

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

FILED IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

NO. 18-CVS-5047

2018 NOV 27 P 4:13

LAKOTA DENTON, AS GUARDIAN AD LITEM
OF MINOR CHILDREN T.D. AND R.D.,

BUNCOMBE CO., C.S.C.

BY



Petitioners,

v.

JAN SHEPARD, BUNCOMBE COUNTY HEALTH
DIRECTOR,

Respondent.

ORDER

THIS MATTER came to be heard and was heard by the Honorable Richard S. Gottlieb, Superior Court Judge Presiding on November 15, 2018, in Buncombe County Superior Court upon the Special Proceeding filed by the Petitioners, Lakota Denton, as Guardian Ad Litem of Minor Children, T.D. and R.D. (herein "Petitioners") against Respondent Jan Shepard, Buncombe County Health Director (herein "Respondent") in the above captioned matter; Petitioners were represented by Lakota R. Denton and Respondent was Represented by Curtis W. Euler, Senior Attorney II Buncombe County and Brandon J. Freeman, Senior Attorney I, Buncombe County; and

After reviewing Petitioners' Special Proceeding and Motion, "Strategies for the Control and Investigation of Varicella Outbreaks 2008" published by the Centers for Disease Control and Prevention ("the CDC Guidelines"), Buncombe County's Quarantine Order template, the State of North Carolina's Epi Curve chart for the 2018 Outbreak at Asheville Waldorf School ("AWS"), and Buncombe County's Epi Curve chart for the 2018 Outbreak at AWS; after receiving testimony from Dr. Jean-Marie Maillard, Medical Director of the Communicable Disease Branch, Epidemiology Section for the North Carolina Department of Public Health, Dr. Jennifer L. Mullendore, Medical Director for Buncombe County, and Jan Shepard, Buncombe County's Public Health Director; after hearing arguments from counsel for Petitioners and counsel for Respondent; and after having considered the matter and taking into consideration all of the facts and circumstances of the case, the Court makes the following FINDINGS OF FACT:

1. Petitioners attend the AWS located in the City of Asheville and in Buncombe County.
2. On October 29, 2018, Buncombe County Health and Human Services (“BCHHS”) learned of twelve (12) varicella (“chickenpox”) cases at the school;
3. On October 31, 2018, AWS informed BCHHS of twenty-nine (29) chickenpox cases.
4. The CDC Guidelines characterize five or more cases of chickenpox that are related in place and epidemiologically linked as an outbreak.
5. Chickenpox is a highly contagious communicable disease that is transmitted through the air and by person-to-person contact;
6. Chickenpox has a ninety percent (90%) transmission rate to susceptible (non-immune) individuals;
7. The incubation period for chickenpox is twenty-one (21) days;
8. A person is contagious with chickenpox approximately one (1) or two (2) days prior to coming down with a rash;
9. According to AWS records, one hundred and ten (110) children filed valid immunization exemptions and were not vaccinated for chickenpox.
10. Petitioners have a valid exemption and have not been vaccinated for chickenpox;
11. Chickenpox poses a significant risk of complications for persons in high-risk categories, such as immunocompromised persons, pregnant women and children under one (1) year of age;
12. BCHHS investigated the outbreak at AWS;
13. BCHHS had difficulty getting information from AWS and was not allowed to tour the campuses or speak to the teaching staff;
14. The CDC Guidelines recommend that children who lack evidence of immunity and whose parents refuse vaccination should be excluded from school from the start of the outbreak through 21 days after rash onset of the last identified case;

15. According to BCHHS, the last known date of onset prior to issuance of the quarantine order was October 29, 2018;

16. For the 2017-18 school year and for almost all school years over the past decade, among all counties in the State of North Carolina, Buncombe County had the highest percentage of Kindergarteners with religious exemptions to at least one immunization required by state law for school entry;

17. The epi curves produced to the Court showed three successive waves of infection at AWS;

18. Based on the information provided and in consultation with BCHHS, on November 2, 2018, the Respondent issued one hundred and four (104) quarantine orders to the unvaccinated students at AWS;

19.

20. The quarantine orders prohibited the unvaccinated children who attend AWS from attending school and other activities outside their home from November 2, 2018 through November 20, 2018 and would, on their face, prohibit Petitioners from leaving their home for any reason;

21. The scope of the quarantine orders exceeds the management recommendations in the CDC Guidelines by prohibiting children from engaging in any activities outside their homes;

22. The quarantine orders' restriction against "other activities outside their home" is broad and undefined;

23. The Petitioners received a quarantine order from Respondent on November 2, 2018 and were subject to the terms of the order.

24. On November 14, 2018, Petitioners filed a special proceeding pursuant to N.C. Gen. Stat. 130A-145(d) challenging the limitations in their quarantine order.

Based on the foregoing Findings of Fact, the Court makes the following CONCLUSIONS OF LAW:

1. The Respondent, Jan Shepard as the Public Health Director for Buncombe County, was acting within her proper scope of her authority in issuing the Quarantine Orders to Petitioners;

2. Based on the outbreak of chickenpox at the AWS, the Respondent had proper authority to issue the Quarantine Orders;

3. Pursuant to N.C. Gen. Stat. 130A-145(d), the Court shall reduce or terminate the limitation unless it determines by the preponderance of the evidence, that the limitation is reasonably necessary to prevent or limit the conveyance of a communicable disease to others;

4. Respondent proved, by the preponderance of the evidence, that the limitation contained in the quarantine order excluding Petitioners from school until November 20, 2018, was reasonably necessary to prevent the spread or transmission of chickenpox to others.


5. The quarantine order as it applies to Petitioners exceeds the scope of the CDC Guidelines to the extent that it excludes Petitioners from "other activities outside their home" and the provision that restricts other activities outside the home is not reasonably necessary to prevent the spread or transmission of chickenpox to others.

Based on the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED AS FOLLOWS:

1. The Quarantine Orders, issued to Petitioners, which contain limitations of Petitioners movements in the form of exclusion from school until November 20, 2018 are UPHELD.

2. The portion of the same Quarantine Orders issued to Petitioners that contain limitations of Petitioners movements by excluding Petitioners from "other activities outside their home" until November 20, 2018 are TERMINATED effective November 15, 2018.

The Court's ruling was announced in open Court on November 15, 2017 and reduced to writing this the 19th day of November 2018



Hon. Richard S. Gottlieb
Presiding Superior Court Judge