

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Karen Devine-Riley,	:	
	:	
Petitioner-Appellee,	:	
	:	No. 11AP-112
v.	:	(C.P.C. No. 09CVH02-02824)
	:	
John R. Clellan,	:	(REGULAR CALENDAR)
	:	
Respondent-Appellant.	:	

D E C I S I O N

Rendered on August 30, 2011

Joan K. Clellan, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

SADLER, J.

{¶1} Respondent-appellant, John R. Clellan, appeals from the judgment of the Franklin County Court of Common Pleas granting a civil stalking protection order ("CSPO"), to petitioner-appellee, Karen Devine-Riley. For the reasons that follow, we dismiss the appeal as moot.

{¶2} On February 24, 2009, appellee filed a petition requesting a CSPO on behalf of herself and her two children. The petition alleged appellant routinely engaged in

threatening behavior towards appellee, and specifically described events alleged to have occurred on February 4 and 5, 2009. An ex parte CSPO was granted, and a hearing was held before a magistrate on April 7, 2009. By decision filed on November 6, 2009, the magistrate issued findings of fact and conclusions of law, and recommended that the court grant the petition and issue a CSPO against appellant effective until February 24, 2011. Objections were filed, and on January 20, 2011, the trial court rendered a decision overruling the objections and adopting the magistrate's decision. As such, the trial court granted appellee's petition for a CSPO against appellant effective until February 24, 2011. Appellant subsequently appealed, and asserts the following five assignments of error for our review:

[1.] The trial court erred by overruling Appellant's objections to Magistrate's decision and adopting Magistrate's decision in its entirety when such decision was against the manifest weight of the evidence.

[2.] The trial court erred as a matter of law by overruling Appellant's objections to Magistrate's decision and adopting Magistrate's decision in its entirety.

[3.] The trial court and the Magistrate denied Appellant the right to equal protection under the law by not recognizing Appellant's right to self-defense under the "New Castle Doctrine," by denying Appellant a right to establish a criminal defense by the making of video footage of the incident scene, and by obviously applying a different and unequal standard of application of the law as between Appellant and his co-respondent wife.

[4.] The trial court abused its discretion in failing to carry out the clear legislative intent in enacting RC 2903.214 and RC 2901.05 by overruling Appellant's objections to Magistrate's decision and adopting Magistrate's decision in its entirety.

[5.] Appellant was denied effective [assistance of] counsel as guaranteed by the 6th Amendment of the United States Constitution.

{¶3} As a general principle, courts exercise jurisdictional restraint in cases that do not present actual controversies, and an appeal will be dismissed when, absent fault of the parties, circumstances preclude the reviewing court from granting effective relief. *VanMeter v. VanMeter*, 10th Dist. No. 03AP-1107, 2004-Ohio-3390, ¶5; *Fortner v. Thomas* (1970), 22 Ohio St.2d 13, 14; and *James A. Keller, Inc. v. Flaherty* (1991), 74 Ohio App.3d 788, 791. Appellate courts are not required to render an advisory opinion on a moot question or to rule on a question of law that cannot affect matters at issue in a case. *Id.* "Actions become moot when resolution of the issues presented is purely academic and will have no practical effect on the legal relations between the parties." *Id.*, quoting *Saffold v. Saffold* (May 13, 1999), 8th Dist. No. 72937.

{¶4} The CSPO in the matter herein expired by its own terms on February 24, 2011, and the record contains no evidence that its terms have been extended. Because this CSPO has expired and is no longer in effect, the present appeal is moot. *VanMeter* (because the domestic violence civil protection order expired, appeal of the same was moot); *Erbes v. Meyer*, 2d Dist. No. 23917, 2001-Ohio-3274 (since the CSPO was no longer in effect, the appeal was moot and dismissed); *Hughes v. Hughes*, 11th Dist. No. 2006-L-196, 2007-Ohio-4774 (order of protection expired, therefore, appeal was moot). "The mootness doctrine has limited exceptions. One exception concerns cases which present a debatable constitutional question or a matter of great public or general interest." *Bradley v. Ohio State Dept. of Job & Family Servs.*, 10th Dist. No. 10AP-567, 2011-Ohio-1388, ¶12 (internal citations omitted). Another exception allows for judicial review of moot

questions when the issue is "capable of repetition, yet evading review." *Id.* Appellant has not alleged, and we do not find, that either exception applies in this instance.

{¶5} Accordingly, we find the issues raised in this appeal moot and dismiss the appeal.

Appeal dismissed.

BROWN and CONNOR, JJ., concur.
