

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**Aaron H.,
Respondent Below, Petitioner**

vs.) **No. 11-1103** (Randolph County 11-DV-120)

**Victoria H. for Ernest R.,
Petitioner Below, Respondent**

FILED

September 4, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Aaron H., pro se, appeals the June 27, 2011 order of the Circuit Court of Randolph County denying his appeal of a now expired domestic violence protective order directing him not to contact or come within 100 feet of Ernest R. through September 5, 2011.¹ Respondent Ernest R., pro se, filed a timely summary response,² to which Aaron H. filed a reply.

This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented in the parties' written briefs and the record on appeal, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the record on appeal, and the briefs of the parties, the Court finds no substantial question of law has been presented. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

An altercation occurred between Aaron H. and Ernest R., his former father-in-law, on the evening of May 18, 2011, when the parties were transferring the minor children back to Victoria H.'s care following Aaron H.'s visitation.³ Victoria H. filed domestic violence petitions on the behalf of her father Ernest R. and on the behalf of the parties' minor son, alleging, *inter alia*, that shortly after the altercation, Ernest R. had to be taken to the emergency room for chest pain. An emergency protective order was entered, and Aaron H. was ordered to appear before the family court on June 6, 2011.

¹"We follow our past practice in . . . cases which involve sensitive facts and do not utilize the last names of the parties." *State ex rel. West Virginia Dept. of Human Services v. Cheryl M.*, 177 W. Va. 688, 689 n.1, 356 S.E.2d 181, 182 n.1 (1987).

² Co-Respondent Victoria H. filed no response of her own.

³ In a case that is still pending, No. 11-0450, Aaron H. appeals the terms of his visitation as well as other issues adjudicated as part of the parties' divorce.

The parties appeared for the June 6, 2011 hearing, at which they presented witnesses.⁴ The family court entered a domestic violence protective order (“DVPO”) directing Aaron H. not to contact or come within 100 feet of Ernest R. through September 5, 2011. At the same time, the family court declined to grant a DVPO with respect to Aaron H. and Victoria H.’s minor son finding that Aaron H. had already returned the child to his mother when the altercation between Aaron H. and Ernest R. began. Aaron H. appealed the DVPO entered with respect to Ernest R. The circuit court denied Aaron H.’s appeal by an order entered on June 27, 2011.

On appeal to this Court, Aaron H. has filed a motion for leave to include in the record evidence in support of his motion to disqualify the family court judge. Aaron H. has also filed a motion for leave to amend the appendix with documents “[that] were not a part of the record in the lower court file.” As will be explained, it unnecessary for this Court to address these motions.

In making their various arguments, Aaron H. and Ernest R. both indicate that the DVPO with respect to Ernest R. has now expired. The record from the lower courts confirms that the DVPO expired by its own terms on September 5, 2011, and was not renewed. Even though a case is moot, issues raised upon appeal may still be adjudicated in some instances under the three factor test set forth in Syllabus Point One, *Israel by Israel v. West Virginia Secondary Schools Commission*, 182 W.Va. 454, 388 S.E.2d 480 (1989). Considering the third factor first, the DVPO in the case at bar, 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, the case at bar fails to meet the first two factors set forth in *Israel* for Aaron H.’s appeal to go forward despite the case being moot. First, it is significant that the family court declined to grant a DVPO with respect to Aaron H. and Victoria H.’s minor son because the collateral consequences of being the subject of a DVPO with respect to one’s former father-in-law are limited at best. Second; although this case is understandably important to Aaron H., Victoria H., Ernest R., and their families; it presents no question of great public interest that must be decided for the guidance of the bar and the public. Therefore, after careful consideration, this Court dismisses as moot Aaron H.’s appeal from the circuit court’s order denying his appeal of the expired DVPO.

Dismissed as Moot.

ISSUED: September 4, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Margaret L. Workman

Justice Thomas E. McHugh

⁴ This Court has reviewed the DVD recording of the June 6, 2011, hearing.