

**IN THE COURT OF APPEALS OF IOWA**

No. 3-101 / 12-0476  
Filed April 10, 2013

**KEVIN KILGORE,**  
Petitioner-Appellant,

**vs.**

**STATE APPEAL BOARD,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Polk County, Artis I. Reis, Judge.

Kevin Kilgore appeals the dismissal of his challenge to the State Appeal Board's order sustaining the Ringgold County budget for fiscal year 2012.

**APPEAL DISMISSED.**

Kevin Kilgore, Diagonal, appellant pro se.

Thomas J. Miller, Attorney General, Jeffrey S. Thompson, Deputy Attorney General, and Meghan Gavin, Assistant Attorney General, for appellee.

Considered by Vaitheswaran, P.J., and Tabor and Mullins, JJ.

**TABOR, J.**

Kevin Kilgore appeals the district court's dismissal of his challenge to the State Appeal Board's order sustaining the adoption of the Ringgold County budget for fiscal year 2012. He contends the district court record does not contain substantial evidence to support the board's order. But Kilgore's brief concedes the action is moot and does not assert his appeal involves recurring issues of public interest that call for resolution. Accordingly, we dismiss the appeal as moot.

***I. Background Facts and Proceedings***

The Mount Ayr Record News published the Ringgold County proposed budget for the 2012 fiscal year on February 16, 2011. The county adopted the budget at a public meeting on March 3. On March 25, 2011, Kilgore protested the budget by filing a petition on behalf of 125 taxpayers with the Ringgold County Auditor. The State Appeal Board received the petition four days later. Kilgore raised four objections to the county budget:

The Ringgold County FY 2012 budget exceeds the General Basic Levy statutory limit of \$3.50 by \$1.00 per \$1,000 of the assessed value of the taxable property with the justification of "the need for additional moneys to permit continuance of programs which provide substantial benefits to the county residents." The petitioners object that the budget does not justify the difference.

[The budget] represents an actual property tax increase of \$195,530 to pay \$80,000 of non-discretionary spending.

[The budget] represents a budgeted one year expenditure increase of \$556,071 to pay for \$80,000 of non-discretionary spending.

[The budget] does not reflect the cost of jail construction in either the FY 2012 (adopted) or the FY 2011 (current) budgets.<sup>1</sup>

On April 21, 2011, the board held a hearing to address the protest. Kilgore acted as spokesperson for the petitioners. County Attorney Clint Spurrier served as the primary spokesperson for Ringgold County, while County Assessor Neil Morgan also responded to questions. One week later, the board issued an order sustaining the adoption of the Ringgold County budget.

On June 22, 2011, Kilgore filed an action pro se with the district court appealing the board's order, and filed an amended petition on August 2, 2011, containing claims that more closely aligned with the requirements set out in Iowa Code section 17A.19(4) (2011). He requested relief in the form of "a FY 2012 (2011/2012) budget that included a General Basic levy of not more than the mandatory 3.5 cap and a budgeted expenditure increase of no more than \$80,000 with all other provisions of said budget being in accordance with Iowa law."

The board moved to dismiss, arguing the district court did not have jurisdiction to hear the case because Kilgore failed to comply with the requirements of judicial review under chapter 17A. The board asserted the contested budget had since been certified to the county auditor and in effect since July 1, 2011, and because Kilgore did not request a stay, the court could not grant relief.

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<sup>1</sup> Because Kilgore's petition to the auditor is not a part of our record, we rely on the board's characterization of Kilgore's four objections.

In response, Kilgore filed a request for an interlocutory ruling to stay the agency decision, a motion for a schedule of proceedings, and a motion for an order to transmit the certified agency record.

On November 30, 2011, the district court scheduled proceedings, but denied Kilgore's motion for interlocutory ruling to stay the order because he did not request a stay at the agency level. The court also decided because the case was not a contested proceeding, section 17A.19(6) did not apply, and accordingly the agency did not need to transmit a record. On December 21, 2011, the court denied the board's motion to dismiss Kilgore's amended petition, finding that he sufficiently complied with section 17A.19.

Kilgore and the board submitted briefs and proposed findings to the court, which heard oral argument on the matter. On February 27, 2012, the court found the board's decision was supported by substantial evidence. Without ruling on any other arguments raised, the court dismissed the case. The order relied on the board's briefing for its analysis: "The Court specifically refers to the Respondent's Brief, Argument IV, as the rationale for this Order, and the Court adopts the section as though restated herein."

At the time the district court entered its order, the record did not contain the board's brief or the contested agency decision. The board asked the district court to expand the record to include the board's challenged decision and the

board's brief regarding the motion to dismiss. The district court granted the motion to expand the record on November 19, 2012.<sup>2</sup>

## **II. Scope and Standard of Review**

We review the district court's dismissal of a petition for judicial review to correct legal errors. *Remer v. Bd. of Med. Exam'rs*, 576 N.W.2d 598, 600 (Iowa 1998). We may affirm a district court decision on any basis appearing in the record and raised on appeal by the prevailing party. See *DeVoss v. State*, 648 N.W.2d 56, 62 (Iowa 2002). Appellate courts have a duty on their own motion to refrain from determining moot questions. *Albia Light & Ry. Co. v. Gold Goose Coal & Mining Co.*, 176 N.W. 722, 723 (Iowa 1920).

## **III. Analysis**

Kilgore contends the record before the district court did not support the state board's decision to sustain Ringgold County's 2012 fiscal year budget. Guidelines and procedures for certifying local budgets appear in Iowa Code chapter 24. Each county board of supervisors may annually certify basic levies, subject to two limitations: (1) for general county services, the levy may not exceed \$3.50 per \$1000 of the assessed value of taxable property in the county; and (2) for rural county services, \$3.95 per \$1000 of the assessed value of taxable property in the county outside incorporated city areas. Iowa Code §

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<sup>2</sup> On March 5, 2012, the board filed a motion for leave to file its brief in the district court, but Kilgore filed his notice of appeal on the same day. As a result, the district court did not rule on the board's motion. The board then filed a motion to correct the record with the Iowa Supreme Court. On August 29, 2012, the supreme court denied the motion and directed the board to file its request to correct the record with the presiding judge in the district court. A senior judge assigned to the file issued the November 19 order.

331.423. But these limitations can be exceeded if the county has “unusual circumstances” that create a need for additional revenue. *Id.* § 331.426.

Kilgore contends the board’s order is not supported by the information presented at the hearing and does not include the board’s reasoning for its decision. He argues because the record does not contain the evidence before the board at the time it rendered its decision, the district court could not have found substantial evidence to support the board’s decision.

The board contends on appeal—as it did in district court—that the issues raised by Kilgore are moot and we need not address them. A case is moot if the issues presented are now academic so that any judgment rendered will have no practical legal effect on the existing controversy. *Figley v. W.S. Indus.*, 801 N.W.2d 602, 608 (Iowa Ct. App. 2011). Ordinarily we will dismiss an appeal if the issues presented therein become moot on appeal. *In re M.T.*, 625 N.W.2d 702, 704 (Iowa 2001).

But courts may choose to address otherwise moot questions depending on “(1) the public or private nature of the question presented, (2) desirability of an authoritative adjudication for future guidance of public officials, and (3) likelihood of future recurrence of the same or similar problem.” *Ashenfelter v. Mulligan*, 792 N.W.2d 665, 670 (Iowa 2010) (internal quotation marks and citation omitted).

Kilgore’s brief concedes the taxpayers’ claims are now moot:

It is clear any redress available to budget protest/appeal petitioners/taxpayers must be effected in/for the fiscal year under protest, but the passage of time has rendered moot the relief requested in the original appeal to the District Court (reduction of levy rate and limited expenditure growth); continuing the review of the initial appeal will serve no useful purpose.

His concession echoes the supreme court's discussion in *Polk County v. Iowa State Appeal Board*, 330 N.W.2d 267, 271 (Iowa 1983), observing that the outcome of that appeal would have no practical effect on the county's budget from a prior fiscal year: "Taxes and expenditures for fiscal 1982 were collected and made pursuant to the Board's directive." The supreme court dismissed some of the petitioner's challenges in that case, but elected to address "recurring issues of considerable public interest." *Id.* at 270–71 (framing issue on appeal as the "harmonization the Iowa Administrative Procedure Act (IAPA), Iowa Code ch. 17A (1981), and the Local Budget Law, Iowa Code ch. 24 (1981)").

The board contends because Kilgore's challenge is fact-driven and specific to a particular year, the circumstances will not repeat themselves. Therefore it will serve no purpose for us to decide the issues. It urges us to take judicial notice that the county did not similarly exceed the maximum levy rate for the 2013 fiscal year.

Kilgore does not assert that his appeal features recurring issues of public importance. He instead complains the board's mootness argument does not respond to his claim that the record is incomplete and is therefore "not a legitimate argument necessitating appellant response/reply."

We are persuaded by the board's mootness argument. This case does not present the exceptions recognized in the *Polk County taxpayer* case. There, the court addressed broad legal issues including standing, the state board's authority to review a county budget, and the administrative process for considering tax protests. See 330 N.W.2d at 271–79. Kilgore's challenges are

limited to the evidence supporting the budget of a previous fiscal year, and whether the board included sufficient reasoning to support its decision. Our decision would have no practical impact on the current claims nor would it provide future guidance on recurring issues. Accordingly, we decline to address the merits and dismiss the appeal as moot.

**APPEAL DISMISSED.**