

IN THE COURT OF APPEALS OF IOWA

No. 8-518 / 07-1092

Filed July 30, 2008

KATHERINE A. BURNS-ROWE,
Petitioner-Appellee,

vs.

RICKY L. ROWE, JR.,
Respondent-Appellant.

Appeal from the Iowa District Court for Jefferson County, James Q. Blomgren, Judge.

Ricky L. Rowe Jr. appeals the district court's final protective order restraining him from contact with his former wife, Katherine Burns-Rowe.

APPEAL DISMISSED.

Autumn Canny and Steven Gardner of Kiple, Denefe, Beaver, Gardner & Zingg, L.L.P., Ottumwa, for appellant.

Theodore F. Sporer and Meghan S. Hanson of Sporer & Flanagan, P.C., Des Moines, for appellee.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

SACKETT, C.J.

Ricky L. Rowe Jr. appeals contending the district court erred in entering a final protective order restraining him from contact with his former wife, Katherine Burns-Rowe. He contends there was insufficient evidence to support a finding of domestic abuse. He also contends the district court erred in admitting the testimony of a licensed social worker concerning information obtained in counseling sessions. We find the issues moot as the protective order has expired and dismiss the case.

I. SCOPE OF REVIEW.

Civil domestic abuse cases are heard in equity, consequently we review de novo. *Wilker v. Wilker*, 630 N.W.2d 590, 594 (Iowa 2001); *Knight v. Knight*, 525 N.W.2d 841, 843 (Iowa 1994).

II. BACKGROUND.

In the parties' dissolution decree primary physical care of their daughter, Sydney, was placed with Katherine, and Ricky was granted visitation. On August 29, 2006, Ricky, following a visitation period, dropped Sydney off at Katherine's home, and as he was hugging her good-bye he told her he was looking forward to the upcoming Labor Day weekend as Sydney was scheduled for a visit with him then. Katherine, who believed Sydney was to be with her Labor Day weekend, in front of Sydney and with no apparent concern for Sydney's feelings, immediately started arguing with Ricky. Katherine contended that she and Ricky had an agreement that she was to have Sydney then. The child understandably became upset. What happened next is a bit confusing as Ricky, Katherine, and Sydney are not in agreement as to the events. It does appear that Katherine

either attempted to put a hand out to Sydney or she pushed Ricky and Ricky then either, according to his testimony, pushed Katherine's hand away, or, according to Katherine's testimony, smacked her hand. Ricky left. Katherine called the police. Sydney, understandably upset by her parents' behavior, called her father and told him her mother was calling the police. Ricky was ultimately arrested for domestic abuse assault. He pled guilty to disorderly conduct and the domestic abuse assault charge was dismissed.

On August 31, 2006, Katherine filed a petition for relief from domestic abuse and a temporary protective order was issued on the same day restraining Ricky from committing further acts of abuse or threats of abuse and restraining him from any contact with Katherine and Sydney. A no contact order was entered on September 11, 2006, restraining Rickie from contact with Katherine and Sydney.

On May 31, 2007, following a hearing, the district court entered a Final Domestic Abuse Protective Order restraining Ricky from committing further acts of abuse or threats of abuse, and from any contact with Katherine. The order stated it was to remain in effect until May 31, 2008. Consequently, the order appealed from is now moot.

One principle of judicial restraint is that courts do not decide cases when the underlying controversy is moot. *Rhiner v. State*, 703 N.W.2d 174, 176 (Iowa 2005). Generally courts will not consider an action if it no longer presents a justiciable controversy. *Iowa Freedom of Info. Council v. Wifvat*, 328 N.W.2d 920, 922 (Iowa 1983); *Hamilton v. City of Urbandale*, 291 N.W.2d 15, 17 (Iowa 1980); *Rodine v. Zoning Bd. of Adjustment*, 434 N.W.2d 124, 125 (Iowa Ct. App.

1988). A live dispute must ordinarily exist before a court will engage in an interpretation of the law. *Grinnell College v. Osborn*, 751 N.W.2d 396, 398 (Iowa 2008). The test of mootness is whether an opinion would be of force or effect in the underlying controversy. *Iowa Mut. Ins. Co. v. McCarthy*, 572 N.W.2d 537, 540 (Iowa 1997). Will a decision in this case, should we render one, have any practical legal effect upon an existing controversy? See *id.* The decision of the district court that is the subject of this appeal no longer has any direct consequences on the parties. The issues raised are moot.

We will consider moot issues on appeal under certain circumstances. See *State v. Hernandez-Lopez*, 639 N.W.2d 226, 235 (Iowa 2002). In determining whether or not we should review a moot action we consider four factors: (1) the private or public nature of the issue; (2) the desirability of an authoritative adjudication to guide public officials in their future conduct; (3) the likelihood of the recurrence of the issue; and (4) the likelihood the issue will recur yet evade appellate review. *Id.* at 234. This is a private action. The focal issue is a factual dispute. An adjudication would provide no guidance to public officials in their future conduct. One might argue there is merit in addressing the admissibility of the testimony of Christine England, a licensed social worker, concerning information obtained from joint counseling where only Katherine agreed to her testifying. However, there is only a possibility, not a likelihood, of the issue's recurrence under a similar factual scenario and no likelihood that if it recurred it would evade appellate review. The appeal is dismissed.

APPEAL DISMISSED.