19 CV 60

CASE NO. 121,693

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

TRUST WOMEN FOUNDATION INC.,
D/B/A SOUTH WIND WOMEN'S CENTER,
D/B/A TRUST WOMEN WICHITA,
Plaintiff-Appellant,

v.

MARC BENNETT, DISTRICT ATTORNEY FOR SEDGWICK COUNTY, KATHLEEN SELZER LIPPERT, EXECUTIVE DIRECTOR OF THE KANSAS BOARD OF HEALING ARTS, ROBIN D. DURRETT, PRESIDENT OF THE KANSAS BOARD OF HEALING ARTS, AND DEREK SCHMIDT, ATTORNEY GENERAL OF KANSAS,
Defendants-Appellees.

ORDER

We deny Appellant's emergency motion for an injunction pending appeal and note the responses. Appellant is correct that Governor Kelly's Executive Order No. 20-08 encourages the use of telemedicine to help mitigate the effects of the novel coronavirus. But paragraph 9 of that order specifically exempts from telemedicine practice the performance of abortions, citing K.S.A. 65-4a10 and K.S.A. 40-2,215.

There is no law or governmental action which limits Appellant's ability to operate as it has for the last few years. Both Executive Order No. 20-18(2)(o), dated April 7, 2020, and Executive Order No. 20-14(2)(p), dated March 24, 2020, specifically exempt medical facilities from the 10-person capacity limit otherwise established by the

emergency stay-home orders. This means that physicians can travel by car or plane to Wichita and work at Appellant's facility, even if that work creates a gathering in excess of 10 people. Because it appears that Appellant has a way to remain open and provide services to its patients, we do not see a need to invoke the extraordinary remedy of K.S.A. 60-262(f). Both Appellees' motions to strike are denied as moot, and the response is noted.

DATED: April 10, 2020.

BY ORDER OF THE COURT.