

SUPREME COURT
STATE OF CONNECTICUT

S.C. 20494

KRISTINE CASEY ET AL.

v.

GOVERNOR NED LAMONT

RULING

PER CURIAM. On March 10, 2020, "[i]n response to the global pandemic of [COVID-19]," Governor Ned Lamont "declare[d] a public health emergency and civil preparedness emergency throughout the [s]tate, pursuant to [General Statutes §§] 19a-131a and 28-9" On September 1, 2020, the governor renewed the declaration of both emergencies, which currently remains in effect until February 9, 2021. Following the declaration of the public health and civil preparedness emergencies, the governor promulgated a series of executive orders in an attempt to contain and mitigate the spread of COVID-19. This appeal challenges certain executive orders that limited various commercial activities at locations such as the plaintiffs' pub, Casey's Irish Pub.¹ As a result of the ongoing pandemic and the restrictions imposed by the executive orders, the pub has remained closed since March 16, 2020.

¹For example, Executive Order No. 7D limited restaurants and bars to "only serve food or [nonalcoholic] beverages for off-premises consumption." Executive Order No. 7D was modified by various other executive orders that subsequently permitted the sale of sealed containers of alcohol for pick up under certain conditions, including a requirement that the sale of alcohol be accompanied by a food order. Later, Executive Order No. 7MM permitted outdoor dining, and, thereafter, Executive Order No. 7ZZ authorized the resumption of indoor dining in accordance with certain rules issued by the Department of Economic and Community Development. Nevertheless, the parties stipulated that "it is not economically or physically feasible for [the plaintiffs] to reopen the [p]ub."

In June, 2020, the plaintiffs, Kristine Casey and Black Sheep Enterprise, LLC, commenced this action against the defendant, Governor Lamont, requesting the court to declare that the governor acted beyond his statutory and constitutional authority when he issued the challenged executive orders. The case was transferred to the Complex Litigation Docket in the judicial district of Waterbury. The operative complaint sought a temporary and permanent injunction against the enforcement of Executive Order Nos. 7D, 7G, 7N, 7T, 7X, 7MM and 7ZZ. The complaint also requested a declaratory judgment stopping enforcement of these executive orders. Thereafter, the governor filed his answer. The parties filed a stipulation of facts, and, after the filing of briefs, including reply and surreply briefs, the case was tried to the court by way of oral argument based on the briefs and the stipulation of facts. On September 16, 2020, the trial court, *Bellis, J.*, issued a memorandum of decision denying the plaintiffs' application for injunctive and declaratory relief and rendering judgment in favor of the governor. The plaintiffs appealed directly to this court pursuant to General Statutes § 52-265a,² and the Chief Justice subsequently certified that this action involves a matter of substantial public interest. Following oral argument, on December 22, 2020, we ordered the parties to file supplemental briefs by December 30, 2020, addressing the questions of whether the governor abandoned reliance on § 19a-131a as a legal basis to support the challenged executive orders and, assuming he did not, whether the governor's authority resulting from a public health emergency declaration, alone, supports the challenged executive

²General Statutes § 52-265a provides in relevant part: "(a) Notwithstanding the provisions of sections 52-264 and 52-265, any party to an action who is aggrieved by an order or decision of the Superior Court in an action which involves a matter of substantial public interest and in which delay may work a substantial injustice, may appeal under this section from the order or decision to the Supreme Court within two weeks from the date of the issuance of the order or decision. The appeal shall state the question of law on which it is based. . . ."

orders.

On appeal, the plaintiffs contend that the trial court incorrectly determined that the COVID-19 pandemic is a "serious disaster" within the meaning of § 28-9 (a). The plaintiffs also contend that the trial court erred in ruling that § 28-9 (b) (1) and (7) empowers the governor to issue the executive orders that forced the closure of the plaintiffs' pub. Finally, the plaintiffs claim that the provisions of § 28-9 (b) (1) and (7) authorizing the governor to modify or suspend various statutes and to take other steps that are reasonably necessary in light of the ongoing pandemic are an unconstitutional delegation of the General Assembly's legislative authority to the governor. In their supplemental brief, the plaintiffs contend that the governor abandoned reliance on § 19a-131a as a legal basis to support the challenged executive orders. Assuming he did not abandon reliance on § 19a-131a, the plaintiffs claim that the governor's authority resulting from a public health emergency declaration, standing alone, does not support any of the challenged executive orders.

The governor contends that the COVID-19 pandemic is a "serious disaster" and that § 28-9 provides the governor with the statutory authority to limit the pub's operation. The governor also contends that § 28-9 does not violate the separation of powers provision of the Connecticut constitution because it does not impermissibly infringe on the General Assembly's legislative authority. The governor claims that § 28-9 is a constitutional delegation of police power because it provides sufficient standards for implementation by the governor. In his supplemental brief, the governor contends that he has not abandoned reliance on § 19a-131a as a legal basis to support the actions taken pursuant to § 28-9 (b) (1). He also contends that he can rely exclusively on his public health declaration as authority to issue Executive Order Nos. 7MM and 7ZZ

because those orders fall within the governor's authority to modify statutes during a health emergency pursuant to § 28-9 (b) (1).

After closely and thoroughly examining the record, briefs, and supplemental briefs, and after careful consideration of the parties' arguments, we conclude that the judgment of the trial court should be affirmed. Although the plaintiffs raise important questions regarding the governor's authority in a pandemic, our analysis of the pertinent law and relevant facts leads us to conclude that the governor's challenged actions to date have been constitutional. We acknowledge the incredibly difficult economic situation that the plaintiffs—and thousands of others across the state—are in given the COVID-19 pandemic.³ We also acknowledge, however, that the governor is charged with protecting the health, safety and welfare of the citizens of this state, and that COVID-19 presents an unforeseen and unpredictable pandemic that is not a static or isolated crisis.

The trial court's judgment is affirmed.

A full opinion will follow that will supersede this ruling. The full opinion will constitute the official opinion of the court.⁴

December 31, 2020

³Indeed, as the trial court noted, "the governor does not dispute that the plaintiffs are suffering irreparable harm and that they lack an adequate remedy at law." (Footnote omitted.)

⁴This ruling may not be used or cited as precedent. Moreover, the time for filing any postappeal motions, including a motion for reconsideration, will run from the date that the full opinion is officially released.