

[Cite as *B.A.C. v. A.V.*, 2019-Ohio-4166.]

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

B.A.C., :
 :
 Petitioner-Appellee, :
 : No. 108259
 v. :
 :
 A.V., :
 :
 Respondent-Appellant. :

JOURNAL ENTRY AND OPINION

JUDGMENT: REVERSED AND REMANDED
RELEASED AND JOURNALIZED: October 10, 2019

Civil Appeal from the Cuyahoga County Common Pleas Court
Case No. CV-11-754587

Appearances:

J. Gary Seewald, *for appellant.*

SEAN C. GALLAGHER, P.J.:

{¶ 1} This cause came to be heard on the accelerated calendar pursuant to App.R. 11.1 and Loc.App.R. 11.1. By designating this as an accelerated appeal, it has been “agreed that we may render a decision in ‘brief and conclusionary form’ consistent with App.R. 11.1(E).” *State v. D.F.*, 8th Dist. Cuyahoga No. 104410, 2017-

Ohio-534, ¶ 1; *Shaker Hts. v. Brandon Profit El-Bey*, 8th Dist. Cuyahoga Nos. 105701 and 105702, 2017-Ohio-9022, ¶ 1.

{¶ 2} Respondent A.V. (“Respondent”), in an action upon a civil stalking protection order, filed a motion for return of property following the expiration of the agreed order — the temporary order included a requirement for the Respondent to turn over a firearm to the local law enforcement agency. In that agreed order, the parties did not indicate that Respondent was Brady disqualified¹ or that the Respondent was precluded from possessing, owning, or using a firearm during the effective dates of the full protection order (meaning there was no prohibition to Respondent’s retention of the firearm during the five-year enforcement of the protection order). Respondent sought the return of the firearm, but the law enforcement agency declined the request without an order from the trial court. The trial court denied Respondent’s motion seeking such an order, prompting the current appeal.

{¶ 3} A trial court has jurisdiction to consider a motion for return of property following the conclusion of a case in which the seizure of the property was required. *State v. White*, 2018-Ohio-2573, 115 N.E.3d 878, ¶ 22 (2d Dist.), citing *State v. Bolton*, 2017-Ohio-7263, 97 N.E.3d 37 (2d Dist.); see, e.g., *State ex rel. Jones v. Friedland*, 8th Dist. Cuyahoga No. 81226, 2002-Ohio-2757, ¶ 6 (noting that an

¹ “Federal law, known as a Brady disqualifier, prohibits gun possession by anyone who is subject to certain types of protection orders, but does not apply to expired orders. 18 U.S.C. 922(g)(8).” *Cyran v. Cyran*, 2016-Ohio-7323, 63 N.E.3d 187, ¶ 5 (2d Dist.).

action in mandamus is not appropriate because a motion for return of the property was filed in the underlying action and that decision was timely appealed); *State ex rel. Johnson v. Kral*, 153 Ohio St.3d 231, 2018-Ohio-2382, 103 N.E.3d 814, ¶ 5 (police department's failure to abide by trial court order to return property can be remedied by contempt motion filed with the issuing trial court). Although we understand the trial court's reluctance to intervene in a settled case, we are nonetheless compelled to conclude that the trial court erred in denying the Respondent's motion. In the absence of a legal basis for the court to deny Respondent access to his firearm stemming from the underlying case, especially in consideration of the fact that the protection order that initially justified the seizure of the firearm expired several years ago, the Respondent's motion for the return of his property should have been granted.

{¶ 4} If there are no other active cases or orders precluding Respondent's possession of the seized firearm, it must be promptly returned to him. We reverse the decision of the trial court. The expired protection order in this case cannot justify the law enforcement agency's continued possession of Respondent's property, and such property must be returned to him absent a valid order from another case precluding such action. We reverse and remand.

It is ordered that appellant recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27
of the Rules of Appellate Procedure.

SEAN C. GALLAGHER, PRESIDING JUDGE

MICHELLE J. SHEEHAN, J., and
RAYMOND C. HEADEN, J., CONCUR