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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 12/09/2010
RUTH WILLINGHAM,
ACTING CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

In re the Marriage of:) No. 1 CA-CV 10-0126
)
AARON A. MUTH,) DEPARTMENT B
)
Petitioner/Appellant,) **MEMORANDUM DECISION**
) (Not for Publication -
v.) Rule 28, Arizona Rules
) of Civil Appellate
JANET L. MUTH,) Procedure)
)
Respondent/Appellee.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause Nos. FC2009-094239, FC2009-094243, FC2009-094396
(Consolidated)

The Honorable R. Jeffrey Woodburn, Judge *Pro Tempore*
The Honorable M. Jean Hoag, Judge

APPEAL DISMISSED AS MOOT

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B R O W N, Judge

¶1 Aaron A. Muth ("Husband") appeals the trial court's
order continuing an order of protection prohibiting contact with

his wife, Janet L. Muth ("Wife"). For the reasons set forth below, we dismiss the appeal as moot.¹

BACKGROUND

¶2 Husband and Wife each filed petitions for dissolution of their marriage on November 2, 2009, and Wife also filed a petition for an order of protection against Husband that was granted the same day. The two dissolution cases were consolidated in the superior court. After Husband requested a hearing, Wife filed an amended petition in support of the order of protection alleging various specific incidents of harassment and domestic violence. The hearing was held on December 2, 2009.

¶3 Wife's grandmother testified and was cross-examined about a telephone call received from Husband, in which he told grandmother that he had left the country and was in Canada. Wife testified she was "terrified" upon learning of the phone call to her grandmother because Husband had her son at the time; she immediately drove to Husband's house to make sure Husband had not taken her son to Canada. Wife further testified that Husband had made previous threats to leave with their son. She

¹ Wife failed to file an answering brief, which could constitute a confession of reversible error. *Bugh v. Bugh*, 125 Ariz. 190, 191, 608 P.2d 329, 330 (App. 1980). We are reluctant, however, to reverse a decision based on an implied confession of error, and we decline to do so here. See *Nydam v. Crawford*, 181 Ariz. 101, 101, 887 P.2d 631, 631 (App. 1994).

also testified generally about unwanted contact by texting and phone from Husband.

¶14 At the conclusion of presentation of evidence, the family court upheld the order of protection, stating it was reluctantly leaving the order in place based on "harassment under the statute." The court noted the evidence that Husband had continued to text and call after Wife had asked him to stop, but relied more on the telephone call Husband had made to Wife's grandmother. Husband objected to the court's reliance on "harassment," stating it was not pled by Wife. Husband's counsel also reminded the court of his previously filed motion for specific findings under Arizona Rule of Family Law Procedure 82(A). The court rejected the request, explaining that the ruling had been given on the record and that Rule 82 does not apply to order of protection proceedings. Husband filed a timely notice of appeal on January 4, 2010; however, perhaps because of a pending motion for attorneys' fees Wife had filed, Husband did not take any action in furtherance of the appeal until the court denied the attorneys' fees request in a signed order in March 2010.

DISCUSSION

¶15 Husband presents four arguments for our consideration: (1) his appeal is not moot due to the expiration of the order of protection; (2) by using a statutory definition of domestic

violence not pled by Wife, the trial court violated the notice requirement for pleadings under Arizona law and his constitutional right to due process; (3) even if the trial court used the alternative statutory definition, there is insufficient evidence to uphold the order of protection; and (4) the trial court refused to make specific findings in violation of Arizona Rule of Family Law Procedure Rule 82(A). Husband also requests attorneys' fees. Because we find that Husband's appeal is moot, we do not address the three remaining issues, nor do we address Husband's request for fees.

¶16 As a matter of judicial restraint, we generally do not address moot issues. *Stop Exploiting Taxpayers v. Jones*, 211 Ariz. 576, 578, ¶ 6, 125 P.3d 396, 398 (App. 2005); *Dunwell v. Univ. of Ariz.*, 134 Ariz. 504, 507, 657 P.2d 917, 920 (App. 1982) ("It has long been the rule of this state that the appellate court is not empowered to decide moot questions or abstract propositions, or declare, for the sake of future cases, principles or rules of law which cannot affect the result of the instant issue."). "A decision becomes moot for purposes of appeal where as a result of a change of circumstances before the appellate decision, action by the reviewing court would have no effect on the parties." *Vinson v. Martin & Assocs.*, 159 Ariz. 1, 4, 764 P.2d 736, 739 (App. 1988). On rare occasions, we may elect to consider a matter that is otherwise moot when it is of

considerable public importance or when it is likely to recur. See *State v. Super. Ct. of Pima Cnty.*, 104 Ariz. 440, 441, 454 P.2d 982, 983 (1969).

¶7 In this case, the order of protection obtained by Wife expired on November 2, 2010. See Ariz. Rev. Stat. § 13-3602(K) (Supp. 2010) ("An order [of protection] expires one year after service on the defendant."); Ariz. R. Prot. Ord. P. 1(M)(2). Thus, it is presumed to be moot. Husband recognizes that his appeal "will likely be resolved after the Order of Protection has already expired," but argues nonetheless that we should review this matter because it involves issues of public importance, including the interrelation of family law and protective order procedure and the specificity required in order of protection petitions.

¶8 Though this type of case is likely to recur, we disagree that it justifies consideration as a matter of public importance. The issues Husband raises are adequately addressed by the Arizona Rules of Protective Order Procedure, which explain the nature and scope of a protective order, the specificity required in a petition seeking such an order, the type of disclosure required by the parties, and the court's duty to make findings on the record.

¶9 Moreover, though we have not been apprised by either party of new developments in the case, we take judicial notice

of an interim minute entry stating that Husband and Wife have agreed to joint custody of their son, so the order of protection at issue here would presumably have no bearing on determining custody-related issues. Furthermore, an amended order of protection, apparently unopposed by Husband, was signed by the family court on August 16, 2010, as noted in a minute entry dated the same day. The amended order contains similar restrictions to the original order of protection. Thus, if we were to consider the merits of Husband's appeal, the resolution would have no effect on the amended order, as Husband has not appealed it. Even if he had challenged the amended order, however, it would still be moot, as a modified protective order expires one year after service of the initial order. See Ariz. R. Prot. Ord. P. 1(M)(2).

CONCLUSION

¶10 For the foregoing reasons, we conclude that the issues presented are moot. Accordingly, we dismiss the appeal.

/s/

MICHAEL J. BROWN, Judge

CONCURRING:

/s/

DIANE M. JOHNSEN, Presiding Judge

/s/

JOHN C. GEMMILL, Judge