

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs October 3, 2022

STACEY LEE (BOYETT) v. BRETT CARR BOYETT**Appeal from the Circuit Court for Davidson County
No. 19D828 Phillip R. Robinson, Judge**

No. M2022-00060-COA-R3-CV

A father appealed an order requiring his children to receive the COVID-19 vaccine. While the appeal was pending, both children received the vaccine. Because we determine that the appeal is moot, we dismiss the appeal.

Tenn. R. App. P. 3 Appeal as of Right; Appeal Dismissed

W. NEAL MCBRAYER, J., delivered the opinion of the court, in which J. STEVEN STAFFORD, P.J., W.S., and THOMAS R. FRIERSON II, J., joined.

Kirk D. Catron, Murfreesboro, Tennessee, for the appellant, Brett Carr Boyett.

Sarah Reist Digby, Brentwood, Tennessee, for the appellee, Stacey Lee Boyett.

MEMORANDUM OPINION¹**I.**

Brett Carr Boyett (“Father”) and Stacey Lee Boyett (“Mother”) have two minor children together, Son and Daughter. When Mother and Father divorced in 2019, they agreed to a permanent parenting plan, which the trial court approved and incorporated into its final divorce decree. Under the plan, each parent is entitled to make decisions “regarding the day-to-day care of the children while the children are residing with that parent, including any emergency decisions affecting the health or safety of a child.” But

¹ Under the rules of this Court, as a memorandum opinion, this opinion may not be published, “cited[,] or relied on for any reason in any unrelated case.” TENN. CT. APP. R. 10.

Mother and Father share joint decision-making for all non-emergency health care decisions.

Previously, neither parent objected to the children staying up to date on their vaccinations. But Mother and Father disagreed about whether the children should receive the COVID-19 vaccine. Father did not want the children to receive the vaccine at all, while Mother wanted both children to be vaccinated as soon as possible. When the parties could not resolve their disagreement, Mother filed a “Motion to Permit Vaccination of Minor Children for Covid-19” with the trial court. She sought permission to vaccinate Son immediately and Daughter as soon as she became eligible to receive the vaccine.²

Father opposed the motion. He noted that, under the parenting plan, the parties shared joint decision making for non-emergency medical procedures. So Mother’s motion was really a request to modify the parenting plan, which Father argued was procedurally improper. But even if her motion was procedurally proper, Father contended that Mother had not provided a factual basis for modifying the parenting plan.

The trial court held a hearing on Mother’s motion in January 2022. It concluded that Son and Daughter faced serious risk from the COVID-19 virus, so vaccinating them against COVID-19 constituted an emergency health care decision under the parenting plan. The court ordered Son to be vaccinated immediately and Daughter to be vaccinated as soon as she became eligible. To ensure swift compliance with its ruling, the court ordered Father to immediately surrender custody of Son to Mother. It also suspended Father’s parenting time with Son until Son received his first dose of the vaccine.

At the conclusion of the hearing, Father moved for a stay pending appeal, which the trial court denied. Several hours later, Father filed this appeal along with a motion for emergency stay pending appeal. *See* TENN. R. APP. P. 7(a). We denied Father’s motion, and Son received his first dose of the COVID-19 vaccine that afternoon. While this appeal was pending, Son received his second dose of the vaccine, and Daughter received her first dose.³

² At the time, Daughter was not yet five years old, and only children five years old and older were eligible to receive the COVID-19 vaccine.

³ We granted Mother’s motion to consider the children’s current vaccine status as a post-judgment fact. *See* TENN. R. APP. P. 14.

II.

A.

Before reaching the issues raised by Father and Mother on appeal, we must first consider whether this case remains justiciable given post-judgment facts. *See Shaw v. Metro. Gov't of Nashville & Davidson Cnty.*, 651 S.W.3d 907, 911 (Tenn. 2022). For this Court to render an opinion, we must be faced with a “genuine and existing controversy.” *McIntyre v. Traugher*, 884 S.W.2d 134, 137 (Tenn. Ct. App. 1994). A case must remain justiciable from the time it is filed until the moment of final appellate review. *Norma Faye Pyles Lynch Fam. Purpose LLC v. Putnam Cty.*, 301 S.W.3d 196, 203-04 (Tenn. 2009). A moot case is no longer justiciable because it “has lost its character as a present, live controversy” and “no longer serves as a means to provide relief to the prevailing party.” *McIntyre*, 884 S.W.2d at 137. Mootness can result from a “court decision, acts of the parties, or some other reason occurring after commencement of the case.” *Norma Faye*, 301 S.W.3d at 204. Determining whether a case is moot presents a question of law. *All. for Native Am. Indian Rts. in Tenn., Inc. v. Nicely*, 182 S.W.3d 333, 338 (Tenn. Ct. App. 2005).

We conclude that this case is moot. We can provide no relief to Father. Father appealed the trial court’s order directing both Son and Daughter to receive the COVID-19 vaccine. He asks this Court to vacate the trial court’s order and remand the case for “appropriate proceedings.” Yet while this appeal was pending, Son received both doses of the vaccine, and Daughter received her first dose. Because both children have already received the vaccine, a ruling by this Court “would have no practical effect.” *King v. Daily*, No. M2017-01743-COA-R3-CV, 2018 WL 6266363, at *4 n.7 (Tenn. Ct. App. Nov. 30, 2018).

B.

Both parties seek attorney’s fees on appeal. Father seeks an award of fees as a prevailing party in a proceeding to enforce a provision of a parenting plan. *See* Tenn. Code Ann. § 36-5-103(c) (2021). Because Father did not prevail, he is not entitled to attorney’s fees.

Mother seeks an award of fees for a frivolous appeal. *See id.* § 27-1-122 (2017). The statute authorizing an award of damages for a frivolous appeal “must be interpreted and applied strictly so as to not discourage legitimate appeals.” *Davis v. Gulf Ins. Grp.*, 546 S.W.2d 583, 586 (Tenn. 1977). A frivolous appeal is one “utterly devoid of merit,” *Combustion Eng’g, Inc. v. Kennedy*, 562 S.W.2d 202, 205 (Tenn. 1978), or that has “no reasonable chance of success.” *Davis*, 546 S.W.2d at 586. An appeal has no reasonable chance of succeeding when it “lack[s] a justiciable issue.” *See Judd v. Guye*, No. M2015-00094-COA-R3-CV, 2015 WL 9311847, at *3 (Tenn. Ct. App. Dec. 21, 2015).

This case was justiciable until Daughter received her first dose of the COVID-19 vaccine. That occurred after Father appealed and submitted his brief. So Father's appeal was unsuccessful, not frivolous. *See Coolidge v. Keene*, 614 S.W.3d 106, 120 (Tenn. Ct. App. 2020).

III.

For the foregoing reasons, this appeal is dismissed as moot. The case is remanded for such other proceedings as are necessary and consistent with this opinion.

s/ W. Neal McBrayer

W. NEAL MCBRAYER, JUDGE