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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

BRIAN P. CARR,

Appellant,

v.

KARYN _____

Respondent.

No. 32671-0-II/32811-9-II

UNPUBLISHED OPINION

PENOYAR, J. — Brian P. Carr appeals a domestic violence protective order against him. He argues that there was no basis of violence or threats of violence and that court commissioners lack authority to issue protective orders. Carr also argues that his due process rights were violated and that the trial court erred in denying his request for a protective order. We affirm.

FACTS

In August 2004, Karyn _____) filed for divorce and asked her husband, Brian P. Carr (Carr), to move out of her house. Carr refused to sign the divorce papers, and refused to move out of _____'s house until he could secure alternate housing. He moved out of _____; home forty-five days after she asked him to leave.

Carr began attending social functions where _____ was also present. _____ asked him not to attend, but he refused to "leave her alone." Report of Proceedings (RP) (10/27/04) at 4. Carr also accepted a job approximately four blocks away from _____'s workplace and moved into an apartment just down the street from her home. On September 28, Carr called _____ late at night stating he needed to retrieve some belongings from her home. He arrived at her door at 11:30 P.M. and forced himself into the house even though she tried to shut the door to keep him out.

On October 7, a package addressed to Carr was delivered to _____'s residence. She brought it inside the house and left town on a trip. Carr called her repeatedly, stating he needed the package immediately. _____ told him she would arrange for him to pick it up when she returned. Carr stated he was going to her house to get it. When _____ returned to her house, the package, a rolling pin, a cord, and a light fixture were all missing. _____ filed a police report.

On October 15, _____ received a temporary protective order against Carr. In her petition, _____ claimed that Carr had committed residential burglary at her home on October 7; that he was stalking and harassing her through unwanted contact, phone calls, and emails; and that he stated he intended to harass and upset her. _____ stated that she experienced severe migraine headaches as a result of the stress Carr's actions caused and that a neurologist was treating her for her condition.

On October 27, Carr and [redacted] each testified about whether the temporary protective order should be extended to a period of one year. The trial court issued the protective order, prohibiting Carr from causing physical harm (including harassing, threatening, or stalking) to [redacted]; coming near or having any contact whatsoever with her (except as related to the couple's dissolution); entering or being within 250 feet of [redacted]'s current residence; and knowingly coming within, or knowingly remaining within, 300 feet of Hunting's person, workplace, day care, or school of [redacted]'s son.

The trial court found that Carr's actions constituted domestic violence, trespass, and stalking. Carr disputed the findings, to which the court stated, "She is terrified. If you look at her, I can find that just looking at her . . . She's terrified, can't you see that?" RP (10/27/04) at 8-9. The protective order expired on October 27, 2005, and is no longer in effect.

Carr also petitioned for a temporary protective order and a permanent protective order against [redacted]. Carr alleged that [redacted] twice threw a cup of coffee at him and that she struck a plate of food that Carr was holding. He did not claim any resulting injuries. The trial court denied Carr's petitions.

Carr filed numerous subsequent motions in trial court.¹ The court scheduled a hearing for February 11, 2005 but, on February 16, 2005, the trial court found that Carr's filings "created an unreasonable burden for court staff" and denied Carr's request for a hearing. Clerk's Papers

¹ On November 23, 2004, Carr filed a motion for review of a protective order, which was denied (CP 139); on December 29, Carr filed an affidavit for record; on December 30, 2004, Carr filed a motion to revise; on January 6, 2005, Carr filed a motion to revisit and consolidate; on January 11, 2005, Carr filed a motion, memorandum in support, and affidavit, to reschedule and consolidate; on January 14, 2005, he filed a motion requesting decision and fact finding hearing, which was denied; on January 19, 2005, he filed another temporary protective order, which was denied; and on April 1, 2005, Carr filed an affidavit of jurisdiction.

(CP) at 36. The court stated that it would schedule a hearing only if a judge found an adequate basis in law and fact.

ANALYSIS

I. Carr's PROTECTIVE ORDER

Carr, pro se, raises numerous arguments and mainly seems to dispute that there were no valid grounds to issue the protective order against him. He asks this court to reverse the trial court's issuance of the protective order. He argues that his actions did not constitute stalking and that the crime of trespass was not relevant. He claims he did not threaten [redacted]. He argues that, even though the protective order expired on October 27, 2005, the issue is not moot because the protective order may be publicly disseminated.

A case is considered moot if there is no longer a controversy between the parties, if the question is merely academic, or if a substantial question no longer exists. *Pentagram Corp. v. City of Seattle*, 28 Wn. App. 219, 223, 622 P.2d 892 (1981) (citing *State ex. rel. Chapman v. Superior Court*, 15 Wn.2d 637, 131 P.2d 958 (1942); *Grays Harbor Paper Co. v. Grays Harbor County*, 74 Wn.2d 70, 442 P.2d 967 (1968); *Sorenson v. Bellingham*, 80 Wn.2d 547, 496 P.2d 512 (1972)). A case is not moot if a court can still provide effective relief. *State v. Turner*, 98 Wn.2d 731, 733, 658 P.2d 658 (1983) (citing *Pentagram Corp.*, 28 Wn. App. at 223). Even though the protective order has expired, Carr claims the court can still provide relief in correcting the record as to his propensity to domestic violence.

This case arguably is not moot, since part of the relief Carr seeks is to cleanse his record of the protective order. Thus, we will review the substance of Carr's claims.