

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PRECEDENTIAL VALUE	Nonprecedential memorandum decision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)

OPINION

PER CURIAM.

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

R.L.,

January 20, 2017

Respondent Below, Petitioner RORY L. PERRY II, CLERK

SUPREME COURT OF APPEALS

vs) No. 16-0152 (Kanawha County 16-DV-72) OF WEST VIRGINIA

P.H.,

Petitioner Below, Respondent

MEMORANDUM DECISION

Petitioner P.H.,¹ pro se, appeals the order of the Circuit Court of Kanawha County, entered February 9, 2016, denying his appeal of a domestic violence protective order (“DVPO”) entered by the Family Court of Kanawha County that subsequently expired on July 16, 2016. Respondent P.H., by counsel Bruce Perrone, filed a response.

The Court has considered the parties’ briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds that petitioner’s appeal has been rendered moot. For these reasons, a memorandum decision dismissing the appeal is appropriate under Rule 21 of the Rules of Appellate Procedure.

The parties are a nephew and his aunt, who were both living in the house of petitioner's grandmother and respondent's mother in Marmet, West Virginia. 2 On January 12, 2016, respondent filed a domestic violence petition alleging that she was afraid of petitioner following an

altercation where "[petitioner] tried to keep me from leaving the house." The Magistrate Court of Kanawha County granted respondent an emergency protective order, which included awarding respondent temporary possession of the Marmet residence. The magistrate court also set the final 1

Consistent with our long-standing practice in cases with sensitive facts, we use initials where necessary to protect the identities of those involved in this case. See *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).

2
Petitioner's grandmother was living in a nursing home in the Commonwealth of Kentucky.

1
hearing before the Family Court of Kanawha County for January 20, 2016.

At the January 20, 2016, final hearing, respondent testified that she was afraid of petitioner and introduced a durable power of attorney executed by petitioner's grandmother. The family court found that the power of attorney gave respondent legal possession of the Marmet residence. The family court granted respondent a DVPO for ninety days, or until April 19, 2016, and gave petitioner thirty days to retrieve his belongings from the house (to be accompanied by law enforcement). The family court ordered petitioner to otherwise refrain from being within 200 feet of the Marmet residence and to refrain from contacting, harassing, or verbally abusing respondent. Petitioner filed an appeal of the DVPO on February 8, 2016 in the Circuit Court of Kanawha County, which denied his appeal by an order entered February 9, 2016.3

Petitioner filed an appeal of the circuit court's February 9, 2016, order on February 17, 2016, and this Court entered a scheduling order on March 9, 2016, pursuant to which the parties have filed their briefs. Subsequent to the entry of the March 9, 2016, scheduling order, the DVPO expired by its own terms on July 19, 2016, following one ninety-day extension that was granted by the family court on March 31, 2016.

On appeal, petitioner raises various issues challenging respondent's handling of his grandmother's finances and property. Respondent counters that those issues cannot be adjudicated in the instant case in which the only cognizable issue is whether she was entitled to the DVPO. Respondent further argues that the DVPO's expiration on July 19, 2016, has rendered petitioner's appeal moot.

We agree with respondent and find that petitioner's appeal has been rendered moot.

"'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.' Syl. pt. 1, *State ex rel. Lilly v. Carter*, 63 W.Va. 684, 60 S.E. 873 (1908)." Syl. Pt. 1, *State ex rel. McCabe v. Seifert*, 220 W.Va. 79, 640 S.E.2d 142 (2006).

Even though a case is moot, issues raised upon appeal may still be adjudicated in some instances:

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

3

In denying petitioner's appeal of the DVPO, the circuit court found that the appeal was untimely filed. See W.Va. Code § 48-27-510(b) (providing that an aggrieved person "may file a petition for appeal with the circuit court within ten days of the entry of the [DVPO] by the family court").

2

repeatedly presented to the trial court, yet escape review at the appellate level because of their fleeting and determinate nature, may appropriately be decided.

Syl. Pt. 1, *Israel by Israel v. Secondary Schools Activities Commission*, 182 W.Va. 454, 388 S.E.2d 480 (1989). Considering the third factor first, the DVPO in the instant case, like most other DVPO's, was of short duration. Such cases are capable of being repeatedly presented to the lower courts, yet escape review at the appellate level because of their fleeting and determinate nature.

However, we find that this case fails to meet the first two factors set forth in *Israel* for petitioner's appeal to go forward despite the case being moot. First, petitioner does not allege that he is being adversely affected by any collateral consequence of the DVPO's entry; instead, as respondent correctly points out, petitioner raises issues in his appeal that are not cognizable in a domestic violence proceeding. Second, although this case is understandably important to petitioner, and to respondent as well, it presents no question of great public interest that must be decided for the guidance of the bar and the public. Therefore, we dismiss as moot petitioner's appeal from the circuit court's February 9, 2016, order denying his appeal of the now expired DVPO.

Dismissed as Moot.

ISSUED: January 20, 2017

CONCURRED IN BY:

Chief Justice Allen H. Loughry II

Justice Robin Jean Davis

Justice Margaret L. Workman

Justice Menis E. Ketchum

Justice Elizabeth D. Walker

3