” K.S.A. 65-101(a)(2) and (5).

“The secretary of health and environment may adopt rules and regulations necessary to carry out the provisions of subsection (a). In addition to other remedies provided by law, the secretary is authorized to apply to the district court, and such court shall have jurisdiction upon a hearing and for cause shown to grant a temporary or permanent injunction to compel compliance with such rules and regulations.” K.S.A. 65-101(b).

“The secretary of health and environment is authorized to issue such orders and adopt rules and regulations as may be medically necessary and reasonable to prevent the spread and dissemination of diseases injurious to the public health, including, but not limited to, providing for

the testing for such diseases and the isolation and quarantine of persons afflicted with or exposed to such diseases.” K.S.A. 65-128(b).

“Whenever the county or joint board of health or the local health officer neglects to properly isolate and quarantine infectious or contagious diseases and persons afflicted with or exposed to such diseases as may be necessary to prevent the spread thereof, the secretary of health and environment may quarantine any area in which any of these diseases may show a tendency to become epidemic.” K.S.A. 65-126.

2. LOCAL HEALTH OFFICERS – DUTIES AND POWERS.

“The board of county commissioners of each county shall act as the county board of health for the county. Each county board shall appoint a person licensed to practice medicine and surgery, preference being given to persons who have training in public health, who shall serve as the local health officer and who shall act in an advisory capacity to the county board of health.” K.S.A. 65-201(a). This provision applies to counties with populations of 100,000 people or more, and this includes Shawnee County. Dr. Locke is the duly appointed Shawnee County Health Officer. There is no dispute that she meets the statutory qualifications.

The local health officer “shall make an investigation of each case of . . . contagious or communicable diseases as may be required, and shall use all known measures to prevent the spread of any such infectious, contagious or communicable disease. . . .” K.S.A. 65-202(c)(1). A local health officer may be removed from office or convicted of a misdemeanor for failure or neglect in performing statutory duties. K.S.A. 65-202(c)(2).

K.S.A. 65-119(a) sets forth additional duties and powers:

“Any county or joint board of health or local health officer having knowledge of any infectious or contagious disease, or of a death from such disease,

within their jurisdiction, shall immediately exercise and maintain a supervision over such case or cases during their continuance, seeing that all such cases are properly cared for and that the provisions of this act as to isolation, restriction of communication, quarantine and disinfection are duly enforced. The county or joint board of health or local health officer shall communicate without delay all information as to existing conditions to the secretary of health and environment. The local health officer shall confer personally, if practicable, otherwise by letter, with the person in attendance upon the case, as to its future management and control. The county or joint board of health or local health officer is hereby empowered and authorized to prohibit public gatherings when necessary for the control of any and all infectious or contagious disease.”

“Any disclosure or communication of information relating to infectious or contagious diseases required to be disclosed or communicated under subsection (a) of this section shall be confidential and shall not be disclosed or made public,” with certain exceptions. K.S.A. 65-119(b).

The secretary of KDHE and local health officers are empowered to order isolation and quarantine as well as order certain persons to obtain medical evaluation and treatment. K.S.A. 65-129b says:

“(a) Notwithstanding the provisions of K.S.A. 65-119, 65-122, 65-123, 65-126 and 65-128, and amendments thereto, and any rules or regulations adopted thereunder, in investigating actual or potential exposures to an infectious or contagious disease that is potentially life-threatening, the local health officer or the secretary:

(1)(A) May issue an order requiring an individual who the local health officer or the secretary has reason to believe has been exposed to an infectious or contagious disease to seek appropriate and necessary evaluation and treatment;

(B) when the local health officer or the secretary determines that it is medically necessary and reasonable to prevent or reduce the spread of the disease or outbreak believed to have been caused by the exposure to an infectious or contagious disease, may order an individual or group of individuals to go to and remain in places of isolation or quarantine until the local health officer or the secretary determines that the individual no longer poses a substantial risk of transmitting the disease or condition to the public;

(C) if a competent individual of 18 years of age or older or an emancipated minor refuses vaccination, medical examination, treatment or testing under this

section, may require the individual to go to and remain in a place of isolation or quarantine until the local health officer or the secretary determines that the individual no longer poses a substantial risk of transmitting the disease or condition to the public; and

(D) if, on behalf of a minor child or ward, a parent or guardian refuses vaccination, medical examination, treatment or testing under this section, may require the minor child or ward to go to and remain in a place of isolation or quarantine and must allow the parent or guardian to accompany the minor child or ward until the local health officer or the secretary determines that the minor child or ward no longer poses a substantial risk of transmitting the disease or condition to the public; and

(2) may order any sheriff, deputy sheriff or other law enforcement officer of the state or any subdivision to assist in the execution or enforcement of any order issued under this section.”

The law contains certain requirements for the contents and delivery of isolation and quarantine orders. K.S.A. 65-129c says in part:

“(a) If the local health officer or the secretary requires an individual or a group of individuals to go to and remain in places of isolation or quarantine under K.S.A. 65-129b, and amendments thereto, the local health officer or the secretary shall issue an order to the individual or group of individuals.

(b) The order shall specify:

- (1) The identity of the individual or group of individuals subject to isolation or quarantine;
- (2) the premises subject to isolation or quarantine;
- (3) the date and time at which isolation or quarantine commences;
- (4) the suspected infectious or contagious disease causing the outbreak or disease, if known;
- (5) the basis upon which isolation or quarantine is justified; and
- (6) the availability of a hearing to contest the order.

(c)(1) Except as provided in paragraph (2) of subsection (c), the order shall be in writing and given to the individual or group of individuals prior to the individual or group of individuals being required to go to and remain in places of isolation and quarantine.

(2)(A) If the local health officer or the secretary determines that the notice required under paragraph (1) of subsection (c) is impractical because of the number

of individuals or geographical areas affected, the local health officer or the secretary shall ensure that the affected individuals are fully informed of the order using the best possible means available.

(B) If the order applies to a group of individuals and it is impractical to provide written individual copies under paragraph (1) of subsection (c), the written order may be posted in a conspicuous place in the isolation or quarantine premises.”

There are criminal penalties for violation of KDHE rules and regulations, violation of an isolation order, breaking or evading quarantine, or knowingly concealing a case of infectious disease. K.S.A. 65-129 says:

“Any person violating, refusing or neglecting to obey any of the rules and regulations adopted by the secretary of health and environment for the prevention, suppression and control of infectious or contagious diseases, or who leaves any isolation area of a hospital or other quarantined area without the consent of the local health officer having jurisdiction, or who evades or breaks quarantine or knowingly conceals a case of infectious or contagious disease shall be guilty of a class C misdemeanor.”

Those convicted of a class C misdemeanor face penalties of up to one month in jail, K.S.A. 21-6602(a)(3), and a fine of up to \$500, K.S.A. 21-6611(b)(3).

3. SCHOOL OFFICIALS – DUTIES AND POWERS.

Teachers and school administrators, among others, are mandatory reporters of infectious or contagious disease. K.S.A. 65-118(a) says:

“Whenever any person licensed to practice the healing arts or engaged in a postgraduate training program approved by the state board of healing arts, licensed dentist, licensed professional nurse, licensed practical nurse, administrator of a hospital, licensed adult care home-administrator, licensed physician assistant, licensed social worker, teacher or school administrator knows or has information indicating that a person is suffering from or has died from a reportable infectious or contagious disease as defined in rules and regulations, such knowledge or information shall be reported immediately to the county or joint board of health or the local health officer, together with the name and address of the person who has or is suspected of having the infectious or contagious disease, or the name and former address of the deceased individual who had or was suspected of having such a disease.”

These mandatory reporters are immune from civil and criminal liability and participation in judicial proceedings for reports made in good faith and without malice. K.S.A. 65-118(b). Information required to be reported under K.S.A. 65-118(a) shall be confidential and not be disclosed or made public, upon subpoena or otherwise, with certain exceptions. K.S.A. 65-118(c).

K.S.A. 65-122 concerns the exclusion of children and other persons “afflicted with an infectious or contagious disease dangerous to the public health” from school and child care facilities. Parents, along with a person in charge of any school or child care facility, have a duty to exclude affected children or other persons from these places. K.S.A. 65-122 says:

“No person afflicted with an infectious or contagious disease dangerous to the public health shall be admitted into any public, parochial or private school or licensed child care facility. It shall be the duty of the parent or guardian, and the principal or other person in charge of any public, parochial, private school or licensed child care facility to exclude therefrom any child or other person affected with a disease suspected of being infectious or contagious until the expiration of the prescribed period of isolation or quarantine for the particular infectious or contagious disease. If the attending person licensed to practice medicine and surgery or local health officer finds upon examination that the person affected with a disease, suspected of being infectious or contagious is not suffering from an infectious or contagious disease, he or she may submit a certificate to this effect to the person in charge of the public, parochial, private school or licensed child care facility and such person shall be readmitted to school or to the child care facility.”

4. CHALLENGING AN ORDER MADE UNDER K.S.A. 65-129C.

An individual quarantined under the authority of K.S.A. 65-129c may request a hearing in district court to challenge the quarantine order. K.S.A. 65-129c(d)(1). Koch requested a hearing on behalf of her minor children, J.K. and J.K., who were subject to the quarantine orders at issue. “The court shall grant the request for relief unless the court determines that the isolation or quarantine order is necessary and reasonable to prevent or reduce the spread of the disease or outbreak believed to have been caused by the exposure to an infectious or contagious disease.”

K.S.A. 65-129c(d)(4)(C)(i). Further, “[i]f feasible, in making a determination under this paragraph (C), the court may consider the means of transmission, the degree of contagion, and, to the extent possible, the degree of public exposure to the disease.” K.S.A. 65-129c(d)(4)(C)(ii).

B. MOOTNESS.

Shawnee County filed a motion to dismiss these cases prior to the hearing on the basis that the quarantine periods at issue had already expired, thus rendering Koch’s challenge moot. “Kansas appellate courts do not decide moot questions or render advisory opinions.” *State v. Montgomery*, 295 Kan. 837, 840, 286 P.3d 866 (2012). A case is moot when “it is clearly and convincingly shown the actual controversy has ended, the only judgment that could be entered would be ineffectual for any purpose, and it would not impact any of the parties’ rights.” *Id.* at 840-41. But the mootness doctrine is not jurisdictional, and it is amenable to exceptions. *Id.* at 841. See also *State v. Roat*, 311 Kan. 581, 590, 466 P.3d 439 (2020).

One common exception arises when an issue “is capable of repetition and raises concerns of public importance.” *State v. DuMars*, 37 Kan.App.2d 600, 605, 154 P.3d 1120, *rev. denied* 284 Kan. 948 (2007). “Public importance means more than that certain members of the general public are interested in the decision of the appeal from motives of curiosity or because it may bear upon their individual rights or serve as a guide for their future conduct.” *State v. Hayden*, 52 Kan. App. 2d 202, 206, 364 P.3d 962 (2015).

Here, Koch challenges the legal authority of these quarantine orders under the circumstances surrounding their issuance, namely that school officials identified her children as requiring quarantine, filled in the blanks on the quarantine orders, and presented them to Koch under the signature of Dr. Locke, the Shawnee County Health Officer. Dr. Locke and others

testified that this was a procedure contemplated by the Shawnee County Health Department's guidelines applicable to K-12 schools in Shawnee County. Given the number of K-12 schools, staff, and students in Shawnee County, the fact that this procedure was directed for use in the schools, and the continuing presence of COVID-19 in the community, the issuance of such quarantine orders under similar circumstances is certainly capable of repetition. Indeed, since the filing of the instant cases, two additional similar cases have been filed with this court. And Koch's challenges raise issues of public importance because the quarantine orders not only restrict or prevent the student's attendance at school, but purport to confine the student to her home for a certain period of time under penalty of law.

For these reasons, the court concludes that Koch's challenges to the quarantine orders are not moot. Shawnee County's motion to dismiss on this basis is denied.

C. ANALYSIS.

Shawnee County seeks to limit the court's review of this matter to the question of whether the quarantine orders were necessary and reasonable to prevent or reduce the spread of COVID-19. See K.S.A. 65-129c(d)(4)(C)(i). But the thrust of Koch's argument is that the quarantine orders were issued without legal authority, rendering them void from the outset. The court will focus its analysis on the issue of legal authority. This requires interpretation and application of the various statutes set forth above.

The most fundamental rule of statutory construction is that the intent of the legislature governs. *Harsay v. University of Kansas*, 308 Kan. 1371, 1381, 430 P.3d 30 (2018). The court discerns legislative intent through the statutory language, giving common words their ordinary meanings. *Nauheim v. City of Topeka*, 309 Kan. 145, 149, 432 P.3d 647 (2019). When a statute is

plain and unambiguous, the court should not speculate about legislative intent, nor should it read something into the statute that is not readily found in its text. *Harsay*, 308 Kan. at 1381. Indeed, “the best and only safe rule for ascertaining the intention of the makers of any written law is to abide by the language they have used.” *Gannon v. State*, 298 Kan. 1107, 1143, 319 P.3d 1196 (2014) (internal quotations and citations omitted).

Teachers and school administrators, among others, are mandatory reporters of infectious or contagious disease. K.S.A. 65-118(a). Further, “[n]o person afflicted with an infectious or contagious disease dangerous to the public health shall be admitted into any public, parochial or private school or licensed child care facility.” And a person in charge of any school or child care facility has a duty to exclude affected children or other persons from these places. K.S.A. 65-122. It follows, then, that schools have the statutory authority to exclude certain persons from a school under the circumstances described in these statutes. But there is no law that allows a school official to issue an order of quarantine confining a student to her home for any period of time under penalty of law.

By contrast, the local health officer may issue an order to quarantine. This is an order to confine a person to a particular place until the local health officer determines the person no longer poses a substantial risk of spreading the disease. K.S.A. 65-129b(a)(1)(B). The local health officer has at her disposal any sheriff, deputy sheriff or other law enforcement officer of the state or any subdivision to assist in the execution or enforcement of the order. K.S.A. 65-129b(a)(2). Further, breaking the quarantine order is a crime, punishable as a class C misdemeanor with the possibility of jail time and a fine. K.S.A. 65-129.

But the power of the local health officer to quarantine is circumscribed. The local health officer may issue a quarantine order only when “the local health officer . . . determines that it is medically necessary and reasonable to prevent or reduce the spread of the disease.” K.S.A. 65-129b(a)(1)(B). Koch argues that the statute means what it says – that the local health officer, not someone else, and certainly not someone without requisite credentials, must make the determination about medical necessity and reasonableness and issue the order. This makes sense in light of the requirements that the local health officer: 1) have medical education and training, K.S.A. 65-201(a); 2) make an investigation of each case of contagious disease and use all known measures to prevent the spread of the disease, K.S.A. 65-202(c)(1); and 3) immediately exercise and maintain supervision over cases of contagious disease during their continuance, seeing that all such cases are properly cared for and that any quarantine is duly enforced, K.S.A. 65-119(a).

Under the facts of this case, Dr. Locke did not determine that a quarantine order for either of Koch’s children was medically necessary and reasonable to prevent or reduce the spread of COVID-19. Dr. Locke admitted she did not know the underlying facts of either student’s exposure before the quarantine orders were issued, neither she nor the Shawnee County Health Department did any investigation or contact tracing, she did not prepare the orders, she did not review the orders before they went out, she did not sign the completed orders, and she did not issue the orders to the students or Koch. Only later, when she learned there might have been some resistance to the quarantine orders, did she have the sheriff leave a copy of the orders issued by the school at Koch’s ex-husband’s residence.

In sum, the quarantine orders in this case were created and issued by school officials who had no statutory or other authority to do so. To the extent the Shawnee County Health Department

argues that the orders were issued under the general authority of Dr. Locke on blank forms with a photocopied signature under the vague auspices of the K-12 guidelines, and as necessitated by the paucity of resources caused by a global pandemic, they are nonetheless void. Dr. Locke did not determine that these quarantine orders were medically necessary and reasonable to prevent or reduce the spread of COVID-19, and she did not issue the orders. The law simply does not allow Dr. Locke to delegate to school officials her statutory power and authority to impose quarantine orders in this situation.

CONCLUSION

The quarantine orders in both cases were issued without statutory or other legal authority and are void. Koch's request for relief in both cases is granted and the orders are vacated. This concludes the litigation in favor of Koch on behalf of her children, and no further journal entry is necessary.

This Order is effective on the date and time shown on the electronic file stamp.

IT IS SO ORDERED.

HON. TERESA L. WATSON
DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above document was filed electronically providing notice to counsel of record.

/s Angela Cox
Administrative Assistant