

IN THE COURT OF APPEALS OF IOWA

No. 7-242 / 96-1253

000289

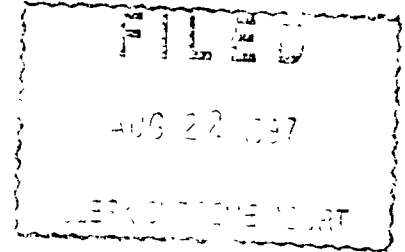
ANGELA KAY STROUD,

Appellee,

vs.

TONY KIM ONG,

Appellant.



Appeal from the Iowa District Court for Johnson County, Larry J. Conmey,
Judge.

Appellant appeals from a protective order entered in a domestic abuse action.

DISMISSED AS MOOT.

Maurine A. Braddock of Honohan, Epley, Braddock and Brenneman, Iowa
City, for appellant.

Susan Dulek, Iowa City, until her withdrawal, and then Perrie Naides, Iowa
City, for appellee.

Heard by Habhab, C.J., and Cady and Streit, JJ.

PER CURIAM

Tony Ong and Angela Stroud cohabited together off and on for four years. They are the parents of one minor child, Lisa Stroud, born July 17, 1993. On April 18, 1996, Angela filed a petition for relief from domestic abuse. She alleged Tony had slapped her, chased her in her car several times, threatened her with a knife on two occasions, and put tape on her mouth. She requested the trial court issue a protective order pursuant to Iowa Code chapter 236 and grant her temporary custody of Lisa.

Angela was granted an ex parte temporary protective order on the day she filed her petition. The order required Tony to stay away from Angela and granted her custody of Lisa until the final hearing. The order indicated Tony's visitation rights would be determined at the final hearing.

Tony received notice of the petition and ex parte order. Both parties appeared at the hearing pro se. Angela did not testify. Although Tony generally denied the allegations contained within the petition, when questioned by the court about individual allegations, he admitted some of them but explained his actions were either joking behavior, made in self defense, or otherwise taken in response to Angela's actions. He consented to the issuance of a protective order.

The court then addressed Tony's visitation rights. Angela requested visitation be supervised and expressed concerns about Tony's mental stability. The court

ordered the visitation to be supervised. The court explained to Tony that a number of local organizations could provide supervision and directed him to re-contact the Department of Human Services. Tony did not voice an objection to the supervised visits. The court instructed Tony to contact the court when arrangements had been made for the visitation.

The court entered a protective order on May 2, 1996. The order indicated it would expire May 2, 1997,¹ and granted Angela custody of Lisa and Tony unspecified supervised visitation until the expiration, modification, or vacation of the order.

Tony obtained legal counsel and filed a rule 179(b) motion and an application for unsupervised periods of physical care. Both motions assert Tony had filed a separate action to establish paternity and custody. The trial court denied the motions and indicated it would not address the issue of unsupervised visitation in the domestic abuse action.

On appeal, Tony argues Angela did not prove the allegations contained in the petition by a preponderance of the evidence as required by Iowa Code section 236.4(1) (1995). Tony argues the court made no finding that domestic abuse had occurred, a prerequisite for its authority to enter a protective order. *See* Iowa Code § 236.5. Tony also claims his right to due process was violated because the petition gave no notice that Angela was seeking supervised visitation and he was not given an

¹ *See* Iowa Code chapter 236.51(e)(1995) (protection order shall be for fixed period of time not to exceed one year).

opportunity at the hearing to address the appropriateness of such an award. Tony additionally argues the notice provided in the domestic abuse forms and orders unfairly favored Angela.

Angela argues Tony has not preserved error on the issue of unsupervised visitation since he did not request it at the hearing. She also alleges this matter is now moot as the protection order granting her custody of Lisa has expired.

At oral argument Tony argued this matter is not moot as the protective order issued by the trial court may cause negative legal ramifications for him. We reject his contentions.

Although we do not generally consider an action if it is moot, we may, for public policy reasons, reach an issue. *Shannon v. Hansen*, 469 N.W.2d 412, 414 (Iowa 1991). In determining whether to reach a moot issue, we consider (1) the public or private nature of the question, (2) the desirability of authoritative adjudication for the future guidance of public officials, and (3) the likelihood of future recurrence. *Id.*; see *First Nat'l Bank v. Heimke*, 407 N.W.2d 344, 346 (Iowa 1987) (public policy exception applied as case presented public question regarding farm mediation statute which was almost certain to recur, on which district courts had reached conflicting results); *Department of Gen. Servs. v. R.M. Boggs Co.*, 335 N.W.2d 408, 410 (Iowa 1983) (public policy exception applied where issue involved

trial court's denial of continuance as public concern delays in judicial process and likelihood of recurrence present).

We find that as the May 2, 1996 protective order expired May 2, 1997, the issues raised by Tony on appeal are now moot. An opinion of this court that the protective order was inappropriate or unconstitutional would be of no force or effect in the underlying controversy as the order has expired. *See In re Interest of B.B.*, 516 N.W.2d 874, 877 (Iowa 1994).

Our lawgiving function is carefully designed to be an appendage to our task of resolving disputes. When a dispute ends, the lawgiving function ordinarily vanishes because it is axiomatic that we ordinarily do not answer academic or moot questions. We certainly should not go out of our way to answer a purely moot question because of its possible political significance. We regularly decline to address constitutional issues unless their answers are necessary to dispose of the case. A case is moot when it no longer presents a justiciable controversy; our test of mootness is whether an opinion would be of force or effect *in the underlying controversy*.

Larson v. Employment Appeal Bd., 474 N.W.2d 570, 572 (Iowa 1991) (citations omitted) (emphasis added). We find any speculative ramifications of the trial court's issuance of the protective order does not warrant our determination of issues which would be of no force or effect in the underlying controversy.

APPEAL DISMISSED AS MOOT.