

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2021 CA 0512

GLORIA JEAN GARSIDE

VERSUS

DONNA SUE LAIRD



Judgment Rendered: DEC 22 2021

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On Appeal from
The Family Court
Parish of East Baton Rouge, State of Louisiana
No. F194379

The Honorable Lisa Woodruff-White, Judge Presiding

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Donald Carl Hodge, Jr.
Baton Rouge, Louisiana

Attorney for Appellant,
Donna Sue Laird

G. Bruce Kuehne
Baton Rouge, Louisiana

Attorney for Appellee,
Michael Rojas

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BEFORE: LANIER, WOLFE, AND BURRIS,¹ JJ.

¹ The Honorable William J. Burris, retired, is serving *pro tempore* by special appointment of the Louisiana Supreme Court.

WOLFE, J.,

Donna Sue Laird appeals the trial court's judgment that sustained exceptions of no cause of action, no right of action, and prescription, and dismissed her original and amended petitions to set aside a protective order. We affirm.

FACTS

In 2014, Laird's brother, Michael Rojas, filed a petition for protection from abuse against Laird on behalf of their mother, Gloria Garside. Rojas generally alleged that Laird lived with and was abusing their mother. In addition to seeking an order protecting their mother, Rojas asked for use of certain vehicles, and that Laird be evicted from the home and return their mother's checkbook and banking information. After entry of a series of temporary restraining orders against Laird, the Family Court for East Baton Rouge Parish issued a Protective Order on July 2, 2014, pursuant to a court-approved consent agreement. Although the Protective Order form allows the court to order terms that do not expire, the Protective Order against Laird specifically provided that its terms would expire on July 2, 2015. Laird signed the page of the order that set forth the penalties for violation, that the order was subject to full faith and credit in other jurisdictions, and that Laird was served with the order at the close of the July 2, 2014 hearing.

On March 15, 2019, almost four years after it expired, Laird filed a petition to set aside the Protective Order. Laird named Rojas, who she identified as their mother's power of attorney, the respondent. Laird alleged that she did not freely enter the stipulated judgment and that the underlying allegations of abuse were false. In an amended petition Laird alleged that she was not provided the services of an interpreter, which she claimed to have requested of the court administrator pursuant to the Americans with Disabilities Act. She asserted that as a result she did not understand the proceedings or the stipulated judgment. Laird also alleged that because of the Protective Order, Southeast Louisiana Legal Services Corporation

would not provide her with free legal representation, which caused her to incur the ongoing expenses of an attorney. In addition to praying that the Protective Order be set aside, Laird requested damages in the form of moving expenses that resulted from the false allegations, attorney fees, and court costs.

In response to the original and amending petitions, Rojas filed exceptions of no cause of action, no right of action, prescription, and lack of jurisdiction. Rojas asserted Laird failed to state a cause of action as the Protective Order had already expired and there was no legal basis for Laird to have it expunged or obtain the monetary relief requested, noting that the grounds upon which Laird asserted her claims were unclear. Rojas further contended that Laird had no right of action since she acquiesced in the entry of the Protective Order. Again noting that the grounds for Laird's claims were unclear, Rojas argued that any claim based on alleged fault had long since prescribed. Finally, Rojas contended that the Family Court lacked jurisdiction over any claims asserted against him in a personal capacity.

Laird opposed the exceptions, reiterating her contention that she suffered damages in the form of moving expenses and continues to suffer damages because she cannot qualify for free legal aid. Laird argued that these identifiable damages give her a cause of action. Laird further contended she has a right of action "based on [the] application of justice, fairness, equity and the law." Laird disputed Rojas's assertion that her claims were prescribed, describing them as personal to her and therefore subject to a ten-year prescriptive period, also noting that her damages were ongoing. Finally, Laird disputed the exception to jurisdiction, stating that despite her mother's death in 2019, the Family Court retained "continuing jurisdiction over this matter as it relates to whether this was a frivolous action based on false allegations."

The parties agreed to submit the matter to the Family Court for a decision on the pleadings. The Family Court signed a judgment on January 21, 2021, in which

it sustained the exceptions of no cause of action, no right of action, and prescription; overruled the exception of lack of jurisdiction; and dismissed Laird's original and amended petitions to set aside the Protective Order at Laird's cost. Laird now appeals.

DISCUSSION

Laird contends the trial court erred in sustaining the exceptions of no cause of action, no right of action, and prescription, and dismissing her claims. She contends that she has a cause of action because she did not freely consent to the Protective Order and has suffered identifiable damages. She contends she has a right of action because she is the only individual who can make a claim for the damages she is suffering. Finally, she contends she is asserting a personal action subject to a ten-year prescriptive period.

It is well settled that courts will not decide abstract, hypothetical, or moot controversies, or render advisory opinions with respect to such controversies. **Ulrich v. Robinson**, 2018-0534 (La. 3/26/19), 282 So.3d 180, 186. An issue is moot when a judgment or decree on that issue has been deprived of practical significance or made abstract or purely academic. A case is moot when a rendered judgment or decree can serve no useful purpose and give no practical relief or effect. If the case is moot, there is no subject matter on which the judgment of the court can operate. **Ulrich**, 282 So.3d at 186.

The Protective Order expired by its own terms nearly four years before Laird filed her petition to set it aside. This court has dismissed direct appeals of Protective Orders for lack of jurisdiction when the Protective Orders expired while the appeal was pending, reasoning that the issues were moot because a judgment or decree could serve no useful purpose and give no practical relief or effect. See **Watson v. Banguel**, 2020-0799 (La. App. 1st Cir. 9/30/21), 2021 WL 4465839, *2 (unpublished); **McKee v. McKee**, 2020-1314 (La. App. 1st Cir. 6/16/21), 2021 WL

2451440, *2 (unpublished), writ denied, 2021-00984 (La. 11/3/21), 326 So.3d 879.

While Laird's petition is procedurally different from a direct appeal, it substantively challenges a Protective Order that has expired. The law of this circuit is that after a Protective Order expires, a decision reversing, setting aside, or modifying the order can have no practical relief or effect. Thus, under the law of this circuit, Laird's challenges to the Protective Order are moot. See Pontchartrain Natural Gas System v. Texas Brine Co., LLC, 2018-0001 (La. App. 1st Cir. 6/4/18), 253 So.3d 156, writ denied, 2018-1124 (La. 9/28/18), 253 So.3d 147 (recognizing this court is bound by the law of the circuit doctrine to follow prior decisions).

Laird argues, however, that she continues to suffer damages, implying that her challenges to the Protective Order are not moot. Unresolved collateral consequences may bring an otherwise moot case within an exception to the mootness doctrine. See Cat's Meow, Inc. v. City of New Orleans, Department of Finance, 98-0601 (La. 10/20/98), 720 So.2d 1186, 1194. However, even if we determined that Laird's challenges are not moot, we would find no error in the Family Court's judgment dismissing Laird's original and amended petitions. Laird argues that the Protective Order was obtained as a result of ill practices because she was not provided an interpreter; however, an action to annul a judgment on grounds of ill practices is subject to a one-year preemptive period that begins the date the ill practices was discovered.² See La. Code Civ. P. art. 2004. Here, since Laird was present at the hearing and certainly knew she was not assisted by an interpreter, Laird's action based on ill practices was extinguished one year after entry of the Protective Order – the same time the Protective Order expired. Laird has not alleged any other basis supported by law for setting aside an expired Protective Order entered by her own

² We do not address any procedural issues relative to Laird's nullity claim, including whether the claim was sufficiently raised in Laird's pleadings.

agreement. Thus, the circumstances do not warrant an exception to the general rule of mootness.

Laird additionally sought damages resulting from the alleged erroneous entry of the Protective Order. Since that claim was conditioned on the success of her challenge to the Protective Order, Laird has failed to state a valid cause of action for relief.³ Cf. Kocher v. Truth in Politics, Inc., 2020-01153 (La. 12/22/20), 307 So.3d 182, 184. Thus, we affirm the trial court’s judgment that sustained the exception of no cause of action and dismissed Laird’s petition.

CONCLUSION

The judgment of the trial court is affirmed. Costs of this appeal are assessed to Donna Sue Laird.

AFFIRMED.

³ The exception of no cause of action tests the legal sufficiency of a pleading by determining whether the law affords a remedy on the facts alleged. **Carr v. Sanderson Farms, Inc.**, 2016-1064 (La. App. 1st Cir. 2/17/17), 215 So.3d 437, 440. In the context of the exception, a “cause of action” is defined as the operative facts that give rise to the plaintiff’s right to judicially assert the action against the defendant. The exception is triable solely on the face of the petition and any attached documents. **Carr**, 215 So.3d at 440. For purposes of resolving the issues raised by the exception, the well-pleaded facts in the petition must be accepted as true. **Reynolds v. Bordelon**, 2014-2362 (La. 6/30/15), 172 So.3d 589, 594-95. The burden of demonstrating that a petition fails to state a cause of action is upon the mover. **Ramey v. DeCaire**, 2003-1299 (La. 3/19/04), 869 So.2d 114, 119. Because the exception of no cause of action raises a question of law and the trial court’s decision is based solely on the sufficiency of the petition, review of the trial court’s ruling on the exception is *de novo*. **Scheffler v. Adams & Reese, LLP**, 2006-1774 (La. 2/22/07), 950 So.2d 641, 647. The pertinent inquiry is whether, in the light most favorable to the plaintiff, and with every doubt resolved in the plaintiff’s favor, the petition states any valid cause of action for relief. **Scheffler**, 950 So.2d at 647.