

IN THE COURT OF APPEALS OF IOWA

No. 22-0798
Filed September 27, 2023

MATTHEW TODD EIMERS,
Petitioner-Appellant,

vs.

**IOWA DEPARTMENT OF PUBLIC SAFETY and IOWA PEACE OFFICERS'
RETIREMENT, ACCIDENT AND DISABILITY SYSTEM,**
Respondents-Appellees.

Appeal from the Iowa District Court for Polk County, Samantha Gronewald,
Judge.

A retired Iowa State Patrol trooper appeals the district court's dismissal of his petition for writ of mandamus against the Iowa Department of Public Safety and Iowa Peace Officers' Retirement, Accident, and Disability System. **APPEAL DISMISSED.**

Pamela J. Walker, Johnston, for appellant.

Brenna Bird, Attorney General, and Jeffrey C. Peterzalek and John R. Lundquist, Assistant Attorneys General, for appellees.

Heard by Tabor, P.J., Buller, J., and Potterfield, S.J.* Langholz, J., takes no part.

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2023).

BULLER, Judge.

Matthew Eimers, a retired trooper with the Iowa State Patrol, appeals from a district court order dismissing his petition for writ of mandamus. The petition sought, among other things, to compel the Iowa Department of Public Safety (DPS) and the Peace Officers' Retirement, Accident, and Disability System (the POR) (collectively "the State") to provide him temporary incapacitation benefits under Iowa Code section 80.6(4) (2021). We dismiss the appeal as moot in light of subsequent developments, including that the POR approved Eimers's accidental-disability retirement and DPS reccredited his used sick leave and paid him.

I. Background Facts and Proceedings

"[W]hile working I began to really feel weak, my lungs hurt from coughing and I felt like I had a temperature. . . . [M]y symptoms are getting progressively worse such as a very bad chest cold with coughing and some lung distress." That's what Eimers emailed his supervisor in January 2021 after contracting COVID-19.

DPS policy required Eimers to obtain a "physician's statement" proving he was "physically able to return to work" before he could do so. But Eimers was unable to return to work. The virus significantly affected his heart and lungs, exacerbated an underlying heart condition, and caused several symptoms associated with "long haul" COVID-19 such as "[i]ncreased fatigue, dyspnea with exertion, difficulty concentrating, diarrhea, night sweats, chest pain and lightheadedness." Based on these changes in his health, Eimers's doctors eventually told him that he needed to retire and would be unable to ever return to work as a trooper.

DPS placed Eimers on “contract leave”—paid leave for sixty days that would not be charged against his active or banked sick-leave accounts—as provided for by his collective bargaining agreement. If Eimers used all of his contract leave, DPS policy directed him to use workers’ compensation benefits or sick leave if he was still unable to return to work. Eimers filed a “First Report of Injury or Illness” form for workers’ compensation based on his COVID-19 exposure.

That April, Eimers applied to retire under Iowa Code section 97A.6(5)(a), which authorizes retirement because of accidental disability through the POR. In addition to applying for accidental-disability retirement through the POR under chapter 97A, Eimers applied for “temporary incapacity benefits” through DPS under section 80.6(4). “Temporary incapacity benefits” are wage-replacement benefits for active employees independent of the accidental-disability-retirement benefits under chapter 97A. These benefits allow a peace officer to be paid by DPS and re-credited any used sick leave if they “become incapacitated for duty as a natural and proximate result of an injury, disease, or exposure incurred or aggravated while in the actual performance of duty at some definite time or place,” so they have an income until they are found to be either “fully recovered” or “permanently disabled.” Iowa Code § 80.6(4).

The State’s benefits administrator denied Eimers’s claim for workers’ compensation benefits that same month, arguing there was insufficient information to support a work-related injury or disease. Around the same time, Eimers’s contract leave expired, and he started using sick leave while his application to retire worked its way through the POR’s process.

Although POR staff told Eimers the application and review process “often takes between four and six months,” the process for Eimers was stalled seven months later with seemingly little forward momentum. In December, Eimers petitioned for a writ of mandamus in the district court, seeking—as relevant to this appeal—to compel DPS to pay his fixed salary and allowances and credit him with any sick leave he was required to take until he returned to work or was retired under section 97A.5. The State moved to dismiss the petition, arguing Eimers’s claims could not be pursued in a mandamus action; they had to be pursued, if anywhere, in the administrative process under chapter 17A; and, if the claims were pursued under chapter 17A, the district court lacked jurisdiction because there was no final agency action. In other words, the State argued that, because the POR had not approved or denied Eimers’s claim, there was nothing for the district court to judicially review. Eimers resisted, largely making complaints about how DPS, the POR, and the State’s benefits processor had behaved. Eimers did not engage with the 17A argument.

The district court granted the motion to dismiss, finding mandamus was unavailable. The court also found that, assuming chapter 17A was the proper review mechanism, Eimers had not exhausted his administrative remedies. Eimers appealed.

After notice of appeal, but before the matter was briefed, the POR granted Eimers’s application for accidental disability retirement. During this time, DPS paid Eimers his regular salary and benefits, even after he ran out of leave. DPS also sent Eimers a check in the gross amount of \$16,807.29, asserting it “credited Eimers with all sick leave expended prior to his disability firing.” In his briefing,

Eimers agrees he received that check and credit for some amount of sick leave, but questions DPS's calculations. The State moved to dismiss the appeal as moot and Eimers resisted. The supreme court ordered the motion to be considered with submission and transferred the case to our court for resolution.

II. Discussion

Mootness is a “threshold question.” *Vasquez v. Iowa Dep’t of Hum. Servs.*, 990 N.W.2d 661, 667 (Iowa 2023). We “may consider matters technically outside the district court record” in answering it. *Riley Drive Ent. I, Inc. v. Reynolds*, 970 N.W.2d 289, 296 (Iowa 2022) (citation omitted). “The key in assessing whether an appeal is moot is determining whether the opinion would be of force or effect in the underlying controversy.” *State v. Avalos Valdez*, 934 N.W.2d 585, 589 (Iowa 2019) (citation omitted). In other words, “[m]ootness . . . generally applies where there is a lack of a real live controversy which deprives the court of the ability to provide the parties with a remedy.” *Irving v. Emp. Appeal Bd.*, 883 N.W.2d 179, 187 (Iowa 2016).

First, as to the POR's involvement in this appeal, it seems both parties agree that Eimers is now retired under chapter 97A and all claims between him and the POR are moot. We dismiss that portion of the appeal without further analysis. Whether Eimers's claims against DPS are still alive is disputed.

At a basic level, DPS argues Eimers has received what he sought from the district court: payment and credit for expended sick leave. Eimers agrees he received payment and was credited sick leave, but takes issue with the amounts. The stated purpose of the mandamus petition was to compel payment—not payment of a particular amount or using a particular calculation. Eimers has

achieved what he set out to do. Nothing we can offer in reviewing the district court's ruling will affect that underlying controversy, and the appeal is therefore moot. See *Avalos Valdez*, 934 N.W.2d at 589; *Irving*, 883 N.W.2d at 187.

Although not set out as a separate brief point, we recognize there are a few fleeting remarks in Eimers's briefing that assert he can avoid mootness because he is seeking costs and attorney fees. In our state, "[a]ttorney fees are generally not recoverable as damages in the absence of a statute or a provision in a written contract." *Kent v. Emp. Appeal Bd.*, 498 N.W.2d 687, 689 (Iowa 1993). To the extent we could charitably read Eimers to assert some kind of common-law attorney-fee and costs argument, he cites no legal authority in support of that claim, and we deem it waived. See Iowa R. App. P. 6.903(2)(g)(3).

Eimers urges two substantive exceptions to the mootness doctrine. First, he points to the public-interest exception, which allows us to reach arguably moot issues when they are "of broad public importance likely to recur." *In re B.B.*, 826 N.W.2d 425, 428–29 (Iowa 2013). Eimers makes various assertions about DPS's historical compliance—or in Eimers's views, noncompliance—with the statutes at issue. But none of these assertions are supported by evidence, verified pleading, affidavit, or request for judicial notice. While proof to support these assertions might have convinced us to invoke the public-interest exception, we are not persuaded the bare assertions of a party can bypass mootness under these circumstances. See *Vasquez*, 990 N.W.2d at 668 (declining to apply mootness exceptions in part due to "inadequate" record).

Second, Eimers points to the doctrine of voluntary cessation. "We have never recognized the voluntary-cessation doctrine by name in Iowa." *Riley Drive*

Ent. I, Inc., 970 N.W.2d at 296–97 (considering but not adopting or applying the doctrine). But the doctrine is meant “to stop a scheming defendant from trying to immunize itself from suit indefinitely by unilaterally changing its behavior long enough to secure a dismissal and then backsliding when the judge is out of the picture.” *Id.* at 297 (cleaned up) (internal citation omitted). Even assuming without deciding that the voluntary-cessation doctrine is recognized under Iowa law, it does not apply here. Like with Eimers’s public-interest claim, his assertion that DPS has schemed in various ways to avoid compliance with the statute is—at least here—speculative and unsupported by competent evidence. We take seriously the accusations made against DPS by Eimers. But we can decide only the case before us, and the evidence here does not justify an exception to mootness in the form of voluntary cessation or otherwise.

Because we find this appeal moot, we decline to address the merits. Those include whether mandamus is the proper mechanism by which a party may seek to compel payment under section 80.6(4) or whether, if chapter 17A is the proper mechanism, the facts here establish exhaustion of administrative remedies. Our court “neither has a duty nor the authority to render advisory opinions,” see *Hartford-Carlisle Sav. Bank v. Shivers*, 566 N.W.2d 877, 884 (Iowa 1997), and to address these issues would violate that prohibition.

Last, we note the parties agree Eimers filed a wage-payment challenge under chapter 91A that is pending in the district court. Nothing in our decision today should be construed to imply a judgment on the merits of that action or suggest a resolution there.

APPEAL DISMISSED.