IN THE COURT OF APPEALS OF IOWA

No. 0-176 / 99-1079
Filed May 31, 2000

JEAN ANN WILLGER, on behalf of Theodore, Leah, Thomas and Samuel Willger, Children,
Plaintiff-Appellee,

vs.

SCOTT ALAN WILLGER,
Defendant-Appellant.

FILED
MAY 31 2000
CLERK SUPREME COURT

Appeal from the Iowa District Court for Allamakee County, John Bauercamper, Judge.

The defendant appeals from the district court order entering a protective order against him. **APPEAL DISMISSED.**

Jeffrey L. Swartz of Jacobson, Bristol, Garrett & Swartz, Waukon, for appellant.

Bradley D. Shidler of Miller, Pearson, Gloe, Burns, Beatty & Cowie, P.C., Decorah, for appellee.

Considered by Sackett, C.J., and Huitink and Vaitheswaran, JJ.

VAITHESWARAN, J.

Scott Willger appeals a domestic abuse protective order, contending (1) Iowa Code chapter 236 (1997) does not afford relief on behalf of minor children and (2) his former wife Jean Willger did not prove he committed domestic abuse assault against his children. We dismiss the appeal as moot.

I. Background Facts and Proceedings

Scott and Jean Willger married in 1982 and subsequently had four children. They divorced on March 10, 1997. Pursuant to a stipulation incorporated into the decree, Jean assumed physical care of the children. The parties agreed to participate in family counseling to address Scott's relationship with the children. They further agreed Scott would receive only minimal visitation until a counselor approved more expansive visits.

The parties engaged in extensive counseling which culminated in a therapist's report dated February 24, 1999. The therapist opined Scott suffered from a deep seated need to be accepted, which hindered his ability to develop a positive relationship with his children. He recommended Scott receive additional individual therapy to address this problem. He further recommended Scott have no "face to face contact" with the children for the foreseeable future, but be given the opportunity to send letters and gifts to them. In an order dated March 15, 1999, the district court accepted the therapist's recommendations

In April 1999, Jean sought to have Scott held in contempt. She alleged in part that Scott had violated the "no face to face contact" order by attending the children's school events, extracurricular activities, and church events. The same

month, Jean also filed a petition for relief from domestic abuse on behalf of her four children. She alleged:

> Scott was very angry, controlling, verbally, and physically abusive. The children and I were so relieved when he left Oct. 20, 1996. Since that time, despite court orders, Scott has never left us alone, using phone calls, letters, and verbal abuse. We have felt stalked and harassed.

The district court entered a temporary protective order and scheduled a combined hearing on the contempt application and domestic abuse petition. Following the hearing, the court found Scott in contempt and imposed a sentence. Scott does not challenge this ruling on appeal. In a separate ruling, the court found Scott committed domestic abuse assault against his children and represented a credible threat to their physical safety. The court ordered Scott to have no contact with his children. The order further stated, "[t]his order shall remain in effect until April 30, 2000 (not more than one year) unless it is modified, terminated or superseded by written order of the court." The district court later denied Scott's motion to amend and enlarge findings pursuant to Iowa Rule of Civil Procedure 179(b). This appeal followed and the case was transferred to our court.

On April 19, 2000, Jean filed with the Iowa Supreme Court a motion to stay termination of the protective order, pending adjudication of the appeal. Our court deemed the motion a petition to amend the order under Iowa Code section 236.5(e). We noted that the order could only be amended after notice and a hearing before the district court, and remanded the case for consideration of whether the court should extend its protective order. On remand, Jean dismissed the motion to stay termination of the protective order.

II. Mootness

"A case is moot if it no longer presents a justiciable controversy because the issues involved are academic or nonexistent." *Women Aware v. Reagen*, 331 N.W.2d 88, 92 (Iowa 1983). We may find a case is moot even if the appellee has not moved to dismiss on this ground. *In re Troester's Estate*, 331 N.W.2d 123, 127 (Iowa 1983). Where a case no longer presents a justiciable controversy, we may nevertheless consider the issues raised on public policy grounds. *Polk County Sheriff v. Iowa Dist. Ct.*, 594 N.W.2d 421, 425 (Iowa 1999).

We conclude this case is moot, as the protective order from which Scott appealed expired on April 30, 2000. Scott has not asked us to review the case on public policy grounds. Accordingly, we dismiss the appeal. We decline to award Jean appellate attorney fees and tax costs equally to both parties.

APPEAL DISMISSED.