

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

Eric C.,
Respondent Below, Petitioner

v.) No. 23-566 (Raleigh County CC-41-2023-D-AP-5)

Jennifer M.,
Petitioner Below, Respondent

MEMORANDUM DECISION

The petitioner herein and respondent below, Eric C., appeals from an order entered August 29, 2023, by the Circuit Court of Raleigh County denying his appeal of the family court’s domestic violence protective order (DVPO).¹ The respondent herein and petitioner below, Jennifer M., contends that the circuit court did not err in denying Eric C.’s request for relief. Upon review of the parties’ briefs and the appendix records, we conclude that the issue assigned as error on appeal is now moot. Therefore, we dismiss this appeal from the docket of this Court in a memorandum decision pursuant to Rules 21 and 27(b) of the West Virginia Rules of Appellate Procedure.

Following the parties’ divorce in 2021, they entered a joint parenting plan. On March 5, 2023, the parties’ child² reported that Eric C., the child’s father, had called her a derogatory name, grabbed and shook her, and physically injured her while she was staying with him during his parenting time. As a result of these allegations, the child’s mother, Jennifer M., filed for the underlying DVPO and petitioned to modify the parties’ parenting plan.

The Magistrate Court of Raleigh County granted Jennifer M. and the parties’ child an emergency protective order on March 6, 2023, the day after the above-referenced incident, that required Eric C. to “refrain from contacting, telephoning, communicating with, harassing, or verbally abusing” them as well as to “refrain from entering any school, business, or place of employment of [Jennifer M. or the parties’ child] for the purpose of violating th[e] Order” and

¹ Eric C. is self-represented, and Jennifer M. is represented by counsel Winifred Bucy. Additionally, in cases involving sensitive facts, we use initials, rather than the parties’ full names. *See generally* W. Va. R. App. P. 40(e) (restricting use of personal identifiers).

² The parties’ child was approximately eleven years old at the time of the events giving rise to this appeal.

“entering or being present in the immediate environs of [Jennifer M. and the child’s] residence.” The order further granted temporary custody of the parties’ child to Jennifer M.

Before reaching the merits of Jennifer M.’s motion for modification of the parties’ parenting plan, the Family Court of Raleigh County appointed a guardian ad litem (GAL) for the parties’ child by order entered April 18, 2023. Thereafter, by order entered June 15, 2023, the family court granted Jennifer M. and the parties’ child a 180-day DVPO prohibiting Eric C. from contacting them or being in their same location, among other relief, except that, at the child’s discretion, Eric C. could contact the child by telephone.

Eric C. appealed from the family court’s DVPO order to the Circuit Court of Raleigh County arguing that the family court’s order appointing a GAL for the child in the related parenting plan modification proceeding was a substantive order that would terminate the DVPO. *See* W. Va. Code § 48-27-401(d)(1) (providing for termination of DVPO upon entry of temporary order or non-procedural order in related action to allocate or reopen prior allocation of custodial responsibility). By order entered August 29, 2023, the circuit court denied Eric C.’s appeal, ruling that Eric C.’s “argument that the appointment of a Guardian *ad litem* in a modification proceeding, subsequent to the entry of a Domestic Violence Protective Order, is not a procedural order, is without merit.” Eric C. then appealed from the circuit court’s order to this Court, by notice of appeal filed September 27, 2023, again asserting that the family court’s order appointing a GAL for the parties’ child was a substantive order that caused the DVPO to terminate pursuant to West Virginia Code § 48-27-401(d)(1) and seeking its dismissal.

On the day before Eric C. filed his notice of appeal, the family court entered an order, on September 26, 2023, temporarily terminating Eric C.’s visitation with the parties’ child, among other relief, and indicating that, by separate order, it would “terminate the Final Domestic Violence Protective Order referenced herein.” The family court then entered its “Order Terminating Protective Order in Subsequent Chapter 48 Action” on October 4, 2023, more than two months before Eric C. filed his petitioner’s brief on December 29, 2023.³

Given that Eric C. seeks the termination of the underlying DVPO, but the family court has already terminated it in accordance with the directives of West Virginia Code § 48-27-401(d)(1), it is clear that Eric C.’s appeal is moot because he already has received the relief he requests from this Court. Ordinarily, “[m]oot 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., *City of Martinsburg v. Cnty. Council of Berkeley Cnty.*, 247 W. Va. 320, 880 S.E.2d 42 (2022). Accordingly, “[t]he general rule, subject to certain exceptions, is that appeals will be

³ Eric C. did not reference the family court’s September 26, 2023, order in his notice of appeal or either of these family court orders in his petitioner’s brief, and he has not filed a reply brief in this matter.

dismissed where there is no actual controversy existing between the parties[.]” Syl. Pt. 1, in part, *W. Va. Bd. of Dental Exam’rs v. Storch*, 146 W. Va. 662, 122 S.E.2d 295 (1961).⁴

Accordingly, Eric C.’s appeal is hereby dismissed from the docket of this Court, and the Clerk is directed to issue the mandate contemporaneously with this decision.

Appeal Dismissed as Moot.

ISSUED: July 30, 2025

CONCURRED IN BY:

Chief Justice William R. Wooton
Justice Tim Armstead
Justice C. Haley Bunn
Justice Charles S. Trump IV

⁴ Although this Court has the discretion to address issues that are technically moot, we decline to do so in this case. *See, e.g., Gallery v. W. Virginia Secondary Schs. Activities Comm’n*, 205 W. Va. 364, 367, 518 S.E.2d 368, 371 (1999) (“[T]his Court retains the discretion to address issues that are raised in technically moot cases.”); Syl. Pt. 1, *Israel by Israel v. W. Virginia Secondary Schs. Activities Comm’n*, 182 W. Va. 454, 388 S.E.2d 480 (1989) (enumerating criteria for determining when to consider technically moot issues).