STATE OF MAINE

SUPREME JUDICIAL COURT
Sitting as the Law Court
Docket No. Cum-17-494

Mabel Wadsworth Women's Health Center et al.

v.

ORDER OF DISMISSAL

Department of Health and Human Services

Before us is an appeal from the entry of summary judgment in favor of the Department of Health and Human Services on a complaint filed against it by Mabel Wadsworth Women's Health Center, Family Planning Association of Maine, and Planned Parenthood of Northern New England (collectively, "the health centers"). The complaint, filed in the Superior Court in November 2015, alleged that by denying MaineCare-eligible women coverage for abortions while funding other necessary pregnancy-related services, *see* 10-144 C.M.R. ch. 101-II, § 90.05-2(A) (2016), the Department restricted women's ability to obtain abortions, in violation of 22 M.R.S. § 1598(1) (2018), which expressly states that it is the public policy of the State "not [to] restrict a woman's exercise of her private decision to terminate a pregnancy before viability." The health centers also alleged violations of the equal protection, due process, safety, liberty, and civil rights provisions of the Maine Constitution, Me. Const. art. I, §§ 1, 6-A. They requested that the court permanently enjoin enforcement of the Department's regulatory provision.

In 2017, the Department and the health centers filed motions for summary judgment. The court (*Horton, J.*) entered a summary judgment in favor of the Department in which it concluded that the MaineCare provision does not violate public policy or the Maine Constitution, citing *Harris v. McRae*, 448 U.S. 297, 326-27 (1980), among other sources. The health centers appealed to us.

After oral arguments were held in this matter in May 2018, we received communications from the Department and an amicus curiae alerting us to new

caselaw and legislative activity related to coverage of abortion services for Medicaid-eligible patients. We ordered supplemental briefing and scheduled additional oral arguments for June 2019.

The parties then agreed to the entry of an order staying the appeal because legislative and regulatory action was underway that could resolve the issues presented in the appeal. We stayed the appeal until September 23, 2019, and required the parties to advise us, by September 20, 2019, whether the stay ought to be continued or lifted, or the case dismissed.

After the stay was entered, Governor Janet T. Mills signed into law L.D. 820, as amended, which required the Department to provide coverage for abortion services to MaineCare members and to undertake rulemaking to effectuate that coverage. The new law, P.L. 2019, ch. 274, took effect on September 19, 2019. The Department promulgated an emergency rule, 10-144 C.M.R. ch. 104, § 7 (effective Sept. 19, 2019), that provided, separate from the MaineCare benefits manual, for State coverage for abortion services provided to an individual "eligible for MaineCare services as determined by the Office for Family Independence (OFI) using the established policies and procedures in the MaineCare Eligibility Manual." *Id.* 7.03. This rule was to expire after ninety days, on December 18, 2019. *See* 5 M.R.S. § 8054(3) (2018).

Because of the legislative and regulatory activity, the Department moved to dismiss the health centers' appeal as moot on September 20, 2019. In October 2019, the health centers objected to the Department's motion to dismiss and argued that, if we were to dismiss their appeal, we should order vacatur of the Superior Court's judgment. Because it appeared that there may have been factual disputes, we ordered the parties to address whether it was necessary to remand the matter to the trial court to develop a factual record. After the parties responded to our request, the Department adopted a final rule requiring payment for abortion services for MaineCare-eligible patients, and that final rule has now taken effect. *See* 10-144 C.M.R. ch. 104, § 7 (effective Dec. 17, 2019).

The issues raised here are moot because the final rule adopted by the Department provides for abortion coverage for MaineCare-eligible patients, and the appeal, which sought to enjoin the enforcement of the MaineCare regulation denying abortion coverage, cannot provide any real or effective

relief. *See* 10-144 C.M.R. ch. 104, § 7; *see* also 10-144 C.M.R. ch. 101-II, § 90.05-2(A); *In re Nicholas S.*, 2016 ME 82, ¶ 7, 140 A.3d 1226.

The health centers contend, however, that we should not dismiss the complaint because exceptions to the mootness doctrine apply when there are critical unanswered questions of great public interest or there are issues that are capable of repetition but evade review because of their fleeting or indeterminate nature. Although the health centers identify public questions about state agencies' rulemaking authority and the interpretation of the Maine constitution, these are not questions to which an authoritative determination is necessary for future agency or court decision-making, and it is uncertain whether the specific questions would recur in the future. *See Mainers for Fair Bear Hunting v. Dep't of Inland Fisheries & Wildlife*, 2016 ME 57, ¶ 8, 136 A.3d 714. Nor is this a situation in which legislative and regulatory amendments are likely to disrupt litigation imminently and on a repeated basis. *Id.* ¶ 10. Although changes in statutes or rules could revive the issue, it is entirely unpredictable whether subsequent political changes would moot the issue once again. Accordingly, we conclude that the appeal is moot and that no exception to the mootness doctrine applies.

Finally, we deny the health centers' request for the extraordinary equitable remedy of vacatur. *See Thanks But No Tank v. Dep't of Envtl. Prot.*, 2013 ME 114, ¶ 12, 86 A.3d 1.

It is therefore ORDERED that the motion to dismiss the appeal as moot is GRANTED, and the request for vacatur is DENIED.

Dated: January 14, 2020

For the Court,*

Leigh I. Saufley
Chief Justice

* Panel: SAUFLEY, C.J., and ALEXANDER, MEAD, GORMAN, JABAR, and HUMPHREY, JJ.