McAneny v. Catechis

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1 IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

2 Opinion Number: _____

3 Filing Date: March 30, 2023

4 No. A-1-CA-38115

5 BARBARA MCANENY, M.D.; WILLIAM 6 RITCHIE, M.D.; and WILLIAM LIAKOS, 7 JR., M.D.,

8 Plaintiffs-Appellees,

9 and

10 ALBERT KWAN, M.D.,

11 Withdrawn Plaintiff,

12 v.

13 JENNIFER A. CATECHIS, in her capacity 14 as New Mexico Interim Superintendent of 15 Insurance; and the NEW MEXICO OFFICE OF 16 THE SUPERINTENDENT OF INSURANCE,

17 Defendants-Appellants,

18 and

19 RADIOLOGICAL ASSOCIATES OF 20 ALBUQUERQUE, PA; JESSICA WILLIAMS, 21 M.D.; CRAIG LASTINE, M.D.; THRETHA 22 REDDY, M.D.; ADAM DELU, M.D.; CRAIG 23 LANCE, M.D.; and THE DOCTORS 24 COMPANY,

25 Intervenors-Appellants.

1 APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY 2 David K. Thomson, District Court Judge

3 Marshall Law, P.C. 4 Stephen R. Marshall 5 Albuquerque, NM

6 Hunt Law Firm 7 Lee R. Hunt 8 Cynthia L. Zedalis 9 Santa Fe, NM

10 Stephen Durkovich 11 Santa Fe, NM

12 for Plaintiffs-Appellees

13 R. Alfred Walker, Legal Counsel 14 Richard B. Word, Legal Counsel 15 Santa Fe, NM

16 for Defendants-Appellants

17 Greenberg Traurig, LLP 18 Jon T. Neumann 19 Phoenix, AZ

20 for Intervenors-Appellants

21 Rodey, Dickason, Sloan, Akin & Robb, P.A. 22 Charles K. Purcell 23 Albuquerque, NM

24 for Amicus Curiae Presbyterian Healthcare Services

1 OPINION

2 BUSTAMANTE, Judge, retired, sitting by designation.

3 {1} Plaintiffs filed a declaratory judgment action against the Superintendent of

4 Insurance 1 and the Office of the Superintendent of Insurance (collectively, OSI)

5 challenging the process used to allow certain hospitals to attain Qualified Health

6 Provider (QHP) status under the Medical Malpractice Act (MMA), NMSA 1978,

7 §§ 41-5-1 to -29 (1976, as amended through 2021). The district court ruled in favor

8 of Plaintiffs, and OSI appeals. Interestingly, however, OSI does not challenge the

9 substance of the district court's judgment. Instead, it argues that events subsequent

10 to entry of the judgment have rendered the matter moot. OSI asks us to dismiss the

11 appeal, remand, and vacate the district court's judgment. OSI also asserts—for the

12 first time—that Plaintiffs did not have standing to bring the action. In addition, OSI

13 argues that the district court abused its discretion when it denied its motion to join

14 the hospitals as necessary parties under Rule 1-019 NMRA.

1 John Franchini was the named defendant as the Superintendent of Insurance in the district court proceedings. However, Franchini's tenure as Superintendent ended on December 31, 2019, after this appeal was filed. Jennifer A. Catechis was appointed Interim Superintendent, effective January 21, 2023. See NMSA 1978, § 59A-2-2.1(F) (2015, amended 2020) (providing for appointment of Interim Superintendent); see also Denish v. Johnson, 1996-NMSC-005 , ¶ 47, 121 N.M. 280 , 910 P.2d 914 (noting officials appointed to fill vacancies "will remain in office with all the powers of that office until the successor is duly qualified"). Pursuant to Rule 12-301(C)(1) NMRA, Catechis was "automatically substituted" as Defendant and the proceedings in this matter shall be pursued in her name for the duration of her tenure as Interim Superintendent.

1 {2} We hold that Plaintiffs did have standing and that the district court did not

2 abuse its discretion in initially refusing to join the hospitals. We disagree that the

3 matter is now moot.

4 BACKGROUND

5 {3} Plaintiffs are three long-time practicing physicians in New Mexico. Plaintiffs

6 asserted that they—along with the other doctors in their respective practice groups—

7 have held QHP status and have been insured under the MMA for over twenty years.

8 As such, they have been surcharged by OSI and made yearly contributions to the

9 Patient's Compensation Fund (the Fund) since they became QHPs. Plaintiffs

10 generally asserted that they depend on the Fund to pay their portion of the

11 professional liability obligations that exceed their mandated private insurance

12 coverage, and that the solvency of the Fund is threatened by the decision of OSI to

13 allow hospitals to qualify as QHPs and share in the benefits of the Fund.

14 {4} Plaintiffs asserted that the Fund experienced an accelerating actuarial deficit

15 in the years prior to the filing of their complaint which resulted in OSI imposing two

16 significant surcharges on physician QHPs. Plaintiffs also alleged that the surcharges

17 imposed on physician QHPs would "dramatically increase" as the Fund "takes

18 responsibility for the risk and liability" of the hospitals and outpatient care facilities

19 illegally granted QHP status by OSI.

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1 {5} Plaintiffs asserted that OSI acted improperly in three ways when it granted the

2 hospitals and outpatient facilities QHP status. First, they argued that it did not

3 comply with the Administrative Procedures Act (APA), NMSA 1978, §§ 12-8-1 to

4 -25 (1969, as amended through 1999). 2 Specifically, they argued that the APA

5 required OSI to publically propose and adopt rules reflecting how it would carry out

6 its responsibilities under the MMA with regard to assessing the risks posed by

7 hospitals before they were allowed to qualify as QHPs. Second, they asserted that

8 OSI failed to comply with NMSA 1978, Section 59A-2-10 (1984) of the New

9 Mexico Insurance Code in that it did not create and sign an order stating the grounds

10 on which the order is based. See § 59A-2-10(A), (B). Third, Plaintiffs asserted that

11 OSI violated its common law and statutory duties as the trustee of the Fund when it

12 failed to act in compliance with the APA and the Insurance Code.

13 {6} After OSI filed its answer, the parties filed cross-motions asking the district

14 court to decide the matter on the pleadings. The arguments made in the motions

15 mirrored the assertions in the pleadings, with OSI specifically asserting that the APA

16 and the Insurance Code did not apply to its duties under the MMA and that its actions

17 in granting QHP status were merely ministerial. After hearing oral argument on the

18 motions and taking the matter under advisement, the district court reconvened the

OSI was made subject to the APA in 2013. 2013 N.M. Laws, ch. 74, § 13; 2

see NMSA 1978, § 59A-2-8(J) (2013, amended 2021 as § 59A-2-8(A)(10)).

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1 parties and announced its decision orally. The district court agreed with the

2 Plaintiffs' legal position, rejecting OSI's arguments that the APA and the Insurance

3 Code did not apply to its actions under the MMA and that its actions were

4 ministerial. The district court, however, was not convinced that the Plaintiffs'

5 requested remedy—declaring all of OSI's actions void—was appropriate. Thus, the

6 district court asked for proposed forms of a dispositive order from the parties.

7 Plaintiffs' submission in response did not include a proposed form of order. Rather

8 it simply reiterated Plaintiffs' assertion that a blanket order voiding OSI's actions

9 was necessary. OSI submitted a form of order that ultimately provided much of the

10 verbiage found in the district court's judgment.

11 {7} At this point in an opinion we would normally delve into the specific

12 provisions of the judgment appealed. It is not necessary to do so here because, again,

13 OSI has chosen not to challenge the substance of the judgment's resolution of the

14 legal issues presented or the district court's remedy. Thus, those issues are not before

15 us based on OSI's appeal.

16 {8} Plaintiffs—appellees herein—ask us to reverse the judgment on a number of

17 grounds, including: (1) the district court erred in not voiding all of OSI's actions; (2)

18 the district erred in drawing a distinction between actions after and before OSI was

19 made subject to the APA; and (3) the district court erred in considering the effect of

20 its decision on entities and parties not before it. But Plaintiffs did not file a cross-

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1 appeal. Under Rule 12-201(C) NMRA, absent a cross-appeal an appellee may raise

2 issues for the purpose of enabling the appellate court to affirm, or raise issues for

3 determination only if the appellate court may reverse in whole or in part as a result

4 of the direct appeal. Given that the substance of the judgment was not challenged by

5 OSI on direct appeal, we will not address Plaintiffs' arguments for reversal. 3 We

6 now turn to the issues raised by OSI: standing, joinder, and mootness.

3 Plaintiffs filed a notice of appeal from the district court's judgment on August 13, 2021. Plaintiffs' Notice of Appeal, McAneny v. Catechis, D-101-CV-2017- 02140 (1st. Jud. Dist. Ct. Aug. 13, 2021). Plaintiffs' appeal was assigned case number A-1-CA-39904. Plaintiffs had previously filed a motion to dismiss OSI's appeal for lack of finality in this case. Plaintiffs'-Appellees' Motion to Dismiss Appeals, McAneny v. Catechis, A-1-CA-38115 (N.M. Ct. App. June 6, 2019). This Court denied the motion to dismiss. Order Granting Motion for Leave to File Reply and Denying Motion to Dismiss, McAneny v. Catechis, A-1-CA-38115 (N.M. Ct. App. Sept. 3, 2019). Plaintiffs filed two motions asking this Court to reconsider its decision with regard to finality. Motion for Reconsideration on Plaintiffs-Appellees' Motion to Dismiss, McAneny v. Catechis, A-1-CA-38115 (N.M. Ct. App. Sept.

13, 2019); Physicians' Second Motion for Reconsideration of Order Denying Motion to Dismiss, McAneny v. Catechis, A-1-CA-38115 (N.M. Ct. App. Sept. 17, 2020). The second motion for reconsideration was denied by this Court on July 29, 2021. Order Denying Second Motion to Reconsider and Motion to Intervene or, in the Alternative, For Leave to File Amicus Curiae, McAneny v. Catechis, A-1-CA-38115 (N.M. Ct. App. July 29, 2021). Plaintiffs' docketing statement asserted that this Court's denial of their motions for reconsideration triggered the time at which they could appeal the district court's January 31, 2019 order. Plaintiffs-Appellants' Docketing Statement, McAneny v. Catechis, A-1-CA-39904 (N.M. Ct. App. Aug. 18, 2021). Plaintiffs did not raise the issue of finality in their briefing in this case and we therefore do not address the matter again in this opinion. Plaintiffs appeal in No. A-1-CA-39904 has been dismissed as untimely contemporaneously with the filing of this opinion.

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1 Discussion

2 I. Standing

3 {9} OSI argues for the first time in this litigation that Plaintiffs did not have

4 standing to bring this case. OSI included a lack-of-standing affirmative defense in

5 its answer, but did not pursue it in the litigation below. We address the argument

6 because our courts have chosen to treat lack of standing as a "potential jurisdictional

7 defect, . . . which may not be waived, and may be raised at any stage of the

8 proceedings." See Gunaji v. Macias, 2001-NMSC-028 , ¶ 20, 130 N.M. 734 , 31 P.3d

9 1008 (internal quotation marks and citations omitted). "Whether a party has standing

10 to bring a claim is a question of law which we review de novo. . . . For purposes of

11 ruling on a motion to dismiss for want of standing, both trial and reviewing courts

12 must accept as true all material allegations of the complaint, and must construe the

13 complaint in favor of the complaining party." N.M. Gamefowl Ass'n v. State ex rel.

14 King, 2009-NMCA-088 , ¶ 12, 146 N.M. 758 , 215 P.3d 67 (internal quotation marks

15 and citations omitted).

16 {10} New Mexico courts have traditionally looked to the federal standing analysis

17 for guidance, even though the "constitutional dimensions" of federal standing are

18 absent from our state jurisprudence. ACLU of N.M. v. City of Albuquerque, 2008-

19 NMSC-045, ¶ 10, 144 N.M. 471 , 188 P.3d 1222 . As such we examine the complaint

20 to determine whether it demonstrates "(1) an injury in fact, (2) a causal relationship

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1 between the injury and the challenged conduct, and (3) a likelihood that the injury

2 will be redressed by a favorable decision." See Prot. & Advoc. Sys. v. City of

3 Albuquerque, 2008-NMCA-149 , ¶ 18, 145 N.M. 156 , 195 P.3d 1 (internal quotation

4 marks and citation omitted). OSI's argument focuses only on the injury in fact aspect

5 of the analysis, and we will similarly limit our review.

6 {11} OSI argues that Plaintiffs did not allege an injury in fact to them. We disagree.

7 The complaint asserted that the actuarial health of the Fund deteriorated significantly

8 in the year prior to the date it was filed. The complaint attributed a large part of the

9 decline to the potential costs of meeting the heightened risk of losses from claims

10 against hospitals. The complaint also alleged that Plaintiffs were assessed significant

11 surcharges as a result of the actuarial decline of the Fund and that the continuing

12 deterioration of the Fund will require dramatic increases in the future. These

13 assertions are sufficient to meet the injury in fact requirement of the standing

14 analysis. While Plaintiffs did not quantify the dollar amount of the increased

15 surcharges, a reasonable inference can be made that the number is not de minimis.
16 In any event, the injury in fact requirement is met "even when the extent of the
17 alleged injury is slight . . . or the allegation is made by an organization on behalf of
18 its members." N.M. Right to Choose/NARAL v. Johnson, 1999-NMSC-005 , ¶ 12,
19 126 N.M. 788 , 975 P.2d 841 . OSI's argument that these allegations are "conjectural

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1 and hypothetical" runs counter to the obligation to view the complaint in favor of
2 the complaining party. See N.M. Gamefowl Ass'n, 2009-NMCA-088 , ¶ 12.
3 {12} As a corollary to the argument that Plaintiffs have suffered no personal
4 damage, OSI asserts that the complaint only alleges damage to the Fund, and notes
5 that Plaintiffs are not beneficiaries of the Fund. We disagree. It is accurate that
6 Plaintiffs do not receive payments directly from the Fund. The Fund is used to pay
7 patients injured by medical malpractice a portion of their damages. Section 41-5-
8 7(E) (1992, amended 2021). But, the Fund is part and parcel of the MMA and the
9 structure created therein to help maintain a viable system of medical care and claim
10 resolution in New Mexico. Section 41-5-25(A) (1997, amended 2021); see also
11 Baker v. Hedstrom, 2013-NMSC-043 , ¶ 17, 209 P.3d 1047 ("To give effect to the
12 purpose of the MMA, the Legislature created a balanced scheme to encourage health
13 care providers to opt into the [MMA] by conferring certain benefits to them, which
14 it then balanced with the benefits it provided to their patients."). To separate the
15 Fund from the MMA structure is not realistic. OSI admitted in its answer to the

16 complaint that, "physicians are essential beneficiaries of the [MMA]." As "essential

17 beneficiaries" of the MMA, Plaintiffs have a strong claim to standing to challenge

18 actions that threaten its viability, including threats to the Fund.

8

1 II. Joinder

2 {13} Eleven months after the complaint in this matter was filed, OSI filed a motion

3 to join necessary parties pursuant to Rule 1-019, or in the alternative to dismiss the

4 case. OSI argued that at a minimum the hospitals whose inclusion in the Fund was

5 threatened—if Plaintiffs were successful—should be joined as necessary parties

6 because the hospitals faced potentially dire consequences if the district court ruled

7 in Plaintiffs' favor.

8 {14} Plaintiffs' response was multifaceted. They noted that the case as framed by

9 the complaint presented strictly legal issues concerning the power of OSI to do what

10 it did in allowing the hospitals to acquire QHP status. They posited that OSI was

11 best able to defend its authority and actions. Analogizing to State ex rel. Clark v.

12 Johnson, 1995 -NMSC-048, 120 N.M. 562 , 904 P.2d 11 , Plaintiffs questioned what

13 the hospitals could add to the legal arguments surrounding the issue. Plaintiffs also

14 noted that under OSI's approach, patients and other providers would also be

15 necessary parties, but they too would not be able to provide material help in deciding

16 the legal issues presented. Finally, Plaintiffs noted that the hospitals themselves had

17 not asked to intervene.

{15} The district court denied the motion. Because "[t]he question of indispensability is a factual question that the district court determines . . . in its discretion," we apply the abuse of discretion standard of review. See Srader v. Verant, 1998-NMSC-025 , ¶ 20, 125 N.M. 521 , 964 P2d 82 .

{16} The district court decided that given the nature of the case—framed as a purely legal question—complete relief could be accorded among the present parties. Focusing on Rule 1-019(A)(2)(a), the district court concluded that the disposition of the case in the absence of the hospitals would not as a practical matter impair their ability to protect their interests. Noting that the hospitals had not themselves requested intervention, the district court deduced that they did not think their interests were substantially threatened. Finally, the district court observed that it was "not convinced the alleged necessary parties [would] present any substantive argument different from the position capably and adequately represented by [OSI]."

{17} Notably, the district court did allow the hospitals to file a consolidated amicus brief. The hospitals did so and filed a brief opposing Plaintiffs' motion for judgment on the pleadings and a brief supporting OSI's suggested form of judgment.

{18} Relevant to the circumstances of this case, Rule 1-019 requires joinder of a person if:

(1) in his absence complete relief cannot be accorded among those already parties; or

(2) he claims an interest relating to the subject of the action and is so situated that the

disposition of the action in his absence may:

21 (a) as a practical matter impair or impede his ability to 22 protect that interest.

10

1 As this Court has previously noted, the determination whether Rule 1-019 mandates

2 joinder is a case specific, context-driven inquiry. State ex rel. Blanchard v. City

3 Comm'rs of Clovis, 1988-NMCA-008 , ¶ 10, 106 N.M. 769 , 750 P.2d 469 ; id. ¶¶ 10,

4 11 (holding that applicants for a city planner position need not be joined in a suit

5 seeking details in their applications where the city-defendant had not shown that the

6 applicants had claimed any right to privacy or confidentiality recognized at law, had

7 not shown that the interests of the applicants would be affected by the judgment of

8 the court, and had not shown that joinder was needed for a just adjudication of the

9 action).

10 {19} Two cases from our Supreme Court illustrate the point. In Clark, the

11 petitioners filed a "writ of mandamus or writ of prohibition and declaratory

12 judgment" challenging the authority of the governor to enter into tribal gaming

13 compacts with a number of New Mexico tribes and pueblos. 1995-NMSC-048 ,

14 ¶¶ 1, 2. The governor argued that the tribes and pueblos were indispensable parties

15 given that they were signatories to the compacts. Id. ¶ 21. Our Supreme Court

16 disagreed, noting:

17 In a mandamus case, a party is indispensable if the "performance of an 18 act to be compelled by the writ of mandamus is dependent on the will 19 of a third party, not before the court." Chavez v. Baca, [1943-NMSC- 20 052, ¶ 31,] 47 N.M. 471 , . . . 144 P.2d 175 []. That is not the case here. 21

Petitioners seek a writ of mandamus against the Governor of New 22 Mexico, not against any of the tribal officials. Resolution of this case 23 requires only that we evaluate the Governor's authority under New 24 Mexico law to enter into the compacts and agreements absent

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1 legislative authorization or ratification. Such authority cannot derive 2 from the compact and agreement; it must derive from state law. This is 3 not an action based on breach of contract, and its resolution does not 4 require us to adjudicate the rights and obligations of the respective 5 parties to the compact.

6 Johnson, 1995 -NMSC-048, ¶ 21.

7 {20} In contrast, our Supreme Court decided that a pueblo was "necessary" to a

8 lawsuit asserting breach of contract and insurance bad faith claims filed against that

9 pueblo's insurer. Gallegos v. Pueblo of Tesuque, 2002-NMSC-012 , ¶¶ 1, 42, 132 N.

10 M. 207, 46 P.3d 668 . The Court noted that "[t]he propriety or impropriety of [the

11 pueblo's insurer]'s performance under the insurance policy is of substantial interest

12 to [the pueblo], which has paid for the insurance protection in question and on whose

13 behalf [the pueblo's insurer] acts." Id. ¶ 43. The Court also noted that in a liability

14 action, the pueblo and its insurer would presumably "share an identity of interest in

15 the outcome of the litigation as [the pueblo's insurer] has a duty to defend its

16 insured." Id. ¶ 45. However, because the plaintiff there was suing the insurer for

17 alleged violations of its duties to the pueblo, the Court would "not presume that [the

18 pueblo's insurer] can or will fully represent the interests of [the pueblo] under the

19 policy, and thus, [the pueblo] is necessary to the litigation." Id.

20 {21} The situation in this case aligns more closely with Clark. First, the complaint

21 here challenges the authority of OSI to allow the hospitals to acquire QHP status in

22 the manner it proceeded. The challenge to OSI's actions and authority did not depend

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1 to any extent on the "will" of the hospitals. See Clark, 1995-NMSC-048 , ¶ 21.

2 Second, when the complaint was filed there was no apparent conflict or divergence

3 of interests between OSI and the hospitals. OSI was fully—perhaps uniquely—

4 capable of defending itself. The district court could be confident that the matter

5 would be properly litigated without the hospitals' joinder.

6 {22} Finally, we see no prejudice to the hospitals from the district court's order.

7 They did not move to be joined, yet they were allowed to appear as amici. OSI does

8 not point to anything the hospitals could or would have done differently had they

9 been joined. In short, we perceive no abuse of discretion by the district court.

10 Complete relief could be accorded among the existing parties. And, as a practical

11 matter, nonjoinder did not impair or impede the hospital's ability to protect their

12 interests.

13 III. Mootness

14 {23} OSI asks us to dismiss the appeal, arguing that it is moot because the

15 Legislature addressed the Fund deficit issue by amending the MMA and because

16 OSI complied with the judgment by promulgating APA compliant rules addressing

17 the process by which it will hereafter qualify hospitals and other outpatient care

18 facilities as QHPs. Problematically, it also asks that we vacate the judgment below.

19 We disagree that the appeal is moot.

13

1 {24} As a general matter a case is moot when no actual controversy exists and the

2 court cannot grant relief to the parties. Gunaji, 2001-NMSC-028 , ¶ 9; id. ¶¶ 9-11

3 (holding that the particular election contest at hand was moot because the terms of

4 office in issue had expired, but addressing the arguments made because the case

5 presented issues of substantial public interest that were capable of being repeated).

6 {25} There are a number of ways a case may become moot. Legislative action

7 specifically addressing an issue in a case is an example. Our Supreme Court held

8 that a case challenging the authority of a municipality to exercise eminent domain

9 over an existing utility service was mooted when the Legislature gave the city-

10 defendant specific authority to proceed. City of Las Cruces v. El Paso Elec. Co.,

11 1998-NMSC-006 , ¶¶ 14-17, 124 N.M. 640 , 954 P.2d 72 . Similarly, this Court

12 decided that a challenge to a municipal sex offender ordinance was moot after the

13 Legislature passed a statute prohibiting local public bodies from adopting or

14 amending laws addressing sex offender registration and notification. ACLU of NM

15 v. City of Albuquerque, 2006-NMCA-078 , ¶¶ 6-8, 139 N.M. 761 , 137 P.3d 1215 .

16 {26} Settlement of all issues in a case by the parties will usually result in mootness.

17 Cobb v. Gammon, 2017-NMCA-022 , ¶¶ 12, 13, 389 P.3d 1058 . There are some

18 situations, however, in which our courts have exercised discretion to decide an issue

19 regardless of the parties' settlement. See Snow v. Warren Power & Mach. Inc., 2015-

20 NMSC-026, ¶¶ 11-16, 354 P.3d 1285 .

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1 {27} Compliance with a judgment from which an appeal has been taken may also
2 result in mootness. See Patterson v. City of Albuquerque, 1983-NMCA-037 , ¶ 9, 99
3 N.M. 632 , 661 P.2d 1331 . But compliance will not result in mootness if there are
4 issues and requests for relief not cured by compliance. Alcantar v. Sanchez, 2011-
5 NMCA-073, ¶ 12, 150 N.M. 146 , 257 P.3d 966 . The analysis is necessarily
6 contextual. See 13B Charles Alan Wright, Arthur R. Miller & Edward H. Cooper,
7 Federal Practice and Procedure § 3533.2.2, Westlaw (3d ed. database updated April
8 2022). Compliance that does not indicate an intent to settle a matter—or in the case
9 of an injunction, compliance that can be undone—does not support a finding of
10 mootness. As the Colorado Court of Appeals has observed, the test of whether an
11 appeal is moot is whether the party acted voluntarily or because of the actual or
12 implied compulsion of judicial power. FCC Constr., Inc. v. Casino Creek Holdings,
13 Ltd., 916 P.2d 1196 , 1198 (Colo. App. 1996).
14 {28} OSI's arguments on mootness fail on all fronts. It asserts that the 2021
15 legislative action addressing the actuarial soundness of the Fund moots all issues
16 related to the Fund. See § 41-5-25(F). The legislation, however, did not address the
17 applicability of the APA and the Insurance Code to OSI's conduct in qualifying
18 entities as QHPs. Id. Thus, it did not specifically address the legal issues decided by
19 the district court. Issues other than the method used to bring the Fund to actuarial

20 health were not mooted by the Legislature's activity.

15

1 {29} OSI also asserts that its promulgation of rules and regulations pursuant to the

2 APA and the Insurance Code as required by the district court's judgment moots any

3 appeal from that portion of the judgment. At oral argument, however, counsel for

4 OSI conceded that adoption of the rules and regulations was undertaken because

5 "[OSI] was told to." Counsel also made clear at oral argument that he did not want

6 to concede that the district court was correct in any of its legal conclusions

7 concerning the applicability of the APA and Insurance Code. In the same breath,

8 however, counsel for OSI conceded that it was seeking no relief as a result of any

9 error by the district court in that regard.

10 {30} The conclusion we draw is that OSI's compliance activities were undertaken

11 under judicial compulsion rather than voluntarily, and that its decision not to

12 challenge the legal merits of the judgment was made to provide tactical support for

13 its mootness argument. To accept OSI's arguments with regard to mootness and

14 vacatur would result in destruction of a judgment OSI chose not to challenge on its

15 merits. OSI would achieve its aim to escape the legal effects of the district court's

16 judgment without subjecting its arguments to scrutiny by this Court. Such a strategy

17 rarely results in the outcome sought.

18 CONCLUSION

19 {31} We affirm the district court's rulings as to standing and Rule 1-019 joinder.

20 We also conclude that the doctrine of mootness does not apply to the circumstances

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1 of this case. Given that the parties did not provide argument on the merits of OSI's

2 responsibilities under the APA and the Insurance Code, we do not address them, and

3 we dismiss the appeal as to that portion of the district court's judgment.

4 {32} IT IS SO ORDERED.

5 _____ 6 MICHAEL D. BUSTAMANTE, Judge, 7 retired, sitting by designation.

8 WE CONCUR:

9 _____ 10 J. MILES HANISEE, Judge

11 _____ 12 KATHERINE A. WRAY, Judge

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