

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.**  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

**FILED BY CLERK**  
**JUL 30 2009**  
COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

|                               |   |                            |
|-------------------------------|---|----------------------------|
| DANIEL POLOTTO,               | ) | 2 CA-CV 2009-0029          |
|                               | ) | 2 CA-CV 2009-0030          |
| Plaintiff/Appellee,           | ) | (Consolidated)             |
|                               | ) | DEPARTMENT B               |
| v.                            | ) |                            |
|                               | ) | <u>MEMORANDUM DECISION</u> |
| BOBBIE JO POLOTTO and MICHAEL | ) | Not for Publication        |
| POLOTTO,                      | ) | Rule 28, Rules of Civil    |
|                               | ) | Appellate Procedure        |
| Defendants/Appellants.        | ) |                            |
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APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause Nos. DV2008-1035 and DV2008-1036

Honorable Karen S. Adam, Judge Pro Tempore

APPEAL DISMISSED

The Diodati Law Firm, PC  
By Andrew D. Diodati

Tucson  
Attorney for Defendants/Appellants

V Á S Q U E Z, Judge.

¶1 In this consolidated appeal,<sup>1</sup> appellants Michael and Bobbie Jo Polotto challenge the juvenile court's orders of protection prohibiting them from having contact with their daughter, to whom their parental rights had been severed, and with appellee Daniel Polotto, her prospective adoptive parent. Because the court's orders of protection have expired, we dismiss the appeal as moot.

### **Facts and Procedural Background**

¶2 On June 13, 2008, the juvenile court issued orders of protection against Michael and Bobbie Jo, based on Daniel's allegations that they had made "numerous harassing and threatening phone calls regarding [their biological daughter]."<sup>2</sup> The court denied Michael's and Bobbie Jo's informal motion for a peremptory change of judge, and we declined jurisdiction of their subsequent special action on this issue. *Polotto v. Cuneo*, No. 2 CA-SA 2008-0051 (order declining jurisdiction filed Sept. 4, 2008). They then requested a hearing in the juvenile court on the orders of protection pursuant to Rule 8, Ariz. R. Protective Order P., and A.R.S. § 13-3602(I). The court scheduled a hearing but vacated it after Michael, Bobbie Jo, and their counsel failed to appear on the appointed date and

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<sup>1</sup>In our discretion, we granted appellants' motion to consolidate their appeals because the juvenile court considered both applications for orders of protection together, and they raise the same legal issues on appeal. *See* Ariz. R. Civ. App. P. 8(b).

<sup>2</sup>The record does not show the precise date on which the orders were served. However, we infer from the record that they both had been served by July 7, 2008, when counsel for the appellants appeared at a hearing on the order against Bobby Jo and indicated he previously had entered a notice of appearance with respect to proceedings on the order against Michael.

time.<sup>3</sup> The court also ordered that “no further hearings [would] be set in this matter within the year.” Michael and Bobbie Jo filed a motion for reconsideration, requesting the court set a new hearing to resolve the case on its merits. The court denied the motion and this appeal followed.

### **Discussion**

¶3 Michael and Bobbie Jo argue the juvenile court abused its discretion by denying their motion for a peremptory change of judge and failing to grant a hearing on their motion for reconsideration. Notwithstanding their arguments, however, we will generally dismiss an appeal as moot when circumstances have changed such that our action would have no effect on the parties. *See Exodyne Props., Inc. v. City of Phoenix*, 165 Ariz. 373, 376, 798 P.2d 1382, 1385 (App. 1990); *Vinson v. Marton & Assocs.*, 159 Ariz. 1, 4, 764 P.2d 736, 739 (App. 1988). And “[a]n order [of protection] expires one year after service on the defendant.” § 13-3602(L); *see* Ariz. R. Protective Order P. 1(M)(2).<sup>4</sup>

¶4 Here, the original orders of protection were issued by the juvenile court on June 13, 2008, and were served no later than July 7, 2008. The orders therefore expired, at

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<sup>3</sup>As Rule 8 requires, the juvenile court scheduled the hearing within ten business days after Michael and Bobbie Jo filed the request, and notified their counsel of the date via certified mail. However, counsel apparently did not check his mailbox until fifteen days later and thus was not aware of the hearing date until it had already passed.

<sup>4</sup>On November 3, 2008, the juvenile court vacated portions of its orders prohibiting Michael and Bobbie Jo from possessing firearms. To the extent this modified the original orders for purposes of Ariz. R. Protective Order P. 1(M)(2), a modified order also “expires one year after service of the initial order and petition.” § 13-3602(L).

the latest, on July 6, 2009, during the appellate process, and the case therefore became moot.<sup>5</sup> *See Vinson*, 159 Ariz. at 4, 764 P.2d at 739. “A case is moot when it seeks to determine an abstract question which does not arise upon existing facts or rights.” *Contempo-Tempe Mobile Home Owners Ass’n v. Steinert*, 144 Ariz. 227, 229, 696 P.2d 1376, 1378 (App. 1985). Because Michael and Bobbie Jo do not allege any exception to the general rule that would allow us to exercise our discretion to consider a moot appeal, we decline to do so. *See Dunwell v. Univ. of Ariz.*, 134 Ariz. 504, 507, 657 P.2d 917, 920 (App. 1982) (“Where the matter is of considerable public importance or the principle involved is a continuing one, the appellate court may, in its discretion, decide the issues of law involved.”).

### **Disposition**

¶5 For the reasons stated above, we dismiss Michael’s and Bobbie Jo’s appeal.

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GARYE L. VÁSQUEZ, Judge

CONCURRING:

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<sup>5</sup>To the extent Michael’s and Bobbie Jo’s failure to prevail on their motion for a peremptory change of judge might affect future proceedings should Daniel seek a new order of protection, their sole means for seeking review of this issue was by special action, an avenue they have already unsuccessfully pursued. “[A] party aggrieved by the denial of a notice of change of judge must seek timely review by way of special action relief” and not by appeal. *Taliaferro v. Taliaferro*, 186 Ariz. 221, 221-23, 921 P.2d 21, 21-23 (1996); *see Denise S. v. Corsaro*, 213 Ariz. 369, ¶ 1, 142 P.3d 245, 246 (App. 2006). In any event, they would be entitled to file a new motion for a change of judge in the event of any new action.

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PETER J. ECKERSTROM, Presiding Judge

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J. WILLIAM BRAMMER, JR., Judge