

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, COUNTY DIVISION**

In re:)
) No. 2022 COMS 6
A.K.,)
)
Respondent.)

ORDER

This matter is before the Court on the Cook County Department of Public Health’s (“CCDPH”) Amended Petition for Order to Enforce Public Health Order, apparently the first case of its kind filed in this Court in the Covid-19 era. The CCDPH asks the Court to enforce its February 17, 2022, public health order that directs the Respondent A.K., a 13-year-old unvaccinated boy who is in the 7th grade at a public school in Cook County, to quarantine at his home because he was allegedly within six feet of a student for more than 15 minutes who tested positive for Covid-19. The public health order states that the “student was unmasked,” but does not indicate which student was unmasked or if both students were unmasked. On February 18, 2022, the Court struck the CCDPH’s original petition without prejudice because the CCDPH’s declarant failed to offer any medical basis to support his opinion that the Respondent must quarantine to protect the public health, a prerequisite under the law. Hours later, the CCDPH filed its amended petition. As explained below, the amended petition is also insufficient and, therefore, must be stricken.

The CCDPH’s petition is a form complaint that is long on the law but short on factual allegations; indeed, most of the salient information is contained in exhibits to the petition. Nevertheless, under these exigent circumstances, the Court considers the information not in the body of the petition with a view to doing substantial justice between the parties. 735 ILCS 5/2-603(c).

On February 16, 2022, the CCDPH was notified that “an individual” “could endanger the public’s health.” Am. Pet. ¶ 10. On February 17, 2022, the CCDPH issued an order requiring the Respondent to isolate and quarantine at his home because he “is, or is suspected to be, infected with, *exposed to*, or contaminated with a dangerously contagious or infectious disease.” *Id.* at ¶ 14 (emphasis added). The quarantine order requires the Respondent to wear a protective mask when in the presence of others in his home, use a separate bathroom from other household members, wash his hands after using the bathroom, monitor and record his body temperature, and sleep in a separate room from other household members. Am. Pet., Exh. A. The CCDPH then goes further, alleging that the respondent “is suspected to have *contracted* a dangerously contagious or infectious disease because he . . . has come in direct contact to a confirmed or suspected individual with a dangerously contagious or infectious diseases.” Am. Pet., ¶ 15 (emphasis added). Citing its public health order and the affidavit in support of its petition, the CCDPH then alleges that, as indicated in the public health order, the “isolation, quarantine or closure commenced on February 17, 2022, and remain [sic] in effect for a period not to exceed the *incubation and communicability period as determined by CCDPH, which is currently 10*

days, . . .” *Id.* at ¶ 17 (emphasis added). Finally, the CCDPH alleges that “all other reasonable means of correcting the problem, short of isolation, quarantine or closure have been exhausted.” *Id.* at ¶ 18.

Five days have elapsed since the CCDPH issued its public health order against the Respondent, and the Respondent represents that he has been asymptomatic and has twice tested negative for Covid-19, including most recent on February 21, 2022, since the CCDPH issued its public health order. Assuming his representations are true, under the CCDPH’s public health order the Respondent may return to school so long as he wears a mask for the next five days. Otherwise, he must remain quarantined at home for the next five days. The Respondent seeks to return to school but without donning a mask. He argues that his school has a “mask-optional” policy and a quarantine period of only *five* days for someone like him, who has been exposed to Covid-19 but is asymptomatic and negative for Covid-19, *see* <https://docs.google.com/document/d/1pVkjwgrNWNOzSNIOt0B346I2dR-gd8IF/edit#heading=h.ytg3b9lp83dt>. He further argues that there is no evidence that any exposure caused him to contract Covid-19 or that he will put others at risk of contracting Covid-19. Thus, the only remaining issue in this case is whether the CCDPH may require the Respondent to remain quarantined at home for the last five days of the alleged ten-day incubation and communicability period of Covid-19, an issue that was previewed at the hearing on February 18, 2022.

A century ago, in the wake of the Spanish flu epidemic that claimed 8,500 Chicagoans, the Illinois Supreme Court upheld the validity of a quarantine order during an outbreak of typhoid fever at a boarding house in the Roseland neighborhood of Chicago. *People ex rel. Barmore v. Robertson*, 302 Ill. 422 (1922).¹ The court described the nature of quarantine as follows:

It is not necessary that one be actually sick, as that term is usually applied, in order that the health authorities have the right to restrain his liberties by quarantine regulations. Quarantine is not a cure -- it is a preventive. As the term is used in this opinion, quarantine is the method used to confine the disease within the person in whom it is detected or to prevent a healthy person from contracting the infection. . . . Effective quarantine must therefore be not so much the isolation of the person who is sick or affected with the disease as a prevention of the communication of the disease germs from the sick to the well. Thus, in the case of typhoid fever, effective quarantine must include very strict restrictions upon the movements of the attendants who in any way [sic] come in contact with the sick person or his discharges. . . . Quarantine, in the very nature of the regulation, is not a definite or uniform measure but it must vary according to the subject. One of the important elements in the administration of health and quarantine regulations is a full measure of common sense. It is not necessary for the health authorities to wait until the person affected with a contagious disease has actually caused others to become sick by contact with him before he is placed under quarantine.

¹ The backstory can be found at <https://www.wbez.org/stories/whats-that-building-the-history-of-chicagos-typhoid-jennie/ce1d7033-0a02-4d68-931e-c2ec54e1f44e>

Id. at 433-34 [internal citation omitted]. Yet, the power of the government to order quarantine is circumscribed:

While the powers given to the health authorities are broad and far-reaching they are not without their limitations. As we have said, while the courts will not pass upon the wisdom of the means adopted to restrict and suppress the spread of contagious and infectious diseases, they will interfere if the regulations are arbitrary and unreasonable. A person cannot be quarantined upon mere suspicion that he may have a contagious and infectious disease, but the health authorities must have reliable information on which they have reasonable ground to believe that the public health will be endangered by permitting the person to be at large. Where danger of an epidemic actually exists, health and quarantine regulations will always be sustained by the courts, but the health regulations are all sustained on the law of necessity, and when the necessity ceases the right to enforce the regulations ceases [sic]. Health authorities cannot promulgate and enforce rules which merely have a tendency to prevent the spread of contagious and infectious diseases, which are not founded upon an existing condition or upon a well-founded belief that a condition is threatened which will endanger the public health. The health authorities cannot interfere with the liberties of a citizen until the emergency actually exists. Where one has been arrested and placed under quarantine on the ground that he is afflicted with a contagious disease he has the right to have the legality of his detention inquired into by habeas corpus.

Id. at 432-33 [internal citation omitted].

A petition for court order authorizing involuntary quarantine shall state “the *medical basis* on which isolation, quarantine or closure is justified, e.g., clinical manifestations; physical examination; laboratory tests, diagnostic tests or other medical tests; epidemiologic information; or other evidence of exposure or infection available to the Department or certified local health department at the time.” 77 Ill. Adm. Code 690.1330 (e)(1)(G) (emphasis added). In addition, the petition shall be accompanied by the declaration of the Department or the certified local health department attesting to the facts asserted in the petition, together with any further information that may be relevant and material to the court's consideration.” *Id.* at 690.1330(E)(2). To obtain a court order to enforce its public health order, the CCDPH, “by clear and convincing evidence must prove that the public’s health and welfare are significantly endangered by a person . . . that has, that is suspected of having, that has been exposed to, or that is reasonably believed to have been exposed to a dangerously contagious or infectious disease, . . .” *Id.* at 690.1330(g).

In support of its petition, the CCDPH offers the declaration of Demian Christiansen, DSc, MPH, who avers in pertinent part:

7. There are two courses of action for the individual: 1) the individual can remain at home for the quarantine period of 10 days and return to school on day 11. Specifically, the individual shall remain at home starting 2/16/2022 (this is considered day 0) and would be eligible to return to school on day 11, which

would be 2/27/2022, a Sunday. (2) Alternatively, the individual shall remain at home for 5 days, and would be eligible to return to school on day 6 (through day 10) provided that the individual is asymptomatic and remains masked at all times. Specifically, the student shall remain home starting 2/16/2022 (this is day 0) and would be eligible to return on day 6 (2/22/2022, a Tuesday). Again, the student shall be masked at all times from days 6-10, day 10 would be 2/26/2022, a Saturday, and the student's quarantine period would be over on 2/27/2022, a Sunday.

8. In my professional opinion, quarantine of the individual is warranted to prevent further spread of COVID-19 to the public, including teachers, staff and other students at the individual's school, as well as any other parties the individual may come in contact with through extra-curricular activities. The individual refuses to wear a mask and by such refusal, his exposure increases the risk that the individual could further the spread of this deadly virus to others in the community and school. (See attached CCDPH Mitigation Letter). The individual's potential health status significantly endangers the public's health and welfare.

9. Based on the current information known to me, I believe that the individual should be immediately quarantined for 5 days at home and may return to school on day 6 so long as the student is masked at all times to ensure they are no longer a risk to the public. However, this recommendation may change if the individual receives a positive COVID-19 test or their health declines.

The CCDPH's amended petition is insufficient because Dr. Christiansen fails to offer any medical basis for his assertion that the incubation and communicability period for Covid-19 is ten days. Rather, he opines more generally that it is necessary to quarantine the Respondent to prevent community transmission of Covid-19. He references and attaches the CCDPH Mitigation Letter, which is a letter from Dr. Rachel Rubin and Dr. Kiran Joshi, Co-Leads and Senior Medical Officers of the CCDPH, to Toni Preckwinkle, President of the Cook County Board of Commissioners, wherein Drs. Rubin and Joshi explain that the mitigation measures in CCDPH Public Health Order 2021-11 are necessary to protect the public health (Public Health Order 2021-11 imposes an indoor mask mandate in public spaces and requires patrons of restaurants and health clubs to present proof of vaccination, among other directives). The letter includes various figures and graphs, and links to other studies, that illustrate that the majority of Covid-19 cases, hospitalizations, and deaths have been among unvaccinated or partially vaccinated people. The letter goes on to explain that the data supports community masking to reduce the spread of Covid-19, especially in enclosed indoor spaces. However, nothing in the CCDPH Mitigation Letter provides a medical basis for Dr. Christiansen's statement that the period of incubation and communicability for Covid-19 is ten days. Likewise, nothing in the CCDPH's public health order against the Respondent, which is cited at ¶ 17 of the petition, explains the medical basis for a ten-day quarantine period.

As explained above, an order of quarantine constitutes a substantial deprivation of one's liberty interest. Therefore, the law quite appropriately places a high burden on a governmental body seeking such relief. It is not enough that CCDPH allege that quarantine is necessary to

prevent community transmission of Covid-19. Rather, the CCDPH must also allege a “medical basis” for the duration of the quarantine period that it imposed on the Respondent and then prove it by clear and convincing evidence. To be sure, the duration of an order of quarantine constitutes an infringement of a liberty interest as much as order of quarantine itself. By not providing any medical basis for a ten-day period of quarantine, the CCDPH, once again, fails to sufficiently allege facts to state a claim for the involuntary quarantine of the Respondent.

Finally, should the CCDPH elect to continue to press its case, the Court takes this occasion to address an objection made by the Respondent at the first hearing on February 18, 2022, and again at today’s hearing. At the onset of the first hearing, when the CCDPH stated that it didn’t have anything further to add in support of its petition, the Respondent moved for a “directed verdict,” arguing that much of what was alleged in the petition was hearsay. At the time, the Court stated that the matter was not set for trial and, at the conclusion of the hearing, further stated because Dr. Christiansen failed to offer any medical basis for his opinion, the Respondent’s objection was moot. Upon further reflection, however, it is apparent that the nature of this type of proceeding necessitates immediate trial where there is a factual dispute. That is because the remedy that the CCDPH seeks – an order of quarantine against the Respondent – effectively constitutes injunctive, and ultimate, relief. However, it is well settled that a court should not order injunctive relief that provides the petitioner with the ultimate relief that he seeks. *Knuppel v. Adams*, 12 Ill. App. 3d 708, 711 (3d Dist. 1973). As this case aptly demonstrates, a quarantine order may be of such brief duration that by the time the matter is tried the quarantine order will have been lapsed and the case will have become moot. Therefore, as a practical matter, the procedure that respects the due process and other constitutional and statutory rights of a respondent would necessitate that the petitioner be prepared to present evidence in the first instance (beyond simply a petition with a declaration appended) through witnesses and documents if the respondent, as appears to be the case here, is not prepared to stipulate to, or otherwise disputes, the salient facts alleged in the petition. The Court may not deprive one of their liberty interests without giving them the opportunity to confront the government’s witnesses and to present their own witnesses.

The CCDPH’s amended petition is stricken without prejudice. The CCDPH is given leave to file a second amended petition. The Clerk shall notify all parties of the entry of this Order.

Entered:

Sanjay T. Tailor
Judge Sanjay T. Tailor

ENTERED

February 22, 2022

Iris Y. Martinez
Clerk of the Circuit Court
of Cook County, IL

DEPUTY CLERK

JS