

SUPREME COURT OF APPEALS OF WEST VIRGINIA

R.L. v. P.H.

No. No. 16-0152, Supreme Court of Appeals of West Virginia (January 20, 2017)

SUMMARY

The Supreme Court of Appeals of West Virginia dismissed as moot an appeal concerning a domestic violence protective order that had expired during the appellate proceedings. The court declined to address the appellant's collateral issues because they were not cognizable in the domestic violence proceeding and presented no question of great public interest.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Allen H. Loughry II; Justice Robin Jean Davis; Justice Margaret L. Workman; Justice Menis E. Ketchum; Justice Elizabeth D. Walker
JURISDICTION	West Virginia
DECIDED	January 20, 2017
DOCKET	No. 16-0152
DISPOSITION	dismissed
PROCEDURAL POSTURE	P.H. appealed the Circuit Court of Kanawha County's order denying his appeal from a domestic violence protective order entered by the Family Court of Kanawha County. The Supreme Court of Appeals dismissed the appeal as moot because the protective order had expired.
STANDARD OF REVIEW	The Court considered the applicable standard of review, the parties' briefs, and the record; the appeal was resolved on mootness grounds.
PRECEDENTIAL VALUE	Nonprecedential memorandum decision
PARTIES	P.H. v. R.L.

TOPICS

- mootness
- domestic violence
- appellate procedure
- family law procedure

PRACTICE AREAS

- family law
- appellate procedure
- civil procedure

QUESTIONS PRESENTED

1. Whether P.H.'s appeal from the denial of his challenge to the domestic violence protective order became moot when the protective order expired.
2. Whether any exception to mootness permitted review of the expired domestic violence protective order.
3. Whether P.H.'s challenges concerning R.L.'s handling of his grandmother's finances and property were cognizable in the domestic violence proceeding.

HOLDINGS

1. The appeal was moot because the domestic violence protective order had expired, and a decision on the order would not provide relief concerning the expired restrictions.
2. No exception to mootness applied because P.H. identified no collateral consequences, the appeal presented no issue of great public interest, and the Court did not need to reach the third Israel factor to provide guidance in this case.
3. The financial and property issues raised by P.H. were not cognizable in the domestic violence proceeding and did not justify review of the expired protective order.

KEY QUOTATIONS

“Moot questions or abstract propositions, the decision of which would avail nothing in the determination of controverted rights of persons or of property, are not properly cognizable by a court.” (2)

“Three factors to be considered in deciding whether to address technically moot issues are as follows: first, the court will determine whether sufficient collateral consequences will result from determination of the questions presented so as to justify relief; second, while technically moot in the immediate context, questions of great public interest may nevertheless be addressed for the future guidance of the bar and of the public; and third, issues which may be repeatedly presented to the trial court, yet escape review at the appellate level because of their fleeting and determinate nature, may appropriately be decided.” (2)

FACTUAL BACKGROUND

R.L., P.H.'s aunt, obtained an emergency protective order after alleging that P.H. tried to prevent her from leaving the home they shared in Marmet, West Virginia. After a final hearing, the family court found that R.L. had legal possession of the residence under a durable power of attorney and entered a domestic violence protective order restricting P.H.'s access to the residence and contact with R.L. The order, including a later ninety-day extension, expired while P.H.'s appeal was pending.

PROCEDURAL HISTORY

The Family Court of Kanawha County entered a ninety-day domestic violence protective order against P.H., later extended once. P.H. appealed to the circuit court, which denied the appeal, finding it untimely. He then appealed to the Supreme Court of Appeals of West Virginia. While the appeal was pending, the protective order expired, and the Supreme Court dismissed the appeal as moot.

DISPOSITION

dismissed

CASES CITED

- In re K.H., 235 W. Va. 254, 773 S.E.2d 20 (2015)
- In re Jeffrey R.L., 190 W. Va. 24, 435 S.E.2d 162 (1993)
- State v. Edward Charles L., 183 W. Va. 641, 398 S.E.2d 123 (1990)
- State ex rel. Lilly v. Carter, 63 W. Va. 684, 60 S.E. 873 (1908)
- State ex rel. McCabe v. Seifert, 220 W. Va. 79, 640 S.E.2d 142 (2006)
- Israel by Israel v. Secondary Schools Activities Commission, 182 W. Va. 454, 388 S.E.2d 480 (1989)

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