

Case Nos. 19-35552

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ADREE EDMO, AKA MASON EDMO,
Plaintiff-Appellee,

v.

IDAHO DEPARTMENT OF CORRECTION, et al.,
Defendants-Appellants

and

CORIZON, INC., et al.,
Defendants-Appellants

On Appeal from Orders of the United States District Court
For the District of Idaho
(No. 1:17-cv-00151-BLW)

DEFENDANTS-APPELLANTS' RESPONSE TO SHOW CAUSE ORDER

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INTRODUCTION

Defendants-Appellants Idaho Department of Correction, Henry Atencio, Jeff Zmuda, Howard Keith Yordy, Richard Craig and Rona Siegert (the “IDOC Defendants”), and Defendants-Appellants Corizon, Inc., Scott Eliason, Murray Young, and Catherine Whinnery (the “Corizon Defendants”) (hereinafter collectively “Defendants”), hereby submit this response to this Court’s August 3, 2020 Order (Dkt. 24) requesting Defendants to “show cause as to why this appeal should not be dismissed as moot” in light of the August 23, 2019 opinion in *Edmo v. Corizon, Inc.*, No. 19-35017 and 19-35019 (hereinafter “*Edmo I*”) and the Supreme Court’s May 21, 2020 decision to not stay the injunction in this case. For the reasons set forth below, Defendants respectfully submit that the issues in the instant appeal, Case No: 19-35552 (hereinafter “*Edmo II*”) are now moot, because the injunction at issue has been fully and irrevocably carried out.

PROCEDURAL BACKGROUND

On December 13, 2018, the district court granted Plaintiff-Appellee Adree Edmo’s *Motion for Preliminary Injunction* ordering each of the Defendants to “provide Plaintiff with adequate medical care, including gender confirmation surgery.” (*Edmo I*, ER045). Plaintiff did not request a permanent injunction and the district court’s Order did not state that permanent injunctive relief was afforded. (*Id.*, ER045).

The IDOC Defendants and Corizon Defendants each filed timely notices of appeal and the appeals were consolidated. (*Edmo I*, Dkt. 8). Defendants subsequently filed a *Joint Urgent Motion to Vacate District Court's Order* asserting that the preliminary injunction the district court ordered had automatically expired pursuant to the PLRA and that the appeal was moot. (*Id.*, Dkt. 31). The Court advised the parties it would hear the merits of Defendants' motion to vacate at oral argument. (*Id.*, Dkt. 37 at 2).

After oral argument, the Court issued an Order directing a limited remand to the district court to "clarify" whether it had renewed the preliminary injunction after entering the same in its December 13, 2018 Order; whether the district court also granted permanent injunctive relief to Edmo in that Order; and whether the district court concluded in the Order whether Edmo had actually succeeded on the merits of the Eighth Amendment claim for permanent injunctive relief. (*Edmo I*, Dkt. 90). The Court also stated that the "district court has authority under this limited remand to consider whether to reissue the injunction." (*Id.* at 3).

On May 31, 2019, the district court entered an Order in response to the limited remand, which was made a part of the record in *Edmo I*. (Dkt. 91). In that Order, the district court made additional factual findings and confusingly stated that it had entered a permanent injunction and was also renewing the preliminary injunction. (*Id.* at 8). The district court also stated that it "clarifies that it concluded, and expressly incorporated into its final decision, that Plaintiff succeeded on the merits

of her Eighth Amendment claim for permanent injunctive relief.” (*Id.* at 9). Finally, the district court asserted that its “original injunction complied with the Prison Litigation Reform Act’s requirement that the Court consider and make factual findings regarding the scope of the injunction.” (*Id.* at 6).

The Court did not request or otherwise invite supplemental briefing or argument from the parties as to the propriety or implications of the district court’s Order on limited remand. Instead, on August 23, 2019, the Court (citing to the district court’s Order on limited remand) entered its Opinion affirming the district court’s issuance of a preliminary and permanent injunction against Defendants Eliason (in his individual capacity) and Atencio, Yordy, and Zmuda (in their official capacities). (*Edmo I*, Dkt. 96-1 at 77, 85).

On June 28, 2019, Defendants filed a joint notice of appeal to obtain appellate review of the factual and legal findings made in the district court’s Order on limited remand. Briefing was complete on January 2, 2020.¹ (*Edmo II*, Dkts. 12, 15-1, and 20).

Subsequently, Defendants’ Petition for Rehearing En Banc in *Edmo I* was denied, and Defendants submitted a Petition for Writ of Certiorari to the Supreme Court. (*Edmo I*, Dkts. 105-1 and 111). Defendants also submitted an application for

¹ Defendants previously argued that this appeal was moot, albeit for different grounds, and requested this Court vacate the district court’s order reissuing the preliminary injunction. *See* Joint Reply Brief, Dkt. 20 at 6–19.

stay to the Supreme Court, and the Supreme Court denied that application. As a result, Defendants provided Ms. Edmo with gender confirmation surgery in July 2020.

ARGUMENT

I. **This appeal is moot because the renewed preliminary injunction has been fully and irrevocably carried out.**

Under Supreme Court precedent, the appeal of a preliminary injunction is moot when “the terms of the injunction . . . have been fully and irrevocably carried out.” *Univ. of Texas v. Camenisch*, 451 U.S. 390, 398 (1981). Here, the terms of the injunction on appeal have been fully and irrevocably carried out. In this appeal, Defendants challenge the district court’s order on limited remand that purportedly renewed the preliminary injunction at issue in *Edmo I*. (*Edmo II*, Dkt. 12 at 1-2). In *Edmo I*, the Court clarified that the injunction required Defendants to provide Ms. Edmo with gender confirmation surgery and adequate medical care “‘reasonably necessary’ to accomplish that end—not every conceivable form of adequate medical care.” (*Edmo I*, Dkt. 96-1 at 78). Defendants have provided Ms. Edmo with gender confirmation surgery in July 2020. Therefore, Defendants have fully and irrevocably carried out the terms of the injunction at issue in this appeal, and Defendants concede the appeal is moot.

II. Because this appeal is moot, the Court should vacate the district court's order granting the renewed preliminary injunction.

Vacatur is the “established practice” when mootness prevents appellate review. *Dilley v. Gunn*, 64 F.3d 1365, 1369 (9th Cir. 1995) (quoting *United States v. Munsingwear, Inc.*, 340 U.S. 36, 39 (1950)). “A party who seeks review of the merits of an adverse ruling, but is frustrated by the vagaries of circumstance, ought not in fairness be forced to acquiesce in the judgment.’ Similarly, a litigant should not be bound by an adverse unreviewed judgment ‘when mootness results from unilateral action of the party who prevailed below.’” *Id.* at 1370 (quoting *U.S. Bancorp Mortg. Co. v. Bonner Mall P’ship*, 513 U.S. 18, 25 (1994)) (internal citation omitted). This rule of “automatic vacatur” applies unless “an appellant renders his appeal moot by his own act.” *Id.* at 1370–71.

Here, this appeal has become moot through happenstance and not by Defendants’ own conduct. Defendants repeatedly requested that the district court, this Court, and the Supreme Court stay the injunction pending appeal. Those requests were ultimately denied, and Defendants fully and irrevocably carried out the terms of the injunction by providing Ms. Edmo with the GCS surgery in early July 2020. As a result, this appeal has become moot through happenstance, and the Court should vacate the district court’s May 31, 2019 Order. *See Univ. of Texas*, 451 U.S. at 398 (vacating and remanding for further proceedings where the injunction became moot due to the terms of the injunction being “fully and irrevocably carried out”).

CONCLUSION

Defendants admit this appeal is moot because the renewed preliminary injunction underlying this appeal has been fully and irrevocably carried out. As a result, Defendants request that the Court dismiss this appeal and vacate the district court's May 31, 2019 order (District Court Docket No. 196) granting the renewed preliminary injunction.

This 17th day of August, 2020.

s/ Dylan A. Eaton

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s/ Brady J. Hall

Brady J. Hall, ISB #7873

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing DEFENDANTS-APPELLANTS' RESPONSE TO SHOW CAUSE ORDER by electronic filing on the date stated below to:

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