

NOT DESIGNATED FOR PUBLICATION

No. 101,372

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

MICHELLE RICE,
Appellee,

v.

DANIEL RICE,
Appellant

MEMORANDUM OPINION

Appeal from Butler District Court; MICHAEL E. WARD, judge. Opinion filed
March 12, 2010. Dismissed.

Darren K. Patterson, of Darren Patterson, Chartered, of El Dorado, for appellant.

Robert J. Lane, of Davis, Manley & Lane, L.L.C., of El Dorado, for appellee.

Before, LEBEN, P.J., CAPLINGER and BUSER, JJ.

Per Curiam: Daniel Rice appeals from the issuance of a protection from abuse (PFA) order in favor of his former wife, Michelle Rice. Daniel contends the evidence was insufficient to support the order.

Preliminarily, Michelle contends the issue is moot since the order has expired and not been reissued. We agree.

The record reveals that the district court granted temporary orders of protection in January 2008 and conducted a trial on May 22, 2008, at which both Daniel and Michelle testified. The court issued a final PFA order on May 22, 2008, which by its terms expired at midnight on May 22, 2009. Daniel timely moved to alter or amend the judgment, which motion was denied. Daniel appeals from the PFA order and the denial of his motion to alter or amend.

Daniel received several extensions of time to file his appellate brief, ultimately filing his brief on May 20, 2009, 2 days before the PFA order expired. On June 19, 2009, Michelle moved to dismiss the appeal as moot, citing the expiration of the PFA order. Daniel did not respond to the motion to dismiss. However, the motions panel of this court denied the motion "on present showing."

Michelle again raises the mootness issue in her response brief on appeal. Daniel has failed to file a reply brief or respond to this preliminary and dispositive issue.

Generally, an appellate court does not decide moot questions or render advisory opinions. *Smith v. Martens*, 279 Kan. 242, 244, 106 P.3d 28 (2005). A case is moot when the controversy between the parties no longer exists and any judgment of the court would be ineffective. *State ex rel. Slusher v. City of Leavenworth*, 285 Kan. 438, 454, 172 P.3d 1154 (2007); *Rodarte v. Kansas Dept. of Transportation*, 30 Kan. App. 2d 172, 183, 39 P.3d 675, *rev. denied* 274 Kan. 1113 (2002).

In support of her argument that this appeal is moot, Michelle cites *Skillett v. Sierra*, 30 Kan. App. 2d 1041, 53 P.3d 1234, *rev. denied* 275 Kan. 965 (2002). There, the defendant appealed the issuance of a PFA order restraining him from contacting the plaintiff and her daughters. The plaintiff argued the appeal was moot because the PFA order had expired, but the defendant responded that an exception to the mootness rule applied because the PFA order would continue to affect his right to possess firearms under federal and state law. 30 Kan. App. 2d at 1046-47.

Although the panel in *Skillet* recognized the existence of exceptions to the general

rule that the court does not decide moot questions, it nevertheless rejected the defendant's suggested exception. The court reasoned that because state and federal firearm possession statutes apply only while a PFA order is in effect, those statutes could not affect the defendant's right to possess firearms once the PFA order expired. 30 Kan. App. 2d at 1047.

Here, it is undisputed that the PFA order expired more than 10 months ago and the record reveals no effort to renew the order. And despite at least two opportunities to respond to the mootness issue, Daniel has failed to do so. Nor has Daniel suggested that he suffered any collateral consequence as a result of the entry of the PFA order or that any of the exceptions to the mootness doctrine apply.

Under these circumstances, we dismiss this appeal as moot.