

**Petition for Writ of Mandamus Dismissed and Memorandum Opinion filed
March 23, 2017.**



In The

Fourteenth Court of Appeals

NO. 14-17-00138-CV

IN RE AMY HENRY, Relator

**ORIGINAL PROCEEDING
WRIT OF MANDAMUS
306th District Court
Galveston County, Texas
Trial Court Cause No. 17-FD-0305**

MEMORANDUM OPINION

In this mandamus proceeding, relator Amy Henry asks this court to compel the respondent, the Honorable Anne B. Darring, presiding judge of the 306th District Court of Galveston County, to vacate an order signed by a visiting judge.

The order grants extraordinary relief. Finding the request for mandamus relief moot, we dismiss this original proceeding.

FACTUAL AND PROCEDURAL BACKGROUND

Relator and real party in interest Mark Alan Henry were married on December 12, 2009, and became parents to twin girls, B.A.H. and H.M.H. Amy filed her “Original Petition for Divorce” from Mark on February 6, 2017. Three days later, Mark filed his “Original Answer,” and then later filed an “Original Counterpetition for Divorce.”

In his counterpetition, Mark requested extraordinary relief from the trial court. He asked the trial court to seal the court’s file and limit access to it. Mark also asked the trial court to order the parties, their attorneys, and agents not to discuss the case with the news media or on social media. And, Mark asked the trial court to grant a temporary restraining order restraining Amy from doing so.

Without any hearing, visiting judge C.G. Dibrell II signed an “Order Granting Extraordinary Relief,” granting Mark all of the extraordinary relief requested in the counterpetition. The order, signed on February 21, 2017, indicates that it is a temporary restraining order because it states in the first sentence, “The application of Respondent, Mark Alan Henry, for temporary restraining order was presented to the court today.” The order further states: “This joint and mutual order is effective immediately and shall continue in force and effect until further order of this Court or until it expires by operation of law.”

ANALYSIS

“Appellate courts are prohibited from deciding moot controversies.” *Nat’l Collegiate Athletic Ass’n v. Jones*, 1 S.W.3d 83, 86 (Tex. 1999); *see also Geters v. Baytown Hous. Auth.*, 430 S.W.3d 578, 582 (Tex. App.—Houston [14th Dist.] 2014, no pet.). “A case becomes moot if at any stage there ceases to be an actual controversy between the parties.” *Jones*, 1 S.W.3d at 86; *Briones v. Brazos Bend Villa Apartments*, 438 S.W.3d 808, 812 (Tex. App.—Houston [14th Dist.] 2014, no pet.).

In his response to the petition for writ of mandamus, Mark claims the visiting judge’s order is a temporary restraining order that expired on March 7, 2017 – 14 days after issuance, and that Amy’s petition for writ of mandamus is now moot. *See Tex. R. Civ. P. 680*. Mark therefore asks this court to dismiss Amy’s petition as moot.

The visiting judge’s order is a temporary restraining order and by its express terms was to continue in force and effect only “until it expires by operation of law.” Texas Rule of Civil Procedure 680 provides that a temporary restraining order shall expire within the time the court fixes, not to exceed 14 days. *See Tex. R. Civ. P. 680*. Thus, under the operation of Rule 680, the visiting judge’s February 21, 2017 order expired 14 days later, on March 7, 2017. The order is no longer in effect. Therefore, Amy’s petition for writ of mandamus is now moot. *See Hermann Hosp. v. Tran*, 730 S.W.2d 56, 57 (Tex. App.-Houston [14th Dist.] 1987, no writ) (all issues on appeal regarding temporary restraining order were rendered moot by expiration of the order); *Bostow v. Bank of Am.*, No. 14-04-00256-CV, 2006 WL 89446, at *5 (Tex. App.—Houston [14th Dist.] Jan. 17, 2006, no pet.) (mem. op.) (issues regarding the propriety

of a temporary restraining order are moot because the temporary restraining order expired long ago); *In re City of Dallas*, No. 05-12-00115-CV, 2012 WL 363038, at *1 (Tex. App.—Dallas Feb. 2, 2012, orig. proceeding) (dismissing mandamus as moot because temporary restraining order expired 14 days after it was issued). Accordingly, we dismiss Amy’s petition for writ of mandamus as moot.

PER CURIAM

Panel consists of Chief Justice Frost and Justices Donovan and Wise.