

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 2442

September Term, 2015

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COLVIN I. BERT

v.

GAIL L. DIXON

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Eyler, Deborah S.,  
Nazarian,  
Salmon, James P.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Nazarian, J.

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Filed: May 11, 2017

\* This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Colvin Bert's ex-girlfriend sought a temporary protective order against him in the District Court for Howard County. The court granted a temporary order pending a hearing on a final order, then, after a contested hearing, denied a final order. Mr. Bert then filed a Request to Shield and a Petition to Rescind the temporary protective order. At the hearing on those motions, Mr. Bert withdrew his Request to Shield, and the court denied the Petition on the ground that the temporary protective order had been rendered moot by the order denying the permanent order. Mr. Bert appealed the denial to the Circuit Court for Howard County, which reached the same conclusion. Mr. Bert appeals again, and we affirm.

## I. BACKGROUND

Based on a petition filed by his former girlfriend, the district court granted an *ex parte* temporary protective order against Mr. Bert. The temporary order was entered on August 3, 2015 and was scheduled, by its terms, to expire on August 10. The details of the petition and the allegations are not important for our purposes; what does matter is that the court held a hearing on a final protective order on August 10, 2015 and, at the conclusion, denied a final order on the ground that the petitioner had failed to meet the required burden of proof.

The next day, in what appears to be an effort effectively to expunge the temporary order, Mr. Bert filed a Motion to Shield the Protective Order. Shortly thereafter, he filed a petition seeking rescission of the temporary protective order.

The court held a hearing on the Motion to Shield on August 27, 2015. Mr. Bert argued that he should not be subject to the collateral consequences of the temporary order, such as being listed in the State Domestic Violence Central Repository,<sup>1</sup> because the temporary order should never have been granted in the first place, and that Md. Code (1999, 2006 Repl. Vol., 2016 Supp.), § 4-507 of the Family Law Article (“FL”) allows the court to rescind a temporary order. The court denied the petition for rescission of the temporary order on the ground that the temporary order had expired as of the hearing on the final order, leaving nothing to rescind.<sup>2</sup> Mr. Bert appealed this decision to the circuit court.

On October 6, 2015, the circuit court determined that because Mr. Bert withdrew his own Motion to Shield and the final protective order was denied, there was no appealable issue (and, therefore, vacated a domestic violence hearing scheduled for a few days later). Mr. Bert then filed a Motion to Correct Clerical Mistake and for Related Relief, arguing that the October 6<sup>th</sup> Order did not address the Petition to Rescind. The court denied relief because FL § 4-507(a)(1) only allows the court to modify or rescind a protective order during the term of the protective order, which had expired on August 10, 2015 and, therefore, could not be rescinded. Mr. Bert timely appealed.

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<sup>1</sup> See Md. Code (1999, 2006 Repl. Vol., 2016 Supp.), § 4-512.1 of the Family Law Article (“FL”).

<sup>2</sup> Mr. Bert withdrew the shielding request without prejudice at the end of the hearing.

## II. DISCUSSION

Mr. Bert raises a multitude of issues on appeal,<sup>3</sup> but they all boil down to the contention that the circuit court abused its discretion in denying Mr. Bert's motion to rescind the temporary protective order. We accept the circuit court's factual findings unless they are clearly erroneous, *Piper v. Layman*, 125 Md. App. 745, 754 (1999), and review the ultimate conclusion of the circuit court *de novo* by examining the applicable law and applying it to the facts of the case. *Id.* at 754. We normally do not consider moot questions, *see, e.g., State v. Ficker*, 266 Md. 500, 507 (1972), and “[a] case is considered moot when ‘past facts and occurrences have produced a situation in which, without any future action, any judgment or decree the court might enter would be without effect,’” *La Valle v. La Valle*, 432 Md. 343, 351 (2013) (quoting *Hayman v. St. Martin's Evangelical Lutheran Church*, 227 Md. 338, 343 (1962)). That said, we may consider an otherwise

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<sup>3</sup> Mr. Bert listed the following Questions Presented in his brief:

1. Did Bert Have Right to Appeal Denial of Petition to Rescind?
2. Did the District Court judge abuse his discretion when he issued the temporary protective order?
3. Did the District Court fail to forward to the Circuit Court the ‘complete’ record in the Dixon vs Bert appeal to the Circuit Court?
4. Did the Circuit Court err when it denied Bert's Appeal?
5. Did the Circuit Court deny Bert's due process rights when it ordered on October 6, 2015 that Bert's October 9, 2015 Domestic Violence hearing shall be vacated?
6. Did the Circuit Court err when it ordered on November 13, 2015 that Bert's October 16, 2015 Motion is denied?

moot question if the lower courts' decisions place a stigma on the appellant's record. *Piper*, 125 Md. App. at 749.

Mr. Bert contends that the circuit court erred in its interpretation of FL § 4-507, but he misapprehends the court's ruling. He's right that FL § 4-507(b)(1) permits appeals to the circuit court from district court protective or peace orders. But then he asks in his brief whether it was "the legislature[']s intent to remove forever the right of a respondent to review the issuance of a temporary protective order," and that's the wrong question. Modification or rescission of a protective order must occur during the term of the order. FL § 4-507(a)(1). Put another way, a party can challenge a temporary protective order (or, generally speaking, any other order) while that order remains in effect. Once it expires, there is nothing left to rescind and no relief for an appellate tribunal to provide.

The temporary protective order at issue expired on August 10, 2015. Mr. Bert filed his motion to rescind the temporary protective order on August 20, 2015, after the term of the temporary protective order expired and after the petition for a final protective order had already been denied. We agree with the circuit court, then, that Mr. Bert's request to rescind the by-then-moot temporary order came too late.

That normally would end the inquiry, but Mr. Bert asks us nevertheless, citing case law and the "stigma" of the temporary order, to consider his rescission request on the merits. In a similarly situated case, we held that even though the case was moot, the circuit court's decision to grant a final protective order "place[d] a stigma upon [the appellant's] record, and [that] . . . he is entitled to seek exoneration from this stigma at the appellate

level.” *Piper*, 125 Md. App. at 749. The key difference in this case, though, is that Mr. Bert won at the final order stage. The resulting domestic violence repository entry will reflect reality: the district court entered a temporary protective order against him, but never entered a final order. To the extent he suffers a stigma from that entry, it results from the adjudicated result of the case. We recognize that Mr. Bert disagrees with the district court’s decision to grant the temporary order, but it is not our place to second-guess the district court’s finding that the factual record justified temporary relief—relief that, again, expired a week later, at the hearing at which he prevailed on the facts.

**JUDGMENT OF THE CIRCUIT  
COURT FOR HOWARD COUNTY  
AFFIRMED. APPELLANT TO PAY  
COSTS.**