

IN THE FRANKLIN COUNTY, OHIO COURT OF COMMON PLEAS
CIVIL DIVISION

STATE ex rel CANDY BOWLING, et al :
 :
 Plaintiffs, : Case No. 21 CVH07-4469
 :
 v. : JUDGE HOLBROOK
 :
 MICHAEL DEWINE, et al :
 :
 Defendants. :

STATE ex rel JAMES PARKER, et al :
 :
 Plaintiffs : 21CVH08-5524
 :
 vs. : JUDGE HOLBROOK
 :
 MICHAEL DEWINE, et al :
 :
 Defendants. :

SEBESTIAN NASH, et al :
 :
 Plaintiffs : 21CVH08-5525
 :
 vs. : JUDGE HOLBROOK
 :
 MICHAEL DEWINE, et al :
 :
 Defendants. :

ORDER AND ENTRY

Ruth Bader Ginsburg once said something to the effect of law is a profession that enables one to aid and repair the tears in the community. There is little doubt that the Covid-19 pandemic and its handling has operated to tear this community. While this Court has hopes that the resolution of these consolidated matters will play a small role in the repair, it cannot, and will not legislate from the bench. Thus, as should be expected

from any court, the following decision reflects the consideration and analysis of the facts alleged and judicially noticed within the confines of the laws of the State of Ohio and the procedural history case.

Background

On March 27, 2020, in response to the COVID-19 Pandemic, Congress passed the Coronavirus Aid, Relief, and Economic Security ("CARES") Act, which, inter alia, provided enhanced unemployment insurance benefits for workers who would not otherwise be eligible for relief. 15 U.S.C. § 9001 et seq. Three types of benefits were created by the CARES Act: (1) Pandemic Unemployment Assistance ("PUA"); (2) Pandemic Emergency Unemployment Compensation ("PEUC"); and (3) Federal Pandemic Unemployment Compensation ("FPUC"), which increased the amount of unemployment insurance benefit payments a worker could receive by \$300 a week from December 27, 2020 to September 6, 2021. See 15 U.S.C. § 9023, further amended by the American Rescue Plan Act of 2021 ("ARPA"), Pub L. No. 117-2, §§ 9011, 9013, 9016 (March 11, 2021). The CARES Act requires the U.S. Secretary of Labor to provide CARES Act Benefits through agreements with the States and specifically provides that agreements regarding the receipt of PEUC and FPUC benefits may be terminated by a state upon 30 days' written notice. 15 U.S.C. §§ 9023(a), 9025(a).

On May 13, 2021, Governor Mike DeWine announced that Ohio would end its participation in the FPUC program effective June 26, 2021. As a result of this announcement, plaintiffs, who allege they are all recipients of FPUC benefits filed actions for declaratory judgment, injunctive relief, a writ of mandamus, and violations of 42 U.S.C. 1983 and 42 U.S.C. 1988 against Governor DeWine and Matt Damschroder, in his official capacity as Director of the Ohio Department of Job and Family Services.

Simultaneous to the filing of the complaint in Case No. 21CVH07-4469, plaintiffs moved the court for a temporary restraining order and preliminary injunction. Within the motion, plaintiffs argued they were entitled to a preliminary injunction enjoining the State of Ohio from prematurely terminating their FPUC benefits.

Following a hearing on plaintiffs' motion for temporary restraining order and preliminary injunction, this Court found that while plaintiffs' loss of FPUC benefits was a significant and irreparable injury, they had not shown by clear and convincing evidence a substantial likelihood of success on the merits of their claims. Naturally, plaintiffs appealed.

In a decision dated August 24, 2021, the Tenth District Court of Appeals, disagreed with this Court's findings. *State ex rel Candy Bowling v. Mike DeWine*, 2021-Ohio-2902. Therein, the court of appeals concluded "that FPUC is one of the 'available advantages' described in R.C. 4141.43(I) that the General Assembly requires [defendants] 'secure' to the citizens of the State of Ohio." *Id.* at P47. But see *Caron v. New Hampshire et al.*, 2021-CV-00423, slip op. at 7 (Sup. Ct. N.H. Sept. 27, 2021) ("[S]imply because PUA 'benefits are distributed by utilizing the same accounting systems used to fund the administrative costs of the state [unemployment insurance] programs' under the [social security act,] it does not follow that the PUA benefits themselves are 'advantages available under the [social security act].'"); *Brannon v. McMaster*, 434 S.C. 386, 864 S.E.2d 548, 549-50 (S.C. 2021) (per curiam) (concluding that PUA is not an advantage "available under the provisions of the Social Security Act" (quotation and emphasis omitted); *Unemployed Workers United v. Ducey*, 254 Ariz. 95, 518 P.3d 293 (App.2022) (FPUC benefits did not morph into an "advantage[] available under" the social security act simply because the federal government used "Social Security infrastructure" and "methods of

administration" to distribute FPUC benefits; recognizing Ohio as the "outlier" on this issue); *Holcomb v. T.L.*, 175 N.E.3d 1177, 1183 (Ind. Ct. App. 2021) ("Utilizing this established accounting system and specifying how funds should be moved around and made available for distribution is entirely different from creating a new federal benefit program, which the CARES Act is."). The court of appeals further found that defendant Mike DeWine had a clear legal duty under R.C. 4141.43(I) to continue participation in the extended Federal Unemployment Benefits. Thus, according to the court of appeals this Court "abused its discretion when it determined that [plaintiffs] were not likely to succeed on the merits of the claim and denied the preliminary injunction." *Bowling*, 2021-Ohio-2902 at P55. The matter was remanded for the purpose of implementing the findings of the court of appeals and for consideration of the third and fourth factors of a preliminary injunction; namely, whether third parties will be unjustifiably harmed if the injunction is granted, and whether the public interest will be served by the injunction.

Due to the expedited timeframes associated with the issues in this case, the Court proceeded to take testimony and evidence at a hearing on August 27, 2021. Before the hearing, however, defendants appealed the court of appeals' opinion eliminating this Court's jurisdiction over the case.

On November 22, 2022, more than one year after the expiration of the FPUC benefits, the Supreme Court of Ohio issued a one sentence decision stating, "[t]his cause is dismissed, sua sponte, as moot." *State ex rel. Bowling v. DeWine*, Slip Opinion No. 2022-Ohio-4122.

At a status conference following the Supreme Court of Ohio's declaration of mootness, the Court ordered the parties to brief three issues: 1. Whether leave of court was required for plaintiffs to file a supplemental class action complaint. And if so,

whether leave should be granted. 2. Whether the claims raised in the original complaint and/or supplemental complaint are moot. 3. Whether this Court has subject matter jurisdiction over the claims raised in the supplemental complaint. Defendants submitted their combined brief and motion to dismiss stating their position on the issues.

Plaintiffs declined to brief the issues as ordered by the Court, and instead filed a renewed motion for leave to file a consolidated class action complaint. Therein, plaintiffs submit the proposed pleading “should adequately address the substantive jurisdictional issues raised by the Court in its January 30, 2023 Entry and many of the arguments raised by the Defendants in its Motion to Dismiss.” Motion for Leave, Mar. 21, 2023 at p.5.

The following is the Court’s finding, conclusions, and orders with respect to the issues raised therein.

1. **Whether leave of court was required for plaintiffs to file a supplemental or amended class action complaint. And if so, whether leave should be granted.**

On July 16, 2021 Plaintiffs Candy Bowling, David Willis, and Shawnee Huff filed a complaint in Case No. 21CV-4469 alleging claims for declaratory judgment, injunctive relief, and a mandamus. In response to the complaint, defendants filed a motion to dismiss on July 21, 2021.

Plaintiffs James Parker and Sarah Russell filed a separate complaint on August 31, 2021 in Case No. 21CV-5524 alleging their status as class members and seeking a mandamus. Defendants’ waiver of service was filed on September 7, 2021. Shortly thereafter, the case was stayed upon defendants’ motion.

Finally, on August 31, 2021, Plaintiffs Sebastian Nash and Zachary Dunn also filed a class action complaint in Case No. 21CVH08-5525 asserting claims for declaratory judgment, as well as violations of 42 U.S.C. 1983, 42 U.S.C. 1988, and R.C. 4141.43(I).

Defendants' waiver of service was filed on September 7, 2021. Shortly thereafter, the case was stayed upon defendants' motion.

Now, plaintiffs seek leave to amend their claims proposing a Consolidated Class Action Complaint which is attached to their motion for leave dated March 21, 2023. The proposed pleading asserts four causes of action – declaratory judgment, injunctive relief, and two petitions for mandamus.

Defendants respond opposing any leave on the grounds that the proposed pleading is futile.

Civ.R. 15 governs amended and supplemental pleadings. Civ.R. 15(A) provides

[a] party may amend its pleading once as a matter of course within twenty-eight days after serving it or, if the pleading is one to which a responsive pleading is required within twenty-eight days after service of a responsive pleading or twenty-eight days after service of a motion under Civ.R. 12(B), (E), or (F), whichever is earlier. In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court shall freely give leave when justice so requires. Unless the court orders otherwise, any required response to an amended pleading must be made within the time remaining to respond to the original pleading or within fourteen days after service of the amended pleading, whichever is later.

The Supreme Court of Ohio has recognized, "[t]he language of Civ.R. 15(A) favors a liberal policy when the trial judge is confronted with a motion to amend the pleadings beyond the time limit when such amendments are automatically allowed." *Wilmington Steel Products, Inc. v. Cleveland Elec. Illum. Co.*, 60 Ohio St.3d 120, 121-122 (1991). While the rule allows for liberal amendment, motions to amend pleadings pursuant to Civ.R. 15(A) should be refused if there is a showing of bad faith, undue delay, or undue prejudice to the opposing party. *Turner v. Cent. Local School Dist.*, 85 Ohio St. 3d 95, 99, 1999-Ohio-207. Time alone is generally an insufficient reason for the court to deny leave to amend; the primary consideration is whether there is actual prejudice to the defendants

because of the delay. *Schweizer v. Riverside Methodist Hosps.*, 108 Ohio App. 3d 539, 546 (10th Dist.1996). If a plaintiff fails to make a prima facie showing of support for new matters sought to be pleaded, a trial court also acts within its discretion to deny a motion to amend the pleading. *Wilmington Steel Prods., Inc. v. Cleveland Elec. Illum. Co.*, 60 Ohio St.3d 120, 123 (1991).

In general, an amended complaint is designed to include matters which occurred before the filing of the complaint but were either overlooked or not known at the time. Civ.R. 15(A). Pleadings so amended substitute for or replace the original pleading. *Id.* See, also, *Abram & Tracy, Inc. v. Smith*, 88 Ohio App. 3d 253, 263 (10th Dist.1993).

A supplemental pleading, on the other hand, addresses matters subsequently occurring but pertaining to the original complaint. Civ.R. 15(E); *Developers Three v. Nationwide Ins. Co.*, 64 Ohio App. 3d 794, 803 (10th Dist.1990). Specifically, Civ.R. 15(E) provides that a trial court may "upon reasonable notice and upon such terms as are just, permit [a party] to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented." Thus, under Civil Rule 15(E), a supplemental pleading is a mere addition to or a continuation of the original complaint and cannot be used to raise new and different causes of action. Staff Notes, Civ.R. 15(E); *State, ex rel. Dickman v. Defenbacher*, 151 Ohio St. 391, 394 (1949).

Having carefully reviewed the proposed pleading, the Court finds that it is both supplemental and amended in that it includes additional claims for relief, i.e. class claims, in Case No. 21CVH07-4469, and also address matters subsequently occurring but pertaining to the original complaints, i.e. the expiration of the benefits under the program. Further, evaluating the pleading under both Civ.R. 15(A) and 15(E), the Court

finds plaintiffs have met their burden. Though this case is advanced in age, its procedural history compels this Court's conclusion that the amendment will yield little, or no, prejudice to defendants because of the delay. Likewise, the history of these cases supports a finding that defendants had reasonable notice of the events that warrant the supplementation of the complaints. Finally, this Court is not convinced that the amendment would be futile.

Accordingly, the Court hereby grants plaintiffs leave to file their amended and supplemented consolidated class action complaint. **The Court will not, however, accept an exhibit or attachment to a motion as a proper pleading. It is therefore ORDERED that plaintiffs separately file their amended and supplemented consolidated class action complaint within 14 days of the time-stamped date of this Order and Entry.** In accordance with the Local Rules, it shall be filed under each consolidated case number.

Ordinarily, defendants would have 14 days to move, answer, or otherwise plead in response to the consolidated class action complaint. Perhaps fortuitously, defendants have already responded with their motion to dismiss in which they argue that this Court lacks jurisdiction over plaintiffs' claims as they are moot and because they seek monetary damages from the state which this Court cannot award.

2. **Whether this Court has subject matter jurisdiction over the claims raised in the supplemental complaint.**

The Court first addresses defendants' subject matter jurisdiction argument. Specifically, defendants submit that Count IV of the consolidated class action complaint seeks an alternate remedy which is nothing more than a claim for monetary damages.

Plaintiffs respond that that proposed consolidated class action complaint clearly seeks purely equitable remedies; not a monetary judgment.

According to the prayer for relief in the consolidated class action complaint, plaintiffs seek an Order from this Court:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action and certifying the Class defined herein;
- B. Designating Plaintiffs as representatives of the Class and their undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiffs and the Class and against Defendants;
- D. Declaring that (1) pursuant to O.R.C. § 4141.43(I), Defendants must secure all possible federal unemployment benefits available to Ohioans, (2) Defendants violated their statutory duties under O.R.C. § 4141.43(I) by prematurely terminating Ohio's participation in FPUC benefits as of the week of June 26, 2021, and (3) Defendants' continued failure and refusal to secure all available advantages on behalf of Ohio and Ohio citizens, such as the FPUC benefits, is in derogation of Defendants' constitutional powers and violates their clear statutory duties;
- E. Mandatorily enjoining and ordering Governor DeWine and Director Damschroder, in their official capacities, ODJFS, and Defendants' officers, employees, and agents, all persons acting concert or participation with any Defendant, or under any Defendant's supervision, direction, or control to reinstate Ohio's participation in FPUC, obtain all Remaining Funds to which Ohio is entitled under federal law, and use Ohio's share of the Remaining Funds to retroactively provide the FPUC benefits to Plaintiffs and Class members;
- F. Ordering – pursuant to O.R.C. § 2731.01, *et seq.* – Governor DeWine and Director Damschroder, on behalf of the State of Ohio, (1) to take all actions necessary to immediately reinstate Ohio's participation in all federal unemployment Benefit Programs available from the United States Department of Labor, including restoring FPUC benefits to the State of Ohio, as is required by O.R.C. § 4141.43(I) for the period beginning on June 26, 2021 through September 6, 2021, (2) to take all action necessary to obtain from the United States Department of Labor all Remaining Funds available to Ohio for the payment of FPUC benefits, and (3) to promptly pay FPUC funds received from the United States Department of Labor to eligible class members as is required by O.R.C. 4141.28(I) [sic];

- G. Awarding Plaintiffs and the Class attorneys' fees and costs, including interest thereon, as allowed or required by law;
- H. Granting all such further and other relief as this Court deems just and appropriate.

The issue of subject-matter jurisdiction involves "a court's power to hear and decide a case on the merits and does not relate to the rights of the parties." *Columbus Green Bldg. Forum v. State*, 10th Dist. No. 12AP-66, 2012-Ohio-4244, ¶ 14, quoting *Vedder v. Warrensville Hts.*, 8th Dist. No. 81005, 2002-Ohio-5567, ¶ 14. "Civ.R. 12(B)(1) permits dismissal where the trial court lacks jurisdiction over the subject matter of the litigation." *Patriot Water Treatment, LLC v. Ohio Dep't of Natural Res.*, 10th Dist. No. 13AP-370, 2013-Ohio-5398, ¶ 29, quoting *PNC Bank, Nat'l Ass'n v. Botts*, 10th Dist. No. 12AP-256, 2012-Ohio-5383, ¶ 21. "When presented with a motion to dismiss for lack of subject matter jurisdiction pursuant to Civ.R. 12(B)(1), a trial court must determine 'whether any cause of action cognizable by the forum has been raised in the complaint.'" *Interim HealthCare of Columbus, Inc. v. State Dep't of Admin. Servs.*, 10th Dist. No. 07AP-747, 2008-Ohio-2286, ¶ 7, quoting *PNP, Inc. v. Ohio Dep't of Job & Family Servs.*, 10th Dist. No. 04AP-1294, 2006-Ohio-1159, ¶ 9, citing *State ex rel. Bush v. Spurlock*, 42 Ohio St.3d 77, 80 (1989).

R.C. 2743.03 created the Court of Claims and vested the court with jurisdiction of the following:

(A)(1) * * * The court of claims is a court of record and has exclusive, original jurisdiction of all civil actions against the state permitted by the waiver of immunity contained in section 2743.02 of the Revised Code and exclusive jurisdiction of the causes of action of all parties in civil actions that are removed to the court of claims. The court shall have full equity powers in all actions within its jurisdiction and may entertain and determine all counterclaims, cross-claims, and third-party claims.

(Emphasis added.) R.C. 2743.02(A)(1) sets out the state's waiver of sovereign immunity, in relevant part, as follows:

The state hereby waives its immunity from liability, * * * and consents to be sued, and have its liability determined, in the court of claims created in this chapter in accordance with the same rules of law applicable to suits between private parties, except that the determination of liability is subject to the limitations set forth in this chapter * * *. To the extent that the state has previously consented to be sued, this chapter has no applicability.

Pursuant to the statutory framework, the Ohio General Assembly vested the Court of Claims with exclusive, original jurisdiction of all civil actions against the state permitted by the waiver of immunity contained in R.C. 2743.02 and full equity powers in all actions within its jurisdiction. *State ex rel. Moritz v. Troop*, 44 Ohio St.2d 90, 92 (1975). In *Cristino v. Ohio Bur. of Workers' Comp.*, 10th Dist. No. 13AP-772, 2014-Ohio-1383, appeal not allowed, 140 Ohio St. 3d 1416, 2014-Ohio-3785, 15 N.E.3d 884, the Tenth District Court of Appeals defined the jurisdictional limits of the Court of Claims in terms of the particular relief sought as follows:

The [Court of Claims Act] does not apply "[t]o the extent that the state ha[d] previously consented to be sued" in the courts of common pleas. R.C. 2743.02(A)(1). * * * As a result, the Court of Claims has no jurisdiction over actions that only seek declaratory judgment or injunctive relief because, before the advent of the act, parties could sue the state for declaratory and injunctive relief in the courts of common pleas. *Racing Guild of Ohio, Local 304, Serv. Emps. Internatl. Union, AFL-CIO, CLC v. Ohio Racing Comm.*, 28 Ohio St.3d 317, 320, 28 Ohio B. 386, 503 N.E.2d 1025 (1986). Nevertheless, when a claim for declaratory judgment, injunctive relief or other equitable relief is ancillary to a claim over which the Court of Claims has jurisdiction, the Court of Claims possesses jurisdiction to adjudicate the entire action. R.C. 2743.03(A)(2); *Ohio Hosp. Ass'n v. Ohio Dep't of Human Services*, 62 Ohio St. 3d 97, 103, 579 N.E.2d 695 (1991). The Court of Claims has exclusive jurisdiction over civil actions against the state for money damages that sound in law. *Measles v. Indus. Comm.*, 128 Ohio St. 3d 458, 2011-Ohio-1523, ¶ 7, 946 N.E.2d 204. Thus, if a plaintiff asserts a legal claim for money damages in addition to a claim for declaratory and/or injunctive relief, and all of the asserted claims arise out of the same circumstances, then the Court of Claims can exercise jurisdiction over the entire action. *Interim HealthCare* at ¶ 13.

Id. at ¶ 12. In other words, there is no question that Ohio law provides that this Court is without subject matter jurisdiction to award plaintiffs monetary damages against defendants. In fact, the Court will lose jurisdiction, even over the equitable claims, if any legal claim in the consolidated class action complaint seeks an award of monetary damages. Exclusive jurisdiction over such claims lies with the Court of Claims, not the Court of Common Pleas.

Here, the consolidated class action complaint seeks to compel the payment of money by defendants. Specifically, plaintiffs seek and order from the Court requiring defendants to promptly pay FPUC funds received from the United States Department of Labor to eligible class members. Plaintiffs argue, however, that even though consolidated class action complaint seeks monetary relief, their claims are purely equitable in nature, not claims for money damages at law. In *Cristino*, the Tenth District Court of Appeals addressed the distinction between equitable claims seeking the payment of money and legal claims seeking monetary relief as follows:

[N]ot every claim seeking monetary relief is a claim for money damages. [*Interim HealthCare*] at ¶ 15. Even where a claimant seeks relief that will ultimately result in the payment of money by the state, "a cause of action will sound in equity if 'money damages' is not the essence of the claim." Id., citing *Ohio Academy of Nursing Homes v. Ohio Dep't of Job & Family Servs.*, 114 Ohio St. 3d 14, 2007-Ohio-2620, ¶ 15, 867 N.E.2d 400. For example, an equitable action for specific relief, seeking reimbursement of the compensation allegedly denied or retained, is not transformed into a claim for damages simply because it involves the payment of money. *Zelenak v. Indus. Comm.*, 148 Ohio App. 3d 589, 2002-Ohio-3887, ¶ 18, 774 N.E.2d 769 (10th Dist.) (claim for specific temporary total disability compensation, to which plaintiffs were statutorily entitled, sought equitable relief and not monetary damages), citing *Ohio Edison Co. v. Ohio Dep't of Transp.*, 86 Ohio App. 3d 189, 194, 620 N.E.2d 217 (10th Dist.1993). "Unlike a claim for money damages where a plaintiff recovers damages to compensate, or substitute, for a suffered loss, equitable remedies are not substitute remedies, but an attempt to give the plaintiff the very thing to which it was entitled." *Interim HealthCare* at ¶ 15, citing *Santos [v. Ohio*

Bureau of Workers' Comp., 101 Ohio St. 3d 74, 2004-Ohio-28, 801 N.E.2d 441] at ¶ 14.

Id. at ¶ 13. In *Interim HealthCare*, court of appeals further clarified the distinction between claims seeking an equitable remedy, which includes the payment of money, from legal claims seeking money damages. Therein, the court noted "a claim that seeks to require a state agency to pay amounts it should have paid all along is a claim for equitable relief, not monetary damages." Id. at ¶ 17. If, on the other hand, a plaintiff "cannot assert title or right to possession of particular property," but he or she may, nevertheless, "be able to show just grounds for recovering money to compensate for some benefit the defendant has received from [the plaintiff]," the claim, however characterized by the plaintiff, is treated as a claim for legal remedy. Id.

Guided by the forgoing legal framework, the Court finds plaintiffs' claims are purely equitable. While plaintiffs are seeking the payment of money, such payment seeks to require defendants to pay sums plaintiffs were entitled to under the FPUC program. Moreover, the payment demanded by plaintiffs is specific and stems from equitable claims for declaratory judgment and those for writs mandamus, and injunctive relief as opposed to legal claims for breach of contract or statutory violations. Because plaintiffs' claims are purely equitable, this Court has subject matter jurisdiction and dismissal pursuant to Civ.R. 12(B) is improper.

3. **Whether the claims raised in the original complaint and/or supplemental complaint are moot.**

Finally, the Court turns its attention to the issue of mootness. Defendants raise two arguments in support of their position that this Court lacks jurisdiction because the matters raised in the consolidated class action complaint are moot. Initially, defendants contend that the case is moot because the FPUC program has expired. Further,

defendants submit that the Supreme Court of Ohio's one sentence decision disposing of their appeal dispositively renders this case moot.

It is well-established law that a reviewing court will generally not address issues that are deemed moot. *Croce v. Ohio State Univ.*, 10th Dist. No. 20AP-14, 2021-Ohio-2242, ¶ 16. "The doctrine of mootness is rooted in the "case" or "controversy" language of Section 2, Article III of the United States Constitution and in the general notion of judicial restraint." *Bradley v. Ohio Dept. of Job & Family Servs.*, 10th Dist. No. 10AP-567, 2011-Ohio-1388, ¶ 11, quoting *James A. Keller, Inc. v. Flaherty*, 74 Ohio App.3d 788, 791 (10th Dist.1991). Cases are considered moot if "they are or have become fictitious, colorable, hypothetical, academic or dead. The distinguishing characteristic of such issues is that they involve no actual genuine, live controversy, the decision of which can definitely affect existing legal relations." (Internal quotations and citations omitted.) *Doran v. Heartland Bank*, 10th Dist. No. 16AP-586, 2018-Ohio-1811, ¶ 12.

A. Expiration of the FPUC Program

There is no dispute that the FPUC benefits expired on September 6, 2021. What is disputed is whether the expiration of the benefits precludes this Court's exercise of jurisdiction over plaintiffs' claims under the doctrine of mootness. The Court finds that it does not. Though some of the allegations in the consolidated class action complaint died with the expiration of FPUC benefits, plaintiffs have sufficiently plead a genuine, live controversy; namely, whether funds allocated as FPUC benefits remain in the general treasury. And if so, whether Ohio can retroactively reinstate its participation in the FPUC program such that it can collect its share of any remaining benefits and distribute the same to eligible parties.

The answers to these questions may, in fact, render the action moot. However, construing the allegations in the consolidated class action complaint a true, any such conclusion would be premature.

B. Supreme Court of Ohio Decision

This Court has spent an inordinate amount of time attempting to decipher the Supreme Court of Ohio's one sentence decision's impact on this case. Does it mean the entire controversy between the parties is moot as defendants would suggest? Or was the Court only addressing the specific preliminary injunctive relief plaintiffs were seeking in their original complaint? Perhaps the court was purposefully ambiguous in order to provide this Court with some flexibility. If that was not the case, this Court expects any court of appeals reviewing this decision will let it know.

In light of this ambiguity, this Court adopts the more conservative application founded in Ohio's well-established policy of deciding cases on their merits. See *State ex rel. Voters First v. Ohio Ballot Bd.*, 133 Ohio St.3d 257, 2012-Ohio-4149, ¶ 21, quoting *State ex rel. Becker v. Eastlake*, 93 Ohio St.3d 502, 505, 2001- Ohio 1606. Consequently, the Court finds that Supreme Court of Ohio's decision relates solely to the specific preliminary injunctive relief sought in plaintiffs' original complaints in which plaintiffs sought a court order enjoining the State of Ohio from *prematurely* terminating participation in the FPUC program. Because the consolidated class action complaint seeks alternate relief, the claims raised therein are not moot. And defendants' arguments for dismissal on such grounds are not well-taken.

4. **Private Right of Action and the Cooperation Statute**

Defendants raise one final argument in support of their motion to dismiss outside of the issues ordered to be briefed; namely, that dismissal is appropriate on the basis that

the Cooperation Statute – R.C. 4141.43(I) – does not create a private right of action. Plaintiffs respond that they are not suing defendants directly under R.C. 4141.43(I); rather, they are seeking a writ of mandamus ordering defendants’ compliance with the statute or an order declaring the parties’ rights and obligations thereunder.

The Court agrees that R.C. 4141.43(I) does not create a private right of action; however, upon careful review and consideration of the allegations in the consolidated class action complaint, there is no such cause of action asserted. Therefore, dismissal on these grounds is inappropriate.

Conclusion

Based on the forgoing, plaintiffs’ motion for leave to file their amended consolidated class action complaint is **GRANTED**. The Court further finds that plaintiffs have sufficiently plead claims for declaratory judgment, injunctive relief, and petitions for writs of mandamus. Therefore, defendants’ motion to dismiss is **DENIED**.

This matter shall come before the Court on **April 9, 2024 at 1:30PM** for a status conference.

IT IS SO ORDERED.

Electronic notification to counsel of record

Franklin County Court of Common Pleas

Date: 03-11-2024

Case Title: THE STATE OF OHIO ET AL -VS- MICHAEL DEWINE ET AL

Case Number: 21CV004469

Type: ENTRY

It Is So Ordered.

The image shows a handwritten signature in black ink that reads "Michael J. Holbrook". The signature is written over a blue circular official seal. The seal contains the text "COMMON PLEAS" at the top, "FRANKLIN COUNTY, OHIO" in the middle, and "ALL THINGS ARE POSSIBLE" at the bottom.

/s/ Judge Michael J. Holbrook

Court Disposition

Case Number: 21CV004469

Case Style: THE STATE OF OHIO ET AL -VS- MICHAEL DEWINE
ET AL

Motion Tie Off Information:

1. Motion CMS Document Id: 21CV0044692023-10-1999980000
Document Title: 10-19-2023-MOTION - PLAINTIFF: THE STATE
OF OHIO - FOR STATUS CONFERENCE
Disposition: MOTION GRANTED

2. Motion CMS Document Id: 21CV0044692023-03-2199960000
Document Title: 03-21-2023-MOTION FOR LEAVE TO FILE -
PLAINTIFF: CANDY BOWLING
Disposition: MOTION GRANTED

3. Motion CMS Document Id: 21CV0044692023-02-0999980000
Document Title: 02-09-2023-MOTION - DEFENDANT: MICHAEL
DEWINE - TO EXCEED PAGE LIMIT FOR THE MEMO OF COM
Disposition: MOTION RELEASED TO CLEAR DOCKET

4. Motion CMS Document Id: 21CV0044692021-08-2699980000
Document Title: 08-26-2021-MOTION - PLAINTIFF: THE STATE
OF OHIO - PLAINTIFFS MOTION FOR PEREMPTORY WRIT O
Disposition: MOTION RELEASED TO CLEAR DOCKET

5. Motion CMS Document Id: 21CV0044692021-07-2199960000
Document Title: 07-21-2021-MOTION TO DISMISS -
DEFENDANT: MICHAEL DEWINE
Disposition: MOTION RELEASED TO CLEAR DOCKET

