

NOT DESIGNATED FOR PUBLICATION

No. 124,787

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

D.A.W.,  
*Appellee,*

v.

B.R.S.,  
*Appellant.*

MEMORANDUM OPINION

Appeal from Dickinson District Court; BENJAMIN J. SEXTON, judge. Opinion filed March 3, 2023. Appeal dismissed.

*B.R.S.*, appellant pro se.

No appearance by appellee.

Before ISHERWOOD, P.J., ATCHESON, J., and TIMOTHY G. LAHEY, S.J.

PER CURIAM: In October 2021, D.A.W. filed a petition for protection from stalking, sexual assault, or human trafficking order against her neighbor, B.R.S. The district court held a hearing on the matter and while both parties appeared pro se, the district court never informed them of their right to counsel pursuant to K.S.A 60-31a05(a). At the close of evidence, the district court issued protection from stalking (PFS) orders against both parties that carried an expiration date of November 2, 2022.

B.R.S. appeals to this court and sets forth several allegations of error, but the PFS order has expired. He acknowledges that the lapse of the order renders his case moot, yet

he offers no argument to overcome that procedural hurdle in order to still obtain review of his claims. The appeal is therefore dismissed.

#### ANALYSIS

The relationship between neighbors B.R.S. and D.A.W. was less than idyllic. For the better part of three years, the enjoyment of their respective abodes was marred by allegations of lurking, surreptitious recordings, threats, harassment, and profane shouting matches that often-required intervention by law enforcement in order to be diffused. The animosity eventually swelled to such a degree that D.A.W. sought a protection from stalking (PFS) order against B.R.S. The district court conducted an evidentiary hearing on the matter during which both parties chose to simply represent themselves. There is no indication the court ever advised them of their right to have an attorney represent them as required by K.S.A. 2021 Supp. 60-31a05(a). At the end of the proceeding, the court found that the parties lacked any capability to peacefully coexist. It further determined that the evidence provided a credible basis to issue protection from stalking orders against both parties, to remain in effect until November 2, 2022.

B.R.S., continuing to represent himself, brought this appeal intending to challenge the district court's failure to advise the parties of their right to have counsel assist them during the PFS hearing. But the resulting order from that hearing has expired. B.R.S. does not attempt to hide this fact and candidly explains: "Unfortunately, by the time this court actually hears and rules on this case, the specified year entered in the order will have nearly expired as of November [2,] 2022, and absolutely NO rehearing will be required."

We exercise unlimited review over whether an issue is moot. *State v. Roat*, 311 Kan. 581, 590, 466 P.3d 439 (2020). Generally speaking, "Kansas appellate courts do not decide moot questions or render advisory opinions." *State v. Montgomery*, 295 Kan. 837, 840, 286 P.3d 866 (2012). "A case is moot when a court determines that "it is clearly and convincingly shown the actual controversy has ended, the only judgment that could be entered would be ineffectual for any purpose, and it would not impact any of the parties' rights."" *Roat*, 311 Kan. at 584 (quoting *Montgomery*, 295 Kan. at 840-41). The court must conclude that the requested relief would not affect any of the appellant's rights, with the understanding that "[t]he range of collateral interests that may preserve an appeal is wide." *Roat*, 311 Kan. at 594. Accordingly, dismissing a case as moot "must be exercised with caution and only upon due consideration of the wide variety of interests a party asserts." 311 Kan. at 591.

Even for times when a case is seemingly moot, this court may reach the merits if an exception applies in that the district court's judgment continues to affect the "vital rights" of a party. 311 Kan. at 596. A party attempting to invoke this exception carries the burden to identify specific adverse collateral consequences attributable to the expired order. *D.G. v. M.G.*, No. 123,342, 2021 WL 5990152, at \*2 (Kan. App. 2021) (unpublished opinion) (citing *Montgomery*, 295 Kan. at 841-42).

B.R.S. has not presented us with an argument that explains how the expired order will continue to have a negative impact on him. Thus, he has not fulfilled his burden to challenge the, now moot, order in a way that allows us to review his claim. We cannot raise that issue for him. "The premise of our adversarial system is that appellate courts . . . sit . . . as arbiters of legal questions presented and argued by the parties before them." *NASA v. Nelson*, 562 U.S. 134, 147 n.10, 131 S. Ct. 746, 178 L. Ed. 2d 667 (2011). "It is not the function of the appellate court to serve as advocate for any party to an appeal. . . . It would be unfair to the parties if it were otherwise." *Hoskinson v. Heiman*, No. 122,120, 2021 WL 2282688, at \*3 (Kan. App. 2021) (unpublished opinion). The lack of any

argument addressing an applicable exception to the mootness doctrine requires dismissal of B.R.S.'s appeal.

Appeal dismissed.