IN THE UTAH COURT OF APPEALS

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Casey Danielle Mortenson, Petitioner and Appellant, v. Daniel K. Turley and Stephanie Jane Turley, Respondents and Appellees.	MEMORANDUM DECISION (Not For Official Publication) Case No. 20080143-CA F I L E D (March 12, 2009) 2009 UT App 67

Fifth District Juvenile, St. George Department, 541380, 541381
The Honorable Thomas M. Higbee

Attorneys: Terry L. Hutchinson, St. George, for Appellant
Daniel K. Turley and Stephanie Jane Turley, Gruetli-Laager, Tennessee, Appellees Pro Se
Martha Pierce, Salt Lake City; and Laura J. Hansen-Pelcastre, West Jordan, Guardians Ad Litem

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Before Judges Thorne, Davis, and McHugh.

DAVIS, Judge:

Appellant Casey Danielle Mortenson appeals the juvenile court's dismissal of a child protective order. Because the relief sought by the appeal was subsequently granted and the rights of the parties cannot now be affected, we dismiss the appeal as moot.

This case involves the safety and welfare of S.Y.T., Mortenson's half-sister and the biological daughter of Appellees Daniel K. Turley and Stephanie Jane Turley (the Turleys). In December 2007, Mortenson filed a verified petition for an ex parte protective order on behalf of S.Y.T., arguing that S.Y.T. was in imminent danger of being sexually abused by the Turleys. On December 11, 2007, the Fifth District Juvenile Court granted the ex parte protective order pending further hearing and awarded Mortenson temporary custody of S.Y.T. Mortenson also petitioned to terminate the Turleys' parental rights to S.Y.T.

On December 31, 2007, the juvenile court held a hearing on the child protective order and requested that counsel submit case

law as to what constituted "imminent danger" for purposes of Utah Code section 78B-7-202.[1] See Utah Code Ann. § 78B-7-202(3) (2008) (requiring the juvenile court to enter an ex parte child protective order if it determines that the child "is in imminent danger of being abused"). On January 9, 2008, following the parties' submissions on the issue, the juvenile court denied the petition for a child protective order, determining that S.Y.T. was not in imminent danger of sexual abuse. S.Y.T. was returned to the Turleys' custody and immediately taken back to Tennessee where the Turleys reside. Mortenson timely filed a notice of appeal from the order denying the child protective order. Mortenson, however, failed to disclose that the juvenile court had otherwise provided for S.Y.T.'s protection.[2]

As a general rule, "the existence of an actual controversy is an essential requisite to appellate jurisdiction[and] it is not the province of appellate courts to decide moot questions." In re Fabian A., 941 A.2d 411, 414 (Conn. App. Ct. 2008). "An issue on appeal is considered moot when 'the requested judicial relief cannot affect the rights of the litigants.'" State v.

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1. At the hearing on the protective order, there was testimony that Daniel Turley had raped Mortenson and another of her half-sisters when they were teenagers and that Stephanie Turley had actively participated in the sexual assault against Mortenson. Moreover, the other half-sister testified that Daniel Turley began sexually abusing her when she was as young as eight or nine, showing her pornographic pictures and fondling her breasts. Because seven-year-old S.Y.T. was nearing the age where the pattern of sexual abuse began with the half-sister, Mortenson argued that S.Y.T. was in imminent danger of being sexually abused by the Turleys.

2. Approximately one week after the denial of the child protective order, on January 16, 2008, the juvenile court signed orders authorizing law enforcement to remove S.Y.T. from the Turleys' custody and awarding temporary custody to Mortenson for the pendency of the termination of parental rights matter. Mortenson had to have the January 16 order enforced in Tennessee and traveled to Tennessee to return S.Y.T. to Utah. At the time the notice of appeal was filed, S.Y.T. had not yet been returned to Utah.

In July 2008, the juvenile court determined that Tennessee was the more appropriate forum and had primary jurisdiction of the matter but also noted that the previous order removing S.Y.T. and awarding custody to Mortenson was to remain in effect. In an order dated January 27, 2009, the Tennessee court declined jurisdiction, and the juvenile court in Utah then resumed primary jurisdiction over the case.

Sims, 881 P.2d 840, 841 (Utah 1994) (quoting Burkett v. Schwendiman, 773 P.2d 42, 44 (Utah 1989)). "When an issue is moot, judicial policy dictates against our rendering an advisory opinion." State v. Vicente, 2004 UT 6, ¶ 3, 84 P.3d 1191. Accordingly, we will generally dismiss the case rather than issuing an advisory opinion.

In this case, the requested relief on appeal was a reversal of the juvenile court's determination that S.Y.T. was not in imminent danger and a reversal of the denial of the child protective order. The juvenile court, however, noted its grave concern for S.Y.T.'s safety and subsequently ordered alternative relief that provided for S.Y.T.'s welfare, namely, removal from the Turleys' custody and placement with Mortenson pending resolution of the termination of parental rights matter. Accordingly, the substance of the requested relief--i.e., protecting S.Y.T. from the Turleys--has been achieved, and disposition of the appeal cannot affect the rights of the parties.[3] The appeal is thus dismissed as moot.

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James Z. Davis, Judge

WE CONCUR:

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William A. Thorne Jr.,
Associate Presiding Judge

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Carolyn B. McHugh, Judge

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3. In her memorandum in opposition to the Guardian Ad Litem's motion for suggestion of mootness, Mortenson quotes In re N.R., 967 P.2d 951 (Utah Ct. App. 1998), to support her proposition that this appeal involves "'an issue of public import that is likely to recur and is capable of evading judicial review,'" and thus falls within an exception to the mootness doctrine. Id. at 953. While the juvenile court may or may not have been correct in determining that S.Y.T. was not in imminent danger, we do not think that such a factual determination appropriately falls within the exception to the mootness doctrine. Instead, this presents a question as to whether the finding was supported by sufficient evidence, an issue not raised on appeal.