

NOTICE: All slip opinions and orders are subject to formal revision and are superseded by the advance sheets and bound volumes of the Official Reports. If you find a typographical error or other formal error, please notify the Reporter of Decisions, Supreme Judicial Court, John Adams Courthouse, 1 Pemberton Square, Suite 2500, Boston, MA, 02108-1750; (617) 557-1030; SJCRreporter@sjc.state.ma.us

19-P-776
19-P-775
19-P-781
19-P-789

Appeals Court

TOM T. vs. LEWIS L.¹ (and three companion cases²).

Nos. 19-P-776, 19-P-775, 19-P-781, & 19-P-789.

Hampshire. January 15, 2020. - June 19, 2020.

Present: Hanlon, Blake, & Hand, JJ.

Civil Harassment. Harassment Prevention. Abuse Prevention.
Moot Question. Practice, Civil, Moot case.

Complaints for protection for harassment filed in the Northampton Division of the District Court Department on March 4, 2019.

An ex parte hearing to issue harassment prevention orders was had before Jacklyn M. Connly, J., and the cases were heard by William F. Mazanec, III, J.

The case was submitted on briefs.
Dana Goldblatt for Lewis L.

¹ The parties' names are pseudonyms.

² The three companion cases involve three members of the plaintiff's family against the same defendant.

HANLON, J. In each of these four related cases, a District Court judge issued an ex parte harassment prevention order, pursuant to G. L. c. 258E, against the defendant on March 4, 2019. The judge then continued each of the four orders for a hearing after notice on March 15, 2019. According to the respective dockets, the defendant was served with a copy of each order, and the parties to each of the four orders were present for the hearing after notice.³ The docket in each case reflects that all four orders were terminated by agreement of the parties on that date, and that written copies of the terminated orders were transmitted by facsimile to the police department in the city where the defendant lives.⁴ In addition, each order directed that "[l]aw enforcement shall destroy all records of such [o]rder."⁵ The defendant now appeals from "certain

³ It appears that all four orders were addressed in a single hearing.

⁴ Our record does not include a transcript of the March 15, 2019 hearing.

⁵ We note that, having terminated the orders, the District Court was required in its notice to the relevant law enforcement agency to "direct the agency to destroy all record" of such terminated orders, and the agency was required to do so. G. L. c. 258E, § 9, third par. The defendant does not argue that the court failed to provide the relevant law enforcement agency with the required directive, or that the law enforcement agency failed to comply with it.

judgments and orders of [the District C]ourt, . . . entered on March 4, 2019."

The law is clear that, in cases involving appeals of abuse prevention orders pursuant to G. L. c. 209A, an order that is issued after a hearing after notice and that simply expires is not moot and may be reviewed on appeal. See Dollan v. Dollan, 55 Mass. App. Ct. 905, 905 n.2 (2002); Wooldridge v. Hickey, 45 Mass. App. Ct. 637, 638 (1998). On the other hand, an order, whether ex parte or after a hearing after notice, that is terminated by a judge at a subsequent hearing is moot because the appellant has received all of the relief to which he or she is entitled. See Allen v. Allen, 89 Mass. App. Ct. 403, 405-406 (2016) ("judicial determination that the order should be terminated and not extended, and its directive to law enforcement agencies to destroy all record of it, provided the defendant with the only relief she could obtain. Because the defendant cannot obtain any additional relief even by means of a successful appeal, the appeal is moot"). See also V.M. v. R.B., 94 Mass. App. Ct. 522, 524 (2018).

Similarly, an ex parte order that is extended at a hearing after notice may not be reviewed independently because that ex parte order has been superseded by the order after notice. See Yahna Y. v. Sylvester S., 97 Mass. App. Ct. 184, 184 n.2 (2020);

V.M., 94 Mass. App. Ct. at 524-525; C.R.S. v. J.M.S., 92 Mass. App. Ct. 561, 565 (2017).

Finally, if the order is terminated by a judge at the plaintiff's request, any appeal of that order is also moot because the court already has taken every action that the defendant could have sought on appeal. See Quinn v. Gjoni, 89 Mass. App. Ct. 408, 414 (2016) ("as in Allen . . . the order under appeal here did not merely expire but has been vacated, and copies of the abuse prevention order possessed by law enforcement officials were ordered destroyed. The defendant therefore has obtained all the relief to which he could be entitled, and he no longer has a cognizable interest in whether the order was lawfully issued" [footnotes omitted]).

We conclude that the same analysis should apply in appeals of orders issued pursuant to G. L. c. 258E. In Seney v. Morhy, 467 Mass. 58, 62 (2014), the court reached that conclusion as to c. 258E orders that had simply expired, concluding "that appeals from expired harassment prevention orders, like appeals from expired abuse prevention orders, should not be dismissed as moot where the parties have a continuing interest in the case." The court reasoned that "a wrongfully issued harassment prevention order [pursuant to G. L. c. 258E] poses the same concerns for a defendant about collateral consequences as does a wrongfully issued abuse prevention order [issued pursuant to G. L.

c. 209A]." Id., quoting Lawrence v. Gauthier, 82 Mass. App. Ct. 904, 904-905 (2012).

In addition, both this court and the Supreme Judicial Court have applied essentially the same analysis for abuse prevention orders issued pursuant to c. 209A and harassment prevention orders issued pursuant to c. 258E since c. 258E was enacted, except in instances where the language of the statutes themselves was different. For instance, this court, in J.S.H. v. J.S., 91 Mass. App. Ct. 107, 109-110 (2017), discussed the similarities in some detail:

"Because of its origin and purpose, much of the language in c. 258E is analogous to the language found in c. 209A. In fact, the Supreme Judicial Court has repeatedly cited case law interpreting c. 209A orders when analyzing analogous issues in the context of c. 258E orders. See [O'Brien v. Borowski, 461 Mass. 415, 417-418 (2012)], (applying case law interpreting c. 209A orders in holding c. 258E orders should be appealed directly to Appeals Court) This court also has cited the Guidelines for Judicial Practice: Abuse Prevention Proceedings (Guidelines), which addresses c. 209A, as an authoritative source for proceedings and orders pursuant to c. 258E. See F.A.P. v. J.E.S., 87 Mass. App. Ct. 595, 601 n.14 (2015) ('[W]e see no reason why the Guidelines . . . should not apply equally in [c. 258E] harassment order proceedings, absent some issue particular to harassment orders [under c. 258E]'). See also Mass. G. Evid. § 1106 note, at 376 (2016) (evidentiary standards applicable in c. 209A proceedings also applicable in c. 258E proceedings).

"Chapters 209A and 258E are particularly similar in their treatment of records following the issuance of an order, as well as after an order is vacated. Under both statutes, once a judge issues an order, the order and supporting papers are transmitted to the appropriate law enforcement agency. See G. L. c. 209A, § 7, third par.; G. L. c. 258E, § 9, third par. The records of c. 209A

orders are also transmitted to the commissioner of probation (commissioner) to be recorded in the Statewide domestic violence record keeping system (DVRS), created by St. 1992, c. 188, § 7. G. L. c. 209A, § 7, third par. See Vaccaro v. Vaccaro, 425 Mass. 153, 156-157 (1997). Similarly, records of c. 258E orders are also transmitted to the commissioner to be recorded in a Statewide registry. G. L. c. 258E, § 9, second par. Under both statutes, once an order is vacated, the court sends written notification to the appropriate law enforcement agency directing it to destroy its records of the vacated order. See G. L. c. 209A, § 7, third par.; G. L. c. 258E, § 9, third par." [Footnotes omitted.]

Further, in J.S.H. we reached the same conclusion regarding expungement of c. 258E orders as we had reached for c. 209A orders. See J.S.H., 91 Mass. App. Ct. at 112, quoting Commissioner of Probation v. Adams, 65 Mass. App. Ct. 725, 737 (2006) ("That is, a judge has the inherent authority to expunge the record of a c. 258E order only 'in the rare and limited circumstance that the judge has found through clear and convincing evidence that the order was obtained through fraud on the court'").

We therefore apply the same principles to the question of whether the appeal of an order under c. 258E is moot as the courts have applied with regard to orders under c. 209A. In the present case, all of the ex parte orders were terminated by a judge at the parties' request at the hearing after notice and all records of those orders possessed by law enforcement were ordered destroyed. Therefore, we conclude, as we did in Quinn,

89 Mass. App. Ct. at 414, that "[t]he defendant . . . has obtained all the relief to which he could be entitled, and he no longer has a cognizable interest in whether the order[s were] lawfully issued" (footnote omitted).

The appeals are dismissed as moot.

So ordered.