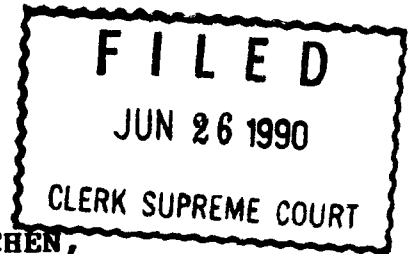


IN THE COURT OF APPEALS OF IOWA

No. 0-190 / 89-390



LARRY GATZKE, WILLIAM CATALONA, WILLIAM W.J. CHEN,
ROBERT F. KLEIN, DAVID KUNDEL, R.E. OLSON, S.C. PATEL, and
V.W. SWAYZE,

Appellants,

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vs.

WILLIAM KOELLNER, MARTIN BECKEY, KENNETH DUNCAN,
JULIA KAALBERG and DARYL SYWASSINK as Members of the Board
of Trustees of Muscatine General Hospital,

Appellees.

Appeal from the Iowa District Court for Muscatine
County, Margaret S. Briles, Judge.

Members of the medical staff at Muscatine General
Hospital filed a writ of certiorari alleging the board of
trustees of the hospital failed to follow the board's
bylaws and the medical staff's bylaws when it advanced Dr.
Atwell from associate to active status. The district court
quashed the writ and found the board was not required to
abide by the bylaws. Appellants appeal the district court
decision. **AFFIRMED.**

John C. Stevens of Lewis & Stevens, P.C., Muscatine,
for appellants.

J. W. Conway, Muscatine, for appellees.

Heard by Oxberger, C.J., and Hayden and Sackett, JJ.

HAYDEN, J.

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The Muscatine General Hospital is a county hospital organized under Iowa Code chapter 347A. The hospital is governed by a Board of five trustees, who are the appellees. The appellants are active members of the medical staff of Muscatine General Hospital. The Board of Trustees adopted bylaws to govern the operation of the hospital. The medical staff adopted bylaws pursuant to the Board's bylaws for the internal governance of the medical staff.

In 1986, Dr. Calvin E. Atwell applied to the Board of Trustees for appointment to the medical staff of the hospital. The Board appointed Atwell as an associate member. In 1987, Atwell applied to be an active member of the medical staff. The Board denied the application. Some members of the medical staff were concerned with Atwell's competency and specialized training to perform certain surgeries.

In 1988, Atwell renewed his application to be appointed an active member. On March 24, 1988, the Board of Trustees met and determined Atwell's application was incomplete because it lacked the chief of surgery's written recommendation. On that same day, appellants filed a petition for an injunction and the district court issued a temporary injunction preventing the Board from appointing Atwell an active member. Following a hearing, the district court on March 31, 1988, entered an order quashing the

injunction. The district court found article VI of the medical staff bylaws governs the procedure to advance a staff member from associate to active status, and that the bylaws were followed.

On April 4, 1988, the Board met and appointed Atwell an active member. The appellants then amended their original injunction petition to request the issuance of a writ of certiorari. The district court issued the writ. The order issuing the writ and an order on a pretrial motion in limine limited the trial evidence to the Board's actions on April 4, 1988. Following a four-day bench trial, the district court quashed the writ. The court concluded the Board has a mandatory duty to control and supervise the physicians in the hospital, pursuant to Iowa Code section 347.13, and such duty cannot be amended, abridged, restricted, or denied by the bylaws of the Board or medical staff. The district court found the Board had jurisdiction to change Atwell's staff status and the Board's decision was supported by substantial evidence.

On June 27, 1988, the medical staff adopted, and the Board of Trustees of the hospital adopted, and approved a new set of medical staff bylaws which superseded the previous medical staff bylaws which were in existence on April 4, 1988. On June 6, 1989, after the appellants filed their notice of appeal, the medical staff, in accordance with the new bylaws, reappointed Dr. Atwell as an active member of the medical staff. On August 8, 1989, the Board

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of Trustees filed a motion to dismiss this appeal as moot based on the reappointment of Dr. Atwell.

The appellants contend the bylaws were adopted pursuant to statutory authority, Iowa Code §§ 347.14 and 347A.1, and, therefore, the bylaws are binding, have the force and effect of law, and that Board's decision is therefore invalid. The appellants argue Atwell's application to be advanced from an associate to an active member is governed by article V of the bylaws and none of the procedures outlined in article V were followed. The appellants also assert the Board's actions were arbitrary and capricious.

Certiorari is a procedure to test the legality of an action by a lower board, tribunal, or court. Lane v. Oxberger, 224 N.W.2d 245, 247 (Iowa 1974). It is an action at law and is not triable here de novo. City of Des Moines v. Iowa District Court for Polk County, 428 N.W.2d 292, 296 (Iowa 1988). We will uphold the fact findings of the trial court if they are supported by substantial evidence. Downs v. Board of Trustees of Police Retirement System of City of Sioux City, 312 N.W.2d 563, 566 (Iowa 1981).

The members of the Board of Trustees argue the numerous issues raised by the plaintiff have become moot since the medical staff and Board of Trustees of the hospital voted to reinstate Dr. Atwell in June and July of 1989 and a new set of bylaws have been passed superseding the old. The appellants respond, even if the present issues are moot, we should expound on these issues based on broad public

importance. We agree with the Board and dismiss the appeal.

A case becomes moot when it no longer presents a justiciable controversy because the issues involved have become academic or nonexistent. Martin-Trizona v. Baxter, 435 N.W.2d 744, 745 (Iowa 1989); Junkins v. Branstad, 421 N.W.2d 130, 133 (Iowa 1988). "The test is whether a judgment, if rendered, would have any practical legal effect upon the existing controversy." Junkins, 421 N.W.2d at 133. Moot questions, however, will be considered when they are of great public importance and are likely to recur. Department of General Services, State of Iowa v. R.M. Boggs Co., Inc., 336 N.W.2d 408, 410 (Iowa 1983). The criteria for whether to apply the exception are: "'(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.'" Baxter, 435 N.W.2d at 745, citing Ruth v. Ray, 332 N.W.2d 325, 326 (Iowa 1983).

In the present case, we note the bylaws that were in effect on April 4, 1988, have been revoked and superseded by a new set of bylaws adopted by the hospital medical staff and the Board of Trustees. Since the central issue of this appeal is whether the Board's actions of April 4, 1988, were governed by article V of the old bylaws, we do not believe an adjudication of rights pursuant to these

bylaws would provide any insight to other state officials since the old bylaws are revoked and new bylaws adopted. We believe Dr. Atwell's reappointment by the medical staff and new Board of Trustees on July 25, 1989, is important. The record reveals at the medical staff meeting on June 6, 1989, Dr. Atwell's name was introduced for the purposes of reappointment. Twenty-four members of the medical staff, including five of the named plaintiffs in the present case, were present. All staff present, including the plaintiffs, voted to recommend to the Board of Trustees Dr. Atwell be reappointed as an active staff member. Additionally, the new Board of Trustees has as a member only one of the original trustees who were involved in the April 4, 1988, vote.

We find the present case somewhat analogous to State ex rel. Doyle v. Benda, 319 N.W.2d 264 (Iowa 1982). In Benda, the plaintiff school district electors brought an action to remove the defendants, school board directors, alleging willful misconduct or maladministration. 319 N.W.2d at 266. The term of the school board members was three years. Id. During the pendency of that action, two of the targeted school board members were reelected. Id. Addressing the question of whether the petition for removal had been mooted, the Iowa Supreme Court held that "[i]n the case before us there was ample opportunity for the various charges against the defendants to become well known in the community before their reelections." Id. at 267. The

court went on to hold the board members' subsequent reelection mooted the petitions for removal. Id.

As in Benda, all parties in the present case were well aware of the controversy surrounding Dr. Atwell. From the time of the April 8, 1988, vote to his reappointment in the summer of 1989, Dr. Atwell's performance was undoubtedly intensely scrutinized, including a review by the Iowa Board of Medical Examiners concerning a number of surgical procedures he had performed. Armed with this knowledge, the medical staff and new Board of Trustees, pursuant to new bylaws, voted to reappoint Dr. Atwell. Even if we were to reverse, our holding would have no practical legal effect since the new Board acted under new bylaws. No issue has been raised as to the legality of July 1989 reappointment procedures.

We also note that any likelihood of recurrence as alleged by the appellants is purely speculative. The Board is operating under a new set of bylaws, and no challenge has surfaced regarding these new bylaws. See Martin-Trigona v. Baxter, 435 N.W.2d 744, 745 (Iowa 1989) (wherein the Iowa Supreme Court held the likelihood Democratic presidential caucus procedures would be violated was speculative because the Democratic Party could change its procedures at any time).

In summary, we hold the appeal must be dismissed because the issues alleged are moot. The public interest exception does not apply here.

A final subsidiary issue in this matter concerns the appellants' contention the Board members have designated unnecessary parts of the record to be included in the appendix. The Iowa Supreme Court has directed us to consider this issue with the appeal. Upon review of those objected-to portions of the record, we conclude overall they were pertinent to the issues on appeal. Printing costs are to be divided equally. Costs of appeal are taxed to appellants.

AFFIRMED.

Oxberger, C.J., concurs; Sackett, J., dissents.

I respectfully dissent.

Plaintiffs, all physicians and medical practitioners at Muscatine General Hospital, allege defendants failed to follow their own procedures in appointing Calvin Atwell, a general surgeon, as an active member of the medical staff of the hospital and in granting him clinical privileges to perform some five hundred medical procedures for which they claim he has no education, experience, background, training or demonstrated ability. Plaintiffs ask we find the board failed to follow its own procedures and acted in an unreasonable manner. They contend the trial court erred in finding the board was not bound by its own bylaws.

The majority has elected to decide the issue is moot, contending the doctor has now been appointed under the new bylaws. I am not as convinced as the majority this is clearly in fact what happened. I am not convinced the vote was consciously made, particularly when I consider the strong stand the petitioners have taken in advocating their position in this court. But, even if the appointment to the staff is moot, there still exists a crucial issue of plaintiffs' complaints, namely the board having extended clinical privileges to Atwell in a number of areas that

exceed those for which the doctor is credentialed. Therefore, even if the issue is moot, I feel it needs to be addressed.

The issue of whether hospitals in this state follow reasonable procedures to assure competent physicians are on staff, and that physicians operate in the area of their competence, is an issue of significant importance. The complaints against Atwell by the medical community are numerous and include, in addition to his performing procedures for which he is not qualified, a failure to validate his credentials and experiences in accord with hospital bylaws. The requirements of the bylaws are reasonable and necessary to avoid a compromise of patient care.

I would find the board was required to follow their own bylaws. Their bylaws are in essence their contract with their medical staff. See Pariser v. Christian Health Care Systems, 627 F. Supp. 39 (E.D. Mo. 1984); Berberian v. Lancaster Osteopathic Hospital, 395 Pa. 257, 149 A.2d 456 (1959); McElhinney v. William Booth Memorial Hospital, 55 S.W.2d 216 (Ky. 1976).

I would sustain the writ.