ORIGINAL

2023 OK 26

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

BRIAN AND JANELLE SHELLEM, HUSBAND AND WIFE, INDIVIDUALLY, AND ON BEHALF OF THEIR MINOR CHILDREN, C.S. AND M.S., BRETT AND EMILIE GARRELTS, HUSBAND AND WIFE, INDIVIDUALLY, AND ON BEHALF OF THEIR MINOR CHILD B.G., AND GRADY AND THERESA EPPERLY, HUSBAND AND WIFE, INDIVIDUALLY, AND ON BEHALF OF THEIR MINOR CHILDREN L.E., C.E., O.E., AND M.E.,

Plaintiffs/Appellees,

v.

ANGELA GRUNEWALD, SUPERINTENDENT OF EDMOND PUBLIC SCHOOLS, AND EDMOND BOARD OF EDUCATION MEMBERS JAMIE UNDERWOOD, CYNTHIA BENSON, KATHLEEN DUNCAN, LEE ANN KUHLMAN, MEREDITH EXLINE, SUED IN THEIR OFFICIAL AND INDIVIDUAL CAPACITIES,

Defendants/Appellants.

FILED
SUPREME COURT
STATE OF OKLAHOMA

MAR 28 2023

JOHN D. HADDEN
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ON APPEAL FROM THE DISTRICT COURT OF OKLAHOMA COUNTY

HONORABLE DON ANDREWS, DISTRICT JUDGE

¶ 0 Parents, individually, and on behalf of their minor children, filed a Petition for Declaratory Judgment and Injunctive Relief and an Application for Temporary Restraining Order requesting the trial court enjoin Edmond Public School District from enforcing its quarantine policy. The quarantine policy required unvaccinated students who have not tested positive for COVID-19 within ninety days and who are identified as a close contact to quarantine for either seven or ten days; whereas vaccinated students who are identified as a close contact are not required to quarantine. The trial court denied the parents' Temporary Restraining

Order, but granted a Temporary Injunction on the basis that the parents established the quarantine policy likely violated the Equal Protection Clause of the 14th Amendment to the United States Constitution. The Edmond Public School District appealed and we retained the matter. We vacate the trial court's order and grant declaratory relief.

**MATTER PREVIOUSLY RETAINED FOR DISPOSITION;
ORDER OF THE DISTRICT COURT VACATED;
DECLARATORY JUDGMENT GRANTED.**

Stanley M. Ward, Noble, Oklahoma, and Richard Labarthe and Alexey Tarasov, LABARTHE & TARASOV, a professional association, Norman and Oklahoma City, Oklahoma for Plaintiffs/Appellees.

F. Andrew Fugitt and Justin C. Cliburn, THE CENTER FOR EDUCATION LAW, a professional association, Oklahoma City, Oklahoma for Defendants/Appellants.

OPINION

ROWE, V.C.J.:

I. BACKGROUND

¶1 During the summer of 2021, Appellants, Edmond Public School Board Members and Edmond Public School District Superintendent, Angela Grunewald, (collectively "District") anticipated a complete return to in-person instruction for the 2021-2022 school year. Prior to the start of the school year, the Oklahoma City County Health Department ("OCCHD") expressed to District that quarantines should be recommended rather than required. In response, District prepared a standard letter that alerted parents when their child was exposed to a positive COVID-19 case, which left the responsibility "for carrying out a quarantine or not"

up to the parents.[1] School began on Thursday, August 12, 2021. By the fourth day of school, District reported 140 positive cases of COVID-19 which rose to 170 positive cases on the fifth day of the school year.

¶2 Based on guidance from the Centers for Disease Control and Prevention ("CDC"), OCCHD informed District that individuals deemed a "close contact"[2] should quarantine in light of the drastic spike of positive COVID-19 cases within the first week of the school year. OCCHD strongly recommended close contacts quarantine for 7-10 days unless (A) the close contact was vaccinated against COVID-19 or (B) the close contact had tested positive in the previous 90 days (the "Policy"). The following day, District implemented a policy consistent with OCCHD's recommendation and informed parents of the Policy by email.[3]

¶3 The Policy provided that a vaccinated close contact was not required to quarantine unless he or she displayed symptoms, but an unvaccinated close contact that had not tested positive within ninety days was required to quarantine. In the case of being identified as a close contact, the unvaccinated individual was presented with two options for quarantine: (1) a 7-day quarantine, in which the individual may return to school on day 8 if he or she provides a negative COVID-

[1] "In the case of a quarantine notification, parents will be notified if their child has been in close contact with a positive case, and the parent will be responsible for carrying out the quarantine or not." Ex. to Pls.' Appl. for Temporary Inj., Defs.' Ex. 9.

[2] "Defined as being within six feet of a positive individual for a period of 15 minutes or more or within three feet if both parties are masked." Temporary Inj. Order 2, n.2.

[3] The Policy was initially provided to parents through a letter sent via email on August 18, 2021. *See* Ex. To Pls.' Appl. For Temporary Inj. Defs.' Ex. 3. Included on the letter was a link to District's website, edmondschools.net, which provided the specific protocols to be followed starting August 18, 2021. *See* Ex. to Pls.' Appl. for Temporary Inj., Defs.' Ex. 4.

19 test on or after day 5 and continues to remain symptom free; or (2) a 10-day quarantine, in which the individual may return to school on or after day 11 if he or she remains symptom free.

¶4 As a result of the Policy, several unvaccinated students were required to quarantine due to being identified as a close contact. The Appellees, parents of children enrolled in Edmond Public Schools affected by the Policy ("Parents"), individually and on behalf of their children, filed a Petition for Declaratory Judgment and Injunctive Relief and an Application for Temporary Restraining Order ("TRO") in the District Court of Oklahoma County. Parents alleged the Policy violated: (1) 70 O.S. § 1210.189(A)(1); (2) their children's Fourteenth Amendment right to procedural due process; and (3) their children's First Amendment right to freely assemble. District objected, and the TRO was denied.

¶5 Following denial of the TRO, the trial court heard testimony on Parents' Petition for Injunctive Relief. A week later, the Attorney General filed a motion for leave to file an amicus curiae brief in support of granting Parents' Injunction on the basis that the Policy violates 70 O.S.Supp.2021, § 1210.189(A)(1). District objected to the filing of the brief, but the trial court granted the Attorney General's motion. The trial court denied relief on all three counts pleaded in the Petition, but granted a Temporary Injunction based on Parents' Equal Protection Clause argument and enjoined District from implementing or enforcing the Policy.

¶6 District timely appealed raising five counts of error relating to the trial court's Equal Protection analysis and inconsistencies of the trial court's order concerning evidence of irreparable harm. In addition, the Attorney General filed an amicus curiae brief with consent of the parties suggesting to the Court that while the trial court properly enjoined District from enforcing the Policy, the trial court improperly interpreted 70 O.S.Supp.2021, § 1210.189(A)(1). Neither Parents nor District filed a response to the Attorney General's amicus brief. We retained the matter for review.

II. STANDARD OF REVIEW

¶7 To obtain a temporary injunction, a plaintiff must show that four factors weigh in his or her favor: (1) the likelihood of success on the merits; (2) irreparable harm to the party seeking the relief if the injunction is denied; (3) their threatened injury outweighs the injury the opposing party will suffer under the injunction; and (4) the injunction is in the public interest. *Edwards v. Bd. Of Cnty Comm'rs of Canadian Cnty*, 2015 OK 58, ¶ 12, 378 P.3d 54, 59. "The right to injunctive relief must be established by clear and convincing evidence and the nature of the injury must not be nominal, theoretical, or speculative." *Id.*

¶8 "A judgment issuing or refusing to issue an injunction will not be disturbed on appeal unless the lower court has abused its discretion or the decision is clearly against the weight of the evidence." *Id.* ¶ 11, 378 P.3d at 58. "To reverse under an abuse of discretion standard, an appellate court must find the trial court's conclusions and judgment were clearly erroneous, against reason and evidence."

Murlin v. Pearman, 2016 OK 47, ¶ 17, 371 P.3d 1094, 1097. We will consider all the evidence on appeal to determine whether the trial court's granting of a temporary injunction was an abuse of discretion. *Dowell v. Pletcher*, 2013 OK 50, ¶ 5, 304 P.3d 457, 460.

¶9 "[A] clear abuse of discretion standard includes appellate review of both fact and law issues: 'In order to determine whether there was an abuse of discretion, a review of the facts and the law is essential.'" *Christian v. Gray*, 2003 OK 10, ¶ 43, 65 P.3d 591, 608 (quoting *Bd. of Regents of Univ. of Oklahoma v. Nat'l Collegiate Athletic Ass'n*, 1977 OK 17, ¶ 3, 561 P.2d 499, 502). Underlying questions of law are reviewed *de novo*. *Lierly v. Tidewater Petroleum Corp.*, 2006 OK 47, ¶ 16, 139 P.3d 897, 903. An issue presented in this cause is one of statutory interpretation. Statutory interpretation presents a question of law which this Court reviews under a *de novo* standard. *Corbeil v. Emricks Van & Storage, Guarantee Ins.*, 2017 OK 71, ¶ 10, 404 P.3d 856, 858.

¶10 The trial court determined Parents were likely to succeed on the merits of their Equal Protection Clause claim against District but were unlikely to succeed on the merits of their claim that the Policy violated 70 O.S.Supp.2021, § 1210.189(A)(1). We find the trial court improperly interpreted § 1210.189(A)(1) and incorrectly concluded Parents were unlikely to succeed on the merits of their claim that the Policy violates § 1210.189(A)(1). Because we determine the Policy violates 70 O.S.Supp.2021, § 1210.189(A)(1), we need not address the Equal Protection Clause argument.

III. DISCUSSION

¶11 On March 15, 2020, Oklahoma Governor, J. Kevin Stitt, declared a statewide emergency due to the coronavirus pandemic and its threat to the people of this State and their peace, health, and safety.[4] The Governor rescinded his emergency declaration on May 3, 2021.[5] Subsequently, the Oklahoma Legislature passed Senate Bill 658 in May of 2021, which was signed into law on May 28, 2021.

¶12 Senate Bill 658 made additions and amendments to school health and safety statutes within 70 O.S.2011, §§ 1210.191-1210.194. Specifically, Senate Bill 658 created two new sections, 70 O.S.Supp.2021, §§ 1210.189 and 190.[6] The

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[4] The Governor's Executive Order 2020-07, filed with the Oklahoma Secretary of State on March 15, 2020, states in pertinent part:

> Therefore, I, J. Kevin Stitt, Governor of the State of Oklahoma, pursuant to the power vested in me by Section 2 of Article VI of the Oklahoma Constitution, hereby declare and order the following:
>
> 1. There is hereby declared an emergency caused by the impending threat of COVID-19 to the people of this State and the public's peace, health, and safety.

Exec. Order No. 2020-07, https://www.sos.ok.gov/documents/executive/1913.pdf.

[5] The Governor's Executive Order 2021-11, filed with the Oklahoma Secretary of State on May 3, 2021 states in pertinent part:

> I, J. Kevin Stitt, Governor of the State of Oklahoma, pursuant to the power vested in my by Section 2 of Article VI of the Oklahoma Constitution hereby order:
>
> Effective May 4, 2021, Second Amended Executive Order 2021-07 is withdrawn and rescinded.

Exec. Order No. 2021-11, https://www.sos.ok.gov/documents/executive/1999.pdf.

[6] In *Ritter v. State*, 2022 OK 73, 520 P.3d 370, this Court determined 70 O.S.Supp.2021, §§ 1210.189 and 190 were an unconstitutional, impermissible delegation of Legislative authority. However, the objectionable provision was stricken, and the remainder of the statute was upheld as constitutional. The text that was stricken arises from § 1210.190(A)(1) which provides:

> A. A board of education of a public school district or a technology center school district may only implement a mandate to wear a mask or any other medical device as provided in this subsection.
>
> 1. A board of education of a public school district or a technology center school district may only implement a mandate to wear a mask or any other medical device after consultation with the

relevant section here is § 1210.189. Section 1210.189 concerns restrictions on a school district's ability to mandate COVID-19 vaccinations and mask mandates. More specifically, § 1210.189 provides:

> A. A board of education of a public school district or a technology center school district, the board of regents of an institution within The Oklahoma State System of Higher Education, the governing board of a private postsecondary educational institution, the Oklahoma State Regents for Higher Education, the State Board of Education or the State Board of Career and Technology Education shall not:
>
> 1. Require a vaccination against Coronavirus disease 2019 (COVID-19) as a condition of admittance to or attendance of the school or institution;
>
> 2. Require a vaccine passport as a condition of admittance to or attendance of the school or institution; or
>
> 3. Implement a mask mandate for students who have not been vaccinated against COVID-19.
>
> B. As used in this section, "vaccine passport" means documentation that an individual has been vaccinated against COVID-19.
>
> C. Nothing in this section shall be construed to apply to any public or private healthcare setting.

The subsection at issue before us is § 1210.189(A)(1).

¶13 Before the trial court, Parents and the Attorney General argued the Policy violates § 1210.189(A)(1) because the Policy's quarantine requirement for unvaccinated students effectively excludes those students from attending school

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> local county health department or city-county health department within the jurisdiction of where the board is located and **when the jurisdiction of where the board is located is under a current state of emergency declared by the Governor.**

The Court determined that the emphasized language usurped local control granted by the Legislature by requiring the Governor to declare or not declare a state of emergency—an impermissible delegation of authority.

The result in *Ritter* has no effect on the application of § 1210.189 as it relates to the case before us, as the Court held the remainder of the statute was constitutional.

due to their COVID-19 vaccination status. District made several arguments in response to demonstrate the Policy does not violate § 1210.189(A)(1). First, District argues the Policy is not based on COVID-19 vaccination status, pointing out that hundreds of unvaccinated students attend school within the district each day. Specifically, District contends COVID-19 vaccination status is not the only condition that triggers whether a student is required to quarantine. Rather, District asserts what determines whether a student should be temporarily quarantined is evidence of that student's heightened immunity to COVID-19. District highlights that the Policy references three types of students exposed to a positive COVID-19 case: (1) vaccinated students; (2) unvaccinated students who have tested positive for COVID-19 within the previous ninety days; and (3) unvaccinated students who have *not* tested positive for COVID-19 within the previous ninety days.

¶14 To the extent District uses a student's vaccination status as a factor of whether they can attend school, § 1210.189(A)(1) is violated. The statute explicitly prohibits school districts from utilizing a student's COVID-19 vaccination status as a condition of whether he or she may attend school in-person. The Policy's consideration of whether a student has tested positive for COVID-19 within the previous ninety days in addition to a student's COVID-19 vaccination status does not cure the violation. If we were to conclude that the Policy does not violate § 1210.189(A)(1) because the Policy also factors in whether a student has tested positive for COVID-19 within the previous ninety days, the result would run contrary to the intent and plain language of the statute. Interpreting the Policy's condition

for quarantine as a level of heightened immunity is a distraction from what the Policy on its face and in practice accomplishes: conditioning a student's attendance of school on COVID-19 vaccination status. Accordingly, District's argument on this point fails.

¶15 Second, District contends quarantined students that participate in virtual learning are counted in "attendance;" therefore, the Policy does not violate § 1210.189(A)(1). Parents and the Attorney General argue "attendance" means physical, in-person attendance. Conversely, District argues that in light of the pandemic, "attendance" is not limited to physical, in-person attendance because of the implementation of virtual learning.

¶16 "The cardinal rule of statutory interpretation is to ascertain and give effect to legislative intent and purpose as expressed by the statutory language." *Odom v. Penske Truck Leasing Co.*, 2018 OK 23, ¶ 17, 415 P.3d 521, 528. "It is presumed that the Legislature has expressed its intent in a statute's language and that it intended what it so expressed." *Id.* "Intent is ascertained from the whole act in light of its general purpose and objective considering relevant provisions together to give full force and effect to each." *Keating v. Edmondson*, 2001 OK 110, ¶ 8, 37 P.3d 882, 886. "Only where legislative intent cannot be ascertained from the language of a statute, as in cases of ambiguity, are rules of statutory interpretation employed." *Odom*, ¶ 18, 415 P.3d at 528.

¶17 To ascertain legislative intent, we begin with the text. The plain meaning of "attendance" is "the act or fact of attending something."[7] The plain meaning of "attend" is "to be present at: to go to."[8] Nothing in the text suggests the Legislature intended for "attendance" to mean anything more than in-person, physical attendance. *Odom*, ¶ 17, 415 P.3d at 528 ("It is presumed that the Legislature has expressed its intent in a statute's language and that it intended what it so expressed."); *Stemmons, Inc. v. Universal C.I.T. Credit Corp.*, 1956 OK 221, ¶ 21, 301 P.2d 212, 216 ("In absence of an attempt to define any of the terms used in the statutes in question, it must be presumed the legislature considered it unnecessary to define particular words and phrases, and that it was intended only that same bear their usual and commonly accepted meaning."). We find "attendance" unambiguous.

¶18 Though we need not explore other provisions within Title 70 to aid us in ascertaining the Legislature's intent, doing so leads us to the same conclusion. Reading 70 O.S.2011, § 1210.194 in conjunction with § 1210.189(A)(1), it is clear the Legislature intended for "attendance" to mean in-person, physical attendance. Section 1210.194 discusses the prohibition of students from *attending* school when afflicted by a contagious disease or head lice. Subsection (A) provides "[a]ny child afflicted with a contagious disease . . . may be prohibited from *attending* a public .

[7] *Attendance*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/attendance (visited February 8, 2023).
[8] *Attend*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/attend (visited February 8, 2023).

. . school until such time as he is free from the contagious disease . . . ." 70 O.S.2011, § 1210.194(A) (emphasis added). It would be absurd to conclude the Legislature intended for "attending" to mean anything other than in-person physical attendance. *Ledbetter v. Oklahoma Alcoholic Beverage L. Enf't Comm'n*, 1988 OK 117, ¶ 7, 764 P.2d 172, 179 ("[S]tatutory construction that would lead to an absurdity must be avoided and a rational construction should be given to a statute if the language fairly permits.").

¶19 While it appears that District's intention was to curb the spread of COVID-19, the Policy effectively prohibits unvaccinated students from attending school when exposed to COVID-19 because of their COVID-19 vaccination status. Because we hold "attendance" means in-person, physical attendance, we find the Policy violates § 1210.189(A)(1). Accordingly, the trial court erred when it concluded Parents were unlikely to succeed on the merits of their claim the Policy violates 70 O.S.Supp.2021, § 1210.189(A)(1).

¶20 Our determination that "attendance" unambiguously means in-person, physical attendance renders it unnecessary to address the other construction-based arguments proffered by District. "A cardinal precept of statutory construction is that where a statute's language is plain and unambiguous, and the meaning clear and unmistakable, no justification exists for the use of interpretive devices to fabricate a different meaning." *Keating v. Edmonson*, 2001 OK 110, ¶ 15, 37 P.3d 882, 888. District's suggestion that we look to the State Board of Education's administrative code 2021 amendment for an alternate definition of

"attendance" runs counter to our principles of statutory construction. "[A]dministrative construction of a statute will not override the plain statutory language." *Id.* We will not look to the administrative code to override the plain meaning of an unambiguous statutory term.

¶21 Lastly, we also find the trial court erred when it interpreted 1210.189(A)(1) as "prohibit[ing] a school district from placing an unvaccinated student into quarantine, even if that student was symptomatic and/or tested positive for COVID-19."[9] District retains the statutory authority to exclude a student from the school premises if afflicted with a contagious disease.[10]

IV. CONCLUSION

¶22 District adopted a quarantine policy in response to a dramatic spike in positive COVID-19 cases. The Policy effectively prohibited students from attending school in-person based upon their COVID-19 vaccination status, in

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[9] Temporary Inj. Order 6.

[10] 63 O.S.Supp.2021, § 1-507 and 70 O.S.2011, § 1210.194 provide school districts the ability to prohibit a student afflicted with a contagious disease from attending school. Thus, if an unvaccinated student exhibited symptoms of COVID-19 and/or tested positive, District retains the statutory authority to exclude student from the school premises.

63 O.S.Supp.2021, § 1-507 provides:

> No person having a communicable disease shall be permitted to attend a private or public school, and it shall be the duty of the parent or guardian and the school of such person to exclude from the school such person until the expiration of the period of isolation or quarantine ordered for the case, or until permission to do so shall have been given by the local county health department or the State Department of Health.

70 O.S.2011, § 1210.194(A) provides:

> Any child afflicted with a contagious disease or head lice may be prohibited from attending public, private, or parochial school until such time as he is free from the contagious disease or head lice.

violation of 70 O.S.Supp.2021, § 1210.189(A)(1). Thus, the trial court improperly interpreted § 1210.189(A)(1) and erred by determining Parents would likely be successful on the merits of their Equal Protection Clause claim.

¶23 With the passage of 70 O.S.Supp.2021, § 1210.189(A)(1), the Legislature divested school districts from establishing policies that condition a student's school attendance on their COVID-19 vaccination status. We find District's policy violates § 1210.189(A)(1). The trial court's order is vacated and declaratory judgment is granted in favor of Parents.

**MATTER PREVIOUSLY RETAINED FOR DISPOSITION;
ORDER OF THE DISTRICT COURT VACATED;
DECLARATORY JUDGMENT GRANTED.**

Kane, C.J., Rowe, V.C.J., Winchester, Darby and Kuehn, JJ., concur.

Kauger, J. (by separate writing), Edmondson, Combs (by separate writing), and Gurich, JJ., dissent.

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BRIAN and JANELLE SHELLEM, Husband and Wife, individually and on behalf of their Minor Children, C.S. and M.S.; BRETT and EMILIE GARRELTS, Husband and Wife, individually and on behalf of their Minor Child, B.G.; and GRAY and THERESA EPPERLY, Husband and Wife, individually and on behalf of their Minor Children, L.E., C.E., O.E., and M.E.,

Plaintiffs/Appellees,

v.

ANGELA GRUNEWELD,

Superintendent of Edmond Public Schools, and Edmond Board of Education Members JAMIE UNDERWOOD, CYNTHIA BENSON, KATHLEEN DUNCAN, LEE ANN KUHLMAN, and MEREDITH EXLINE, sued in their official and individual capacities,

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KAUGER, J., with whom Gurich, J. joins, dissenting:

¶1 I agree with the dissent by Justice Combs for yet another reason. The Oklahoma Constitution art. 13 §4 addresses compulsory school attendance and the possibility of alternatives. It provides:

> The Legislature shall provide for the compulsory attendance at some public or other school, unless other means of education are provided, of all the children in the State who are sound in mind and body, between the ages of eight and sixteen years, for at least three months in each year.

¶2 Although the framers did not anticipate virtual schooling, they were prescient by recognizing that another means, other than actual attendance, was possible to fulfill the attendance requirement.