IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
January 5, 2023, Session

JANICE NEWMAN KROHN v. KENNETH B. KROHN

Appeal from the Circuit Court for Davidson County
No. 13D3060 Judge Joseph P. Binkley, Jr.

No. M2021-01020- COA-R3-CV

A mother obtained an order of protection against her son in general sessions court. The son appealed to circuit court. Through the parties' inaction, the case languished for more than five years, leading to the circuit court dismissing the case. In response, the son filed various motions and documents seeking restoration of the case to the docket and further relief, which resulted in a hearing and additional orders being entered by the circuit court. Through these orders, the circuit court ruled in accordance with the son's position that the order of protection was no longer in effect and had not been in effect for years. The circuit court also concluded that, given the parties' inaction and because the case had become moot, dismissal rather than restoration to the docket was appropriate. The son appealed. We conclude that for purposes of this appeal the case is moot.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

JEFFREY USMAN, J., delivered the opinion of the Court, in which FRANK G. CLEMENT, JR., P.J., M.S., and ANDY D. BENNETT, J., joined.

Kenneth B. Krohn, Cambridge, Massachusetts, pro se.[1]

OPINION

I.

This is an unusual case. This appeal involves a continuing challenge to an order of protection that has not existed for more than eight years that was granted to a woman who has since unfortunately passed away and whose estate has elected not to participate in the appeal. In other words, this case involves the appeal of a non-existent order of protection for a deceased person with no appellee appearing. Further contributing to the unusual

[1] The appellee, Janice Newman Krohn, died on March 28, 2022. Her estate did not file a responsive brief or participate in oral argument.

nature of this case, through the parties' inaction, this case sat dormant in the circuit court for more than half a decade. Plus, the appellant prevailed before the circuit court.

At the center of this odd case is unfortunately a disturbing circumstance within a family in which an order of protection was obtained by a mother against her son. In April 2013, then-74-year-old Kenneth Krohn of Cambridge, Massachusetts, called his then-99-year-old mother, Janice Krohn, to discuss visiting her in Nashville, Tennessee, for his upcoming 75th birthday. From the record, it is not clear precisely what was said, but the conversation appears to have touched upon longstanding family disputes and apparently upset Ms. Krohn significantly. She told her son that she would call him back, but she did not do so. For the next several days, she did not answer any of his follow-up calls.

Instead, Ms. Krohn filed a petition in the General Sessions Court for Davidson County seeking an order of protection against her son. In her petition, she described the basis for the order as follows:

> TELEPHONE ABUSE
>
> THREATEN VISITS TO MY HOME – I TELL HIM I DO NOT WANT HIM TO COME HOME.
>
> ABUSE CONVERSATION IS FRIGHTENING
>
> The last time we talked on the phone was March 15, 2013[.] Other calls have come in but he is so abusive I don't answer or take the phone off the hook.

The general sessions court issued a temporary order of protection on April 23, 2013. After a hearing on October 28, 2013, the general sessions court issued an order of protection prohibiting all contact. The order was set to expire one year later on October 28, 2014. On the date of the issuance of the order, Mr. Krohn appealed the matter to the Davidson County Circuit Court. After Mr. Krohn filed his appeal, the general sessions court issued another order, this one an open-ended order which purported to extend the order of protection until the appeal was resolved in the circuit court.

A de novo trial in the circuit court was originally set for November 21, 2013, but the parties agreed to reset it to January 16, 2014. A trial did not occur on that date and the trial was not rescheduled. Litigation, however, continued. After the circuit court issued some discovery-related orders unfavorable to Mr. Krohn, he sought the recusal of the circuit court judge. The first circuit court judge recused himself on September 4, 2014, and the case was reassigned. In October 2014, after the new judge denied several of Mr. Krohn's discovery-related motions, he sought to disqualify the judge. After the denial of Mr. Krohn's motion for disqualification, he appealed to the Tennessee Court of Appeals. This court affirmed the circuit court's denial of Mr. Krohn's disqualification motion on

September 22, 2015. *Krohn v. Krohn*, No. M2015-01280-COA-T10B-CV, 2015 WL 5772549, at *11 (Tenn. Ct. App. Sept. 22, 2015), *perm. app. denied* (Tenn. Oct. 28, 2015). Mr. Krohn then sought permission to appeal the denial of his motion for disqualification of the circuit court judge to the Tennessee Supreme Court. After the Tennessee Supreme Court denied permission to appeal, this court issued a mandate to the circuit court on December 4, 2015. Following this mandate, with the case having returned to circuit court, no further action was taken by either party for approximately five and a half years.

Then, on April 27, 2021, the circuit court issued an order *sua sponte* dismissing the case as a result of the parties' extended period of inaction. Mr. Krohn responded with a motion to restore the case to the court's active docket, which the circuit court treated as a Rule 59.04 motion to alter or amend. With no action in the case for over five years, Ms. Krohn, who was by then well over 100 years old, did not file a timely response to Mr. Krohn's motion before a hearing occurred on July 16, 2021. Accordingly, at the hearing, Mr. Krohn requested that the court grant his motion under Local Rule section 26.04(g), which states, "if no response is timely filed and personally served, the motion shall be granted and counsel or pro se litigant need not appear in court at the time and date scheduled for the hearing." The court declined this request, stating that the local rule does not apply to cases involving domestic abuse orders of protection. The circuit court then held a hearing on the merits of Mr. Krohn's motion. Mr. Krohn states that he was not prepared for this scheduled hearing because he believed his motion would be granted without a hearing under the local rule. As a result, after the hearing, Mr. Krohn followed up with an additional motion styled as a motion for a declaratory judgment, asking the court to find that the order of protection was not properly extended and had, therefore, expired.

The court issued an order addressing Mr. Krohn's motion to reinstate and his motion for a declaratory judgment on July 29, 2021. In this order, the circuit court found that neither party requested a hearing related to the extension of the original order of protection as required by Tennessee Code Annotated section 36-3-605(b). Therefore, the court found the order of protection expired on October 28, 2014. The open-ended order of the general sessions court purporting to extend it until the appeal was resolved in the circuit court was invalid. Because the circuit court found that the order of protection that was being challenged had expired approximately seven years earlier, the circuit court held that the appeal before it was now moot. The circuit court also reiterated its earlier holding that the parties had not taken any action in the case since December 2015 and that it was within its inherent authority to dismiss a case for failure to prosecute. Accordingly, the circuit court denied Mr. Krohn's motion to have the case placed back on the active docket.

On appeal, Mr. Krohn, who has sought and received extensions related to filing his briefing in this court, raises three issues which we rephrase and restate for purposes of clarity as follows: (1) whether the circuit court erred in finding that the case was moot when Mr. Krohn faces collateral consequences related to the order of protection, (2)

whether the circuit court abused its discretion when it dismissed the case for failure to prosecute, and (3) whether the circuit court abused its discretion when it declined to automatically grant his motion to restore the case to the active docket under Local Rule section 26.04(g) when Ms. Krohn filed no response to the motion. For the reasons stated below, we find that this appeal is moot; consequently, we do not reach the second and third issues advanced by Mr. Krohn.

II.

Before we can address the merits of Mr. Krohn's claims, we must resolve a threshold jurisdictional issue. The Tennessee Supreme Court has indicated that the role of the courts "is limited to deciding issues that qualify as justiciable, meaning issues that place some real interest in dispute." *City of Memphis v. Hargett*, 414 S.W.3d 88, 96 (Tenn. 2013) (citing *Colonial Pipeline Co. v. Morgan*, 263 S.W.3d 827, 838 (Tenn. 2008)). We must practice restraint in addressing issues when the parties "do not have a continuing, real, live, and substantial interest in the outcome." *Norma Faye Pyles Lynch Family Purpose LLC v. Putnam Cnty.*, 301 S.W.3d 196, 210 (Tenn. 2009).

A case becomes moot when the legal controversy has been extinguished, *City of Memphis*, 414 S.W.3d at 96, or it "no longer serves as a means to provide some sort of judicial relief to the prevailing party." *Norma Faye*, 301 S.W.3d at 204. For example, "a suit brought to enjoin a particular act becomes moot once the act sought to be enjoined takes place." *McIntyre v. Traughber*, 884 S.W.2d 134, 137 (Tenn. Ct. App. 1994); *see also State ex rel. Lewis v. State*, 208 Tenn. 534, 538, 347 S.W.2d 47, 48 (1961) (finding that the court "would not consider the question where nothing could be done but remove an unfaithful officer from public office, when his office has expired. . . .").

The Tennessee Supreme Court has, however, recognized mootness exceptions. *Shaw v. Metro. Gov't of Nashville & Davidson Cnty.*, 651 S.W.3d 907, 912 (Tenn. 2022). As has been correctly noted by Mr. Krohn, these exceptions include the circumstance when the primary subject of a dispute has become moot, but collateral consequences to one of the parties remain. *Norma Faye*, 301 S.W.3d at 204. The paradigmatic illustration of collateral consequences as an exception to mootness occurs with an appeal of a conviction where the sentence has been served by the time of an appeal being considered, but the party continues to suffer collateral consequences stemming from the conviction. *See*, *e.g.*, Wayne R. LaFave et al., 7 Crim. Proc. § 27.5(a) (4th ed. 2022) (observing that "[t]he most significant barrier to finding an appeal moot after a sentence has been served is known as the collateral consequences exception. A case is not moot, notwithstanding full satisfaction of the sentence, if the defendant is still subject to a collateral legal disability as a result of his conviction").

We assume *arguendo* that Mr. Krohn is correct that there are continuing collateral consequences stemming from an order of protection having been granted against him in

2013. Even with this assumption on behalf of Mr. Krohn's position, the problem is that alleviating those collateral consequences runs squarely into the limits of the reach of the relief that Mr. Krohn informed the circuit court he was seeking.

During oral argument, the following exchange occurred in connection with exploring how the collateral consequences that Mr. Krohn asserts he continues to suffer from could be redressed in this case:

> Judge's Question: Mr. Krohn . . . I am struggling to see how the collateral consequences could be lifted here. . . . You mentioned stigma. . . . There is no order of protection. . . . It has been dissolved. It does not exist. What further action could a trial court take? Let's say it goes back. What could the trial court do to alleviate those collateral consequences that you are suffering. I understand that you saying that there are enduring collateral consequences of this. But, I am struggling to see how a trial court could remedy that.
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> Mr. Krohn: Very simply your honor. . . . If the trial court simply held that the initial petition was without merit and dismisses it, then these collateral consequences go away. I no longer have the stigma. . . .

In other words, the relief which Mr. Krohn argues would provide redress for his continuing collateral consequences is a declaration that the General Session Court erred in its initial decision to grant an order of protection. Krohn's case, however, suffers from a fatal defect. The circuit court did not understand him to be asking for such relief nor did he ask for such relief from the circuit court.

Following dismissal after more than five years of inaction from the parties, in seeking reinstatement of the case to the docket, Mr. Krohn specified for the circuit court what relief he was seeking. Mr. Krohn did not request a declaratory judgment from the circuit court declaring that the 2013 general sessions court should have never granted an order of protection. On appeal, he now asserts such relief would address the continuing collateral consequences of the original grant of an order of protection against him. However, before the circuit court, Mr. Krohn instead specified that he was seeking a declaratory judgment "that the Order to Extend is unlawful and wholly without legal effect" and that the "2013 Protection definitely expired on October 28, 2014."[2] In his

[2] Mr. Krohn also sought a declaratory judgment indicating "that any future order by a judge of the Court of General Sessions for Davidson County directing that a domestic violence order of protection issued against Respondent which has been appealed de novo to the Circuit Court shall remain in effect until the appeal has been resolved would be similarly unlawful and wholly without legal effect." Mr. Krohn noted in his briefing before the circuit court that he "possesses standing to seek . . . [this] component of the declaratory relief sought by this petition because of the significant possibility that Petitioner will

prayer for relief, Mr. Krohn again expressly "sought a declaration that the Order to Extend issued on October 29, 2013 is unlawful and without effect" and "a declaration that the 2013 Order of Protection issued on October 28, 2013 definitively expired on October 28, 2014 and is no longer in effect."[3] The circuit court ruled for Mr. Krohn on both of these matters, granting him this relief. The circuit court determined that the general session court's open-ended extension order (the Order to Extend) was invalid. The circuit court also determined that the order of protection expired on October 28, 2014, and is no longer in effect. Mr. Krohn did include in his prayer for relief a request for "any other relief to which Respondent might justly be entitled." He did not, however, inform the circuit court that he was seeking as a form of relief a declaration that the order of protection never should have been granted by the general sessions court. Accordingly, the circuit court concluded the matter had become moot.

There does not appear to be any error in the circuit court's apprehending of what Mr. Krohn stated in terms of the relief that he was seeking. Nevertheless, as noted above, Mr. Krohn insists that the circuit court erred and that his case is not moot based upon continuing collateral consequences. Mr. Krohn has indicated that these collateral consequences can be addressed through a form of relief of a declaration that he did not seek from the circuit court. An appeal is moot where the appellant has received from the circuit court the relief requested.[4] Accordingly, this matter has become moot.

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seek in the Court of General Sessions for Davidson County yet another domestic violence order of protection against Respondent after the expiration of the one contended presently to be in effect." Unfortunately, Ms. Krohn has passed away. With her death, this third component of relief is no longer at issue. Consequently, Mr. Krohn unsurprisingly has not addressed this matter on appeal in arguing for continuing justiciability of this case. Accordingly, this matter is not before this court.

[3] Mr. Krohn also sought in his prayer for relief an award of court costs. The circuit court concluded that under Tennessee Code Annotated section 36-3-617(a)(1) an award of court costs to Mr. Krohn would be improper. He has not argued on appeal that the circuit court erred in this determination; accordingly, this matter is not before this court.

[4] *See*, *e.g.*, *Bynum v. Savage*, 847 S.W.2d 705, 706 (Ark.1993) ("[T]he party asking us to consider an otherwise moot issue obtained exactly the relief she requested. A party who prevails has no ground for appeal."); *Rosa v. Fischer*, 87 A.D.3d 1252, 1253 (N.Y. App. Div. 2011) ("Given that petitioner has received all the relief requested in his petition and to which he is entitled, the matter is moot . . . . Although petitioner argues in his brief that the actual time computation was improper, he has not preserved this claim due to his failure to raise it in the petition."); *McCullough v. Eleventh Jud. Dist. Ct. in & for Cnty. of Pershing*, 520 P.3d 826 (Nev. 2022)("[I]t appears that petitioner has received the relief requested and this petition is moot."); *Patton v. Nevada Bd. of Parole Comm'rs*, No. 85239-COA, 2023 WL 1438406, at *2 (Nev. App. Jan. 23, 2023) ("As Patton received his requested relief, his claim became moot . . . ."); *State v. Thorpe*, 2021-NCCOA-701, ¶ 8, 281 N.C. App. 189, 191, 867 S.E.2d 406, 409 (N.C. Ct. App. Dec. 21, 2021) ("Because defendant . . . 'has . . . received the relief requested . . . this case is moot.'"); *Harris v. McCormick*, 2022-Ohio-2279, ¶ 2, 2022 WL 2373590, at *1 (Ohio Ct. App. June 29, 2022) ("This journal entry establishes that Harris has received his requested relief, a ruling on his motion, and that this

III.

Accordingly, we dismiss the appeal with costs taxed to Kenneth B. Krohn, the appellant.

JEFFREY USMAN, J.

procedendo action is moot."); *Cook v. State*, 858 S.W.2d 467, 473 (Tex. Crim. App. 1993) ("[W]hen appellant has been given all the relief he requested at trial, there is nothing to complain of on appeal.."); *see also NASD Dispute Resolution, Inc. v. Judicial Council of Cal.*, 488 F.3d 1065, 1068 (9th Cir. 2007) (holding that appeal was moot because other circumstances had already provided plaintiffs "the relief sought by them in this case"); *Sawad v. Frazier*, No. CIV. 07-1721 DSD/JJG, 2008 WL 1819089, at *1 (D. Minn. Apr. 23, 2008) (noting "she too has received the requested relief, and her claim is moot").