

Grant and Opinion Filed October 12, 2021



**In the
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-21-00323-CV

IN RE DAVID MU, Relator

**Original Proceeding from the 280th District Court
Harris County, Texas
Trial Court Cause No. 2021-07175**

MEMORANDUM OPINION

Before Justices Myers, Partida-Kipness, and Carlyle
Opinion by Justice Carlyle

In this original proceeding, relator David Mu seeks a writ of injunction staying provisions of a February 25, 2021 trial court protective order requiring him to complete a Batterer's Intervention and Prevention Program (BIPP) and pay certain fees.¹ We grant Mr. Mu's petition for writ of injunction as to the BIPP requirement and otherwise deny the petition.

¹ The trial court's February 25, 2021 protective order is currently on appeal in this Court under a separate cause number, 05-21-00288-CV. The Texas Supreme Court transferred that appeal and this original proceeding to this Court from the Houston Fourteenth District Court of Appeals pursuant to a docket equalization order.

A court of appeals does not have original jurisdiction to grant writs of injunction, “except to protect its jurisdiction over the subject matter of a pending appeal, or to prevent an unlawful interference with the enforcement of its judgments and decrees.” *In re Torres*, No. 05-18-00774-CV, 2018 WL 4784580, at *1 (Tex. App.—Dallas Oct. 4, 2018, orig. proceeding [mand. denied]) (mem. op.) (quoting *Ott v. Bell*, 606 S.W.2d 955, 957 (Tex. App.—Waco 1980, no writ)). Appellate courts lack subject matter jurisdiction to decide moot controversies. *Nat’l Collegiate Athletic Ass’n v. Jones*, 1 S.W.3d 83, 86 (Tex. 1999); *see also State ex rel. Best v. Harper*, 562 S.W.3d 1, 6 (Tex. 2018) (“Mootness occurs when events make it impossible for the court to grant the relief requested or otherwise affect the parties’ rights or interests.” (cleaned up)). Thus, a court of appeals may issue a writ of injunction to prevent an appeal from becoming moot. *In re Return Lee to Lee Park*, No. 05-19-00774-CV, 2019 WL 5119437, at *1 (Tex. App.—Dallas Oct. 10, 2019, orig. proceeding [mand. dism’d]) (mem. op.) (citing *Dallas Morning News v. Fifth Court of Appeals*, 842 S.W.2d 655, 657 (Tex. 1992) (orig. proceeding); *In re Shields*, 190 S.W.3d 717, 719 (Tex. App.—Dallas 2005, orig. proceeding)).

Here, the complained-of protective order (1) imposed a lifetime prohibition on Mr. Mu contacting the applicant or being within a certain distance of her home or workplace and (2) required Mr. Mu to complete a BIPP by the 30th day before the order’s first anniversary and pay \$996.00 in attorney’s fees and filing fees within 60 days of the order’s issue date. Mr. Mu timely appealed the protective order. Though

he asked the trial court to stay the BIPP requirement and court-ordered fees pending the appeal's resolution, the trial court denied that request.

In his petition in this original proceeding, Mr. Mu asserts, "This Court should issue a writ of injunction or otherwise stay the requirement that Mr. Mu attend BIPP classes and pay court fees, pending the resolution of his appeal, which intends to challenge, among other issues, the constitutionality and appropriateness of the BIPP requirement." He contends:

[T]he time and expense incurred can never be recovered, even if the appeal is successful and this Court invalidates the underlying protective order. Further, Mr. Mu's Fifth Amendment rights against self-incrimination are infringed by the requirement that he attend and substantially comply with a BIPP course that will demand he discuss potential crimes and bad acts for which the statute of limitations has not run. Mr. Mu intends to challenge these issues on appeal but will be required to give up those rights pending appeal without the intervention of this Court.

He argues that because he "will have surrendered the right not to speak about these events" by completing the BIPP requirement, "much of the subject matter of [his] appeal will be destroyed and part of [his] appeal will be rendered moot."²

The record shows that if Mr. Mu is required to complete the BIPP requirement as the protective order directs, a judgment from this Court could be ineffectual and the pending appeal could become moot. Thus, a writ of injunction staying the BIPP requirement is appropriate to preserve our jurisdiction over the underlying appeal.

² At Mr. Mu's request, this Court issued a May 27, 2021 order staying the BIPP requirement pending resolution of this original proceeding. This Court also requested "that real party in interest and respondent file a response, if any, to the petition by June 16, 2021." No response was filed.

See Harper, 562 S.W.3d at 6; *see also Thompson v. Ricardo*, 269 S.W.3d 100, 104–05 (Tex. App.—Houston [14th Dist.] 2008, no pet.) (concluding party’s completion of actions specified in trial court’s sanctions order mooted appeal of sanctions).

But Mr. Mu has not demonstrated, and the record does not show, how payment of the court-ordered fees would destroy any subject matter of the lawsuit or otherwise render his appeal moot. Thus, we cannot conclude a stay of those fees is necessary to preserve this Court’s jurisdiction over his appeal. *See In re Young*, No. 01-13-01011-CV, 2013 WL 6670861, at *1 (Tex. App.—Houston [1st Dist.] Dec. 17, 2013, orig. proceeding) (mem. op.) (denying writ of injunction where relator failed to show how execution of money judgment would destroy subject matter of suit or otherwise render appeal moot); *see also In re Carter*, No. 05-19-00691-CV, 2019 WL 2482626, at *1 (Tex. App.—Dallas June 14, 2019, orig. proceeding) (mem. op.) (“An injunction will not lie in the courts of appeals merely to preserve the status quo pending appeal or to prevent damage to an appellant.”).

We grant Mr. Mu’s petition for writ of injunction as to the BIPP requirement and order that the trial court is enjoined from enforcing that requirement pending final disposition of the appeal in cause number 05-21-00288-CV or further order of this Court. We otherwise deny Mr. Mu’s requested relief.³

³ We also lift the stay imposed by this Court’s May 27, 2021 order.

/Cory L. Carlyle/
CORY L. CARLYLE
JUSTICE