STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

MARIA HUNTER and WILLARD HUNTER,
on behalf of their minor children
N.H. and C.H.

Petitioners,

For Judgment Pursuant to Article 78 of the CPLR,

v.

LANCASTER CENTRAL SCHOOL DISTRICT,

Respondents.

Decision & Order

Index #: 807681/2021

HOGAN WILLIG, PLLC
Corey J. Hogan, Esq.
Attorney for Petitioners

WEBSTER SZANYI LLP
Ryan G. Smith, Esq.
Marnie E. Smith, Esq.
Attorney for Respondents

Colaiacovo, J.

Petitioners brought this Article 78 proceeding to challenge the policy of the Lancaster Central School District (hereinafter "Respondent" or "School District") that required a note from a medical professional to exempt their children from the requirement that students wear a face mask during the COVID-19 pandemic. The Court previously granted a temporary restraining order enjoining the School District from prohibiting the children from attending school.

Though this Court did not require the children wear a face mask, it did, however, require the children wear a face shield. Argument was later heard on whether Petitioners were entitled to a preliminary injunction. The Court's decision is as follows.

Statement of Facts and Procedural History

The two (2) minor children affected by this proceeding are students at Lancaster Middle and William Street Schools in the Lancaster Central School District. Both students are asthmatics but have worn face masks throughout the school year, as required by the Departments of Health and Education. Pursuant to the Department of Health's "Interim Guidance for In-Person Instruction at Pre-K to Grade 12 Schools During the COVID-19 Public Health Emergency", "students who are unable to medically tolerate a mask, including students where such mask would impair their physical or mental health are not subject to the required use of a mask."

On June 7, 2021, each student experienced an asthmatic event that required medical attention. In what was described as a warm day, reaching 84 degrees with a relative humidity of 68%, the children complained of breathing problems that, they feel, were exacerbated by the mask requirement. N.H. texted her mother, complaining of feeling faint, difficulty breathing, and having overall anxiety. Her mother, contacted the office of the Superintendent, instead of the school nurse or principal, to complain about mask wearing, eventually

advised the nurse that she would come and pick up N.H. The same day, while attending gym class, C.H. began to experience breathing problems, though he insisted he could finish out the school day. It is alleged that upon returning to his "sweltering classroom without air conditioning", he begin to experience trouble breathing and was escorted to the nurse's office. Though "struggling to breath", he was instructed to keep his face mask on. Petitioner Maria Hunter was contacted yet again, this time about C.H., and was advised that the school nurse was calling 911. C.H. was subsequently transported to Children's Hospital but later discharged. Both N.H. and C.H. were kept home from school thereafter.

Wishing to return her children to school, Maria Hunter contacted the children's respective principals to make arrangements for their return. However, notwithstanding her children's medical issues which she believed to be exacerbated by having to wear a face mask, she was advised that the children were required to wear a face mask unless she could secure a doctor's note. It was later alleged that the pediatrician's office had a "general policy against writing any note for exceptions to mask mandates." See Affidavit of Maria Hunter, ¶5.

Thereafter, Petitioners brought this proceeding to declare the School District's added requirement of a doctor's note, notwithstanding the children's apparent inability to medically tolerate a mask, as arbitrary and capricious.

Argument

Petitioners

Petitioners maintain that their children already meet the State's guidance that exempts children who are unable to medically tolerate a mask. Petitioners allege that to impose an additional requirement, here a doctor's note, is especially onerous and, as a result, arbitrary and capricious. The fact that the children experienced medical episodes, namely asthmatic events after complaining of breathing issues attributed to weather conditions and restrictions caused by their face masks, the Petitioners maintain that nothing more is needed. Petitioners have submitted the affidavit of Dr. Clayton J. Baker, M.D. C.M., who wrote, "That [Respondent] school officials would continue to require masking of these children, in the wake of two such medical misadventures, on the same day, in the same family, in their schools, is indefensible." See Affidavit of Clayton J. Baker, M.D. C.M., ¶28. Further, Petitioners have included a letter from Allyson Roach, a Licensed Social Worker who works with N.H., who advised the wearing of a face shield would only worsen the child's general anxiety disorder. Petitioners insist that they have satisfied the requirements that otherwise entitle them to further injunctive relief.

Lancaster Central School District

Respondents refute the Petitioners' accusations that they refused to allow the children to return to school without face masks. Moreover, they submit they

never got the chance to resolve the dispute with the parents, who instead rushed to file this lawsuit. Nevertheless, Respondents contend that to qualify for a medical exemption, it necessarily follows that some sort of medical documentation or permission is necessary before state-wide policies are abandoned. As the Governor has not lifted the requirement that children enrolled in pre-K to grade 12 wear a face mask, Respondents are left with no other option than to require a note from a medical professional.

Notwithstanding, Respondents insist that Petitioners have not met their burden that would warrant a preliminary injunction. Instead, as Respondents claim, Petitioners arguments are speculative, conclusory, and, in some cases, absurd.

Standard of Review

On a motion for a preliminary injunction, the moving party must demonstrate by clear and convincing evidence a likelihood of ultimate success on the merits, irreparable injury if the injunction were not granted, and a balancing of equities in favor of granting the injunction. Nobu Next Door, LLC v Fine Arts Hous., Inc., 4 N.Y.3d 839 (2005); Aetna Ins. Co. v. Capasso, 75 N.Y.2d 860 (1990). If any one of these three requirements are not satisfied, the motion must be denied. Faberge Intern., Inc. v. Di Pino, 109 A.D.2d 235 (1st Dep't. 1985). An injunction is a provisional remedy to maintain the status quo and prevent the dissipation of property that could render a judgment ineffectual. However, it is

not to determine the ultimate rights of the parties. As such, absent extraordinary circumstances, a preliminary injunction will not issue where to do so would grant the movant the ultimate relief sought in the complaint. Reichman v. Reichman, 88 A.D.3d 680, (2nd Dep't. 2011); SHS Baisley, LLC v. Res Land, Inc., 18 A.D.3d 727 (2nd Dep't. 2005). In addition, preliminary injunctions should not be granted absent extraordinary or unique circumstances or where the final judgment may otherwise fail to afford complete relief. SHS Baisley, LLC v. Res Land, Inc., 18 A.D.3d at 727, supra. However, the decision whether to grant or deny a preliminary injunction is within the sound discretion of the Court. Masjid Usman, Inc. v. Beech 140, LLC, 68 A.D.3d 942 (2nd Dep't. 2009).

Here, the Court must evaluate the preliminary injunctive standard in the context of the requirements under Article 78 of the CPLR. Article 78 of the CPLR is the main procedural vehicle to review and challenge administrative action in New York. On judicial review of an administrative action under Article 78, courts must uphold the administrative exercise of discretion unless it has "no rational basis" or the action is "arbitrary and capricious." Matter of Pell v. Board of Ed. Union Free School District, 34 N.Y.2d 222 (1974). "The arbitrary and capricious test chiefly relates to whether a particular action should have been taken or is justified . . . and whether the administrative action is without foundation in fact. Arbitrary action is without sound basis in reason and is generally taken without regard to the facts." Id. at 231; See also Jackson v. New York State Urban Dev

Corp., 67 N.Y.2d 400 (1986). Rationality is the key in determining whether an action is arbitrary and capricious or an abuse of discretion. Matter of Pell v. Board of Education, 34 N.Y.2d at 231. The Court's function is completed on finding that a rational basis supports the administrative determination. See Howard v. Wyman, 28 N.Y.2d 434 (1971). "Where the administrative interpretation is founded on a rational basis, that interpretation should be affirmed even if the court might have come to a different conclusion." Mid-State Management Corp. v. New York City Conciliation and Appeals Board, 112 A.D.2d 72 (1st Dep't. 1985) aff'd 66 N.Y.2d 1032 (1985); Matter of Savetsky v. Zoning Bd. of Appeals of Southampton, 5 A.D.3d 779 (2d Dep't. 2004).

As such, this Court must examine whether the School District's policy to require additional documentation before waiving the requirement of wearing a face covering during school, is arbitrary and capricious and whether Petitioners have actually demonstrated legal entitlement to a preliminary injunction.

Decision

Without stating the obvious, in response to the coronavirus pandemic, mask wearing was universally adopted to help stop the spread of the virus. Since no unvaccinated age group remains safe from contracting the virus, even children are forced to wear face masks so as to reduce the risk of transmission. While the risk of exposure diminishes by the day, as nearly 70% of the state is completely vaccinated and scientifically shielded from contracting the virus,

children, who are not yet eligible for the vaccine, are still required to wear face masks in school in order to prevent the spread.

It is certainly understandable to question the propriety of face mask wearing since our governing class has done little to ensure confidence in their frequently promulgated coronavirus policies. For instance, on June 7, 2021, coincidentally the very same day the Hunter children experienced their medical episodes, New York State Health Commissioner Howard Zucker sent a letter to the CDC advising that the State intended to loosen New York's mask requirements in schools. Based on Zucker's representations to the CDC, no masks would be required indoors in schools the following Monday. This reasonably caused confusion and anxiety, as no one communicated the change in policy to those primarily responsible for implementing these policies, namely school districts. However, one day later, the Governor modified this directive, saying that mask wearing would continue inside the classroom but would no longer be necessary outside. These frequent abrupt policy changes do very little to encourage any faith in the soundness of these policies. Instead, these dramatic shifts undercut and undermine health policies and, as such, cause dissension and suspicion.

However, the issue before the Court is not to be construed as a general assault on the efficacy of wearing face masks. Instead, the limited issued before the Court is whether the School District's additional requirement to have

children, who suffer from a medical issue that would otherwise exempt them from the State's mask policy, secure a doctor's note is arbitrary and capricious. This Court finds that it is not.

When evaluating the arbitrary and capricious standard, a court inquires whether the determination under review had a rational basis." Matter of Halperin v. City of New Rochelle, 24 A.D.3d 768 (2nd Dept. 2005). "Under this standard, a determination should not be disturbed unless the record shows that the agency's action was 'arbitrary, unreasonable, irrational, or indicative of bad faith'." Id. at 770. "It is not the province of the courts to second-guess thoughtful agency decision making." Matter of Riverkeeper, Inc. v. Planning Bd. of Town of Southeast, 9 N.Y.3d 219 (2007); Matter of Ignizio v. City of New York, 85 A.D.3d 1171 (2nd Dept. 2011). In performing its analysis, the court may not substitute their judgment for that of the agency for it is not their role to weigh the desirability of any action or [to] choose among alternatives." Matter of Riverkeeper, Inc. v. Planning Bd. of Town of Southeast, 9 N.Y.3d at 232.

Contrary to Petitioners' argument, it is not arbitrary and capricious to require a doctor's note to demonstrate a medical condition. It is logical that to qualify for a medical exemption, some sort of medical documentation is necessary. Here, the School District requires a note from a doctor. That does not seem arbitrary or capricious. While minds can certainly differ on whether this policy is appropriate, that is not a basis to disturb a finding. As such, clearly

the School District had a rational basis to request a doctor's note to explain why the two (2) minor children could not attend school while wearing a mask. Allowing parents to simply demand their children no longer wear a mask, while the coronavirus is still with us, though diminishing with each passing day, without medical support is bound to be exploited and abused. As such, Petitioners cannot demonstrate the likelihood of success on the merits when this Court finds that the School Districts policy of requiring a doctor's note to be rational.

While this Court is sympathetic the concerns of the two (2) children who do not wish to wear a face shield, which the Court devised as a compromise, there is little in the record to substantiate the link between the wearing of the mask and the children's past medical episode. As noted during oral argument, both children wore masks throughout the year without any complaint or objection. Even their own expert, Dr. Clayton Baker noted in his affidavit, "it is not possible to state with medical certainty at this time that the masks were the cause of the asthmatic attack." See Affidavit of Dr. Clayton Baker, ¶12. This hardly meets the standard to grant injunctive relief.

Further, Petitioners have not shown a balancing of the equities in their favor. Since Petitioners have argued that this case is related to Hensley v. Williamsville Central School District, (Index #: 804182/2021) and Dinero v. Orchard Park Central School District, (Index #: 804310/2021), which this Court presided over, in denying their respective requests for a preliminary injunction,

the Court held, "…the Court cannot perform an "end-run" around the Article 78 proceeding, short circuit it, and grant Petitioner the ultimate relief they seek." See Matos v. City of New York, 21 A.D.3d 936 (2nd Dept. 2005); Village of Westhampton Beach v. Cayea, 38 A.D.3d 760 (2nd Dept. 2007); Rosa Hair Stylists v Jaber Food Corp., 218 A.D.2d 793 (2nd Dept. 1995). The Court is not inclined to do here what it opposed doing in these "related" cases. To grant Petitioners the ultimate relief they seek in the context of a mandatory injunction is not the purpose of this procedural vehicle.

While the coronavirus led to many lawsuits filed to challenge overly broad, restrictive, and punitive decisions of local, state and the federal governments, many were necessary because petitioners were left without any meaningful redress. Those cases, often successful, were so because of their meritorious arguments. Here, this petition falls woefully short of that standard. Instead, this case can only be viewed as a mad-dash to the courthouse to generate attention and notoriety. It does not appear that the Petitioners even attempted to reach an accommodation with the School District before filing their lawsuit. Lawsuits such as these do little to advance the righteous challenge of ill-conceived, illogical, and unsupported government policies that have no basis in science. Here, Petitioners were failed by this short-sighted attempt to circumvent a reasonable requirement to protect children, who still remain

vulnerable to this virus. Petitioners should not have needed legal representation to reach an agreement with the School District.

As such, Petitioners request for a preliminary injunction is hereby DENIED. This shall constitute the Decision and Order of the Court. However, notice of entry must still be made.

A further conference, if still needed in light of the fact that the school year ends on June 23, 2021, is scheduled for July 7, 2021 at 2:00 p.m.

Hon. Emilio Colaiacovo, J.S.C.

ENTER
Buffalo, NY
June 21, 2021