

SUPREME COURT OF APPEALS OF WEST VIRGINIA

T.A.M. v. C.M.K.

T.A.M. v. C.M.K. · No. No. 12-0544 · Decided October 4, 2013

SUMMARY

The West Virginia Supreme Court of Appeals dismissed as moot a pro se appeal concerning a domestic violence protective order because the order had expired. The court declined to address the petitioner's constitutional challenges to West Virginia's domestic violence statutes, finding no sufficient collateral consequences or issue of great public interest warranting review.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per curiam; Chief Justice Brent D. Benjamin; Justice Robin Jean Davis; Justice Margaret L. Workman; Justice Menis E. Ketchum; Justice Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	October 4, 2013
DOCKET	No. 12-0544
DISPOSITION	dismissed
PROCEDURAL POSTURE	T.A.M. appealed the Circuit Court of Monongalia County's order affirming a domestic violence protective order. During the appeal, the protective order was extended and then expired, and the Supreme Court of Appeals dismissed the appeal as moot.
STANDARD OF REVIEW	The appeal was reviewed for mootness under the standards governing technically moot issues and possible exceptions for collateral consequences, issues of great public interest, and issues capable of repetition yet evading review.
PRECEDENTIAL VALUE	Published memorandum decision; limited precedential value under West Virginia appellate practice.
PARTIES	T.A.M. v. C.M.K.

TOPICS

domestic violence

mootness

appellate procedure

constitutional law

PRACTICE AREAS

family law

domestic violence

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QUESTIONS PRESENTED

1. Whether the appeal from the expired domestic violence protective order was moot.
2. Whether the technically moot appeal should nevertheless be adjudicated under exceptions for collateral consequences, issues of great public interest, or issues capable of repetition yet evading review.

HOLDINGS

1. An appeal from a domestic violence protective order that has expired by its own terms is moot when no continuing collateral consequence requiring relief is shown.
2. The court declined to reach the merits of the constitutional and procedural challenges because the appeal presented no sufficient collateral consequences, no question of great public interest, and no issue requiring future appellate guidance.

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.” (at 3)

“After careful consideration, this Court dismisses as moot petitioner’s appeal from the circuit court’s March 13, 2012 order affirming the now-expired DVPO.” (at 3)

FACTUAL BACKGROUND

C.M.K. filed a verified domestic violence petition, and the Magistrate Court of Monongalia County issued an emergency protective order. The Family Court conducted a hearing, but part of the hearing was not recorded; after a circuit-court remand, the family court reentered a 180-day protective order based on findings that C.M.K. was more credible and that T.A.M. placed her in reasonable apprehension of physical harm. The order was extended and expired on August 20, 2012, before the Supreme Court resolved T.A.M.'s appeal.

PROCEDURAL HISTORY

C.M.K. obtained an emergency protective order from the Magistrate Court of Monongalia County and then a 180-day domestic violence protective order from the Family Court of Monongalia County. Because part of the original family-court hearing was not recorded, the circuit court vacated the original protective order, reinstated the emergency order, and remanded for continuation of the evidence. After the family court reentered a protective order, the circuit court affirmed it. The protective order was later extended through August 20, 2012, and expired before the Supreme Court decided the appeal.

DISPOSITION

dismissed

CASES CITED

- State ex rel. West Virginia Department of Human Services v. Cheryl M., 177 W. Va. 688, 356 S.E.2d 181 (1987)
- 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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