ARKANSAS COURT OF APPEALS

DIVISION IV
No. CV-13-983

	Opinion Delivered: March 12, 2014
KRYSTAL BOHANNON APPELLANT	APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, SEVENTEENTH DIVISION [NO. DR-13-2278]
V. EDWARD FIELDS ROBINSON APPELLEE	HONORABLE MACKIE M. PIERCE, JUDGE AFFIRMED

RHONDA K.WOOD, Judge

Krystal Bohannon appeals a three-year protective order that restrained her from contact with appellee Edward Robinson and their infant son A.R. Bohannon argues that the circuit court erred by entering a final order of protection without sufficient evidence to support a finding of domestic abuse and that the circuit court's denial of her motions for post trial relief and to set aside the final order of protection was an abuse of discretion. We affirm the circuit court.

On June 1, 2013, Bohannon was in an accident while driving under the influence with three children in her car. Bohannon was arrested and taken to the Jefferson County Jail. Robinson immediately filed a petition for an order of protection on behalf of A.R., citing the June 1 accident as well as a previous accident in 2013 in which Bohannon was driving under the influence of drugs with A.R. and other children in her car. The circuit

court issued an ex parte order of protection, which was served along with the petition to Bohannon in the Jefferson County Jail on June 4, 2013.

The ex parte order provided notice to Bohannon that a hearing was set on Robinson's petition for June 17, 2013. Robinson appeared pro se at the hearing, and Bohannon failed to appear despite proper notice. Following Robinson's testimony at the hearing, the court found sufficient evidence to establish domestic abuse, entered a protective order against Bohannon for a period of three years, and awarded temporary custody of A.R. to Robinson. On June 28, 2013, Bohannon filed post trial motions seeking to have the final order of protection set aside and a new trial, contending she was not present because she was incarcerated at the time of the hearing. The court conducted a hearing on these motions on July 31, 2013, and the circuit court subsequently entered an order denying the motions. Bohannon filed a timely notice of appeal.

Our supreme court has held that if there is timely service of a defendant under the Arkansas Domestic Abuse Act, any objections, claims, or arguments that the defendant desires to make should be made at, or prior to, the hearing on the final order of protection. *Wills v. Lacefield*, 2011 Ark. 262. If the defendant fails to do so, the issues are not preserved for our review on appeal. *Id.* There is no indication in the record that Bohannon filed any pleading prior to the final hearing in this case, and the record is clear that she did not attend the hearing in which the final order of protection was granted nor did she request a continuance. Pursuant to *Wills*, we do not have the authority to review the issues she presents on appeal. Accordingly, we affirm.

Affirmed.

HARRISON, J., agrees.

WHITEAKER, J., concurs.

PHILLIP T. WHITEAKER, Judge, concurring. I agree with the majority's determination that we lack the authority to review the issues that Bohannon presents on appeal. Our supreme court has held that proceedings under the Domestic Abuse Act are special proceedings and that the rules of civil procedure do not apply. *Wills v. Lacefield*, 2011 Ark. 262. As a result, when a defendant in a domestic-abuse proceeding is timely served, all objections, claims, or arguments must be made at, or prior to, the hearing on the final order of protection. *Id.* Here, Bohannon was properly served in this domestic-abuse proceeding, and she did not raise any objections, claims, or arguments at, or prior to, the hearing on the final order of protection. Because all of her arguments, including the constitutional ones, were raised in a posttrial motion, we do not have the authority to review the issues she presents on appeal.

However, I write separately to outline how this decision, based on these facts, creates a miscarriage of justice that cannot be remedied by the appellant or the intermediary appellate court. In essence, this order changes custody of the child from Bohannon to Robinson for a period of three years without providing the customary safeguards under the domestic-relations statutes. First, custody of the child was placed with Robinson without so much as a determination of paternity. Robinson filed his petition seeking an order of protection on behalf of a child. The petition alleged (1) that he and Bohannon had a dating relationship that produced a child, (2) that he is the father of the child and that Bohannon is the mother, and (3) that no order pertaining to the custody of the child for whom he was seeking the order of protection existed. Thus, apparently by his own admission, Robinson is at best a putative father of the child in question. By law, Bohannon would be the statutory custodian of the

child born outside of marriage. Ark. Code Ann. § 9-10-113(a) (Repl. 2009). Had Robinson followed the normal procedure for seeking custody through a paternity action, he would have had to prove three things before obtaining custody: 1) that he was a fit parent to raise the child; 2) that he has assumed his responsibilities for the care and support of the child; and 3) that it is in the best interest of the child for him to have custody. Ark. Code Ann. § 9-10-113(c). Moreover, had Robinson followed the normal procedure for seeking custody through paternity, the rules of civil procedure and all their due-process guarantees would have been afforded to Bohannon. Because this was a "special proceeding" to which the rules of civil procedure did not apply, Robinson was able to obtain "temporary custody" for a period of three years, over a child for whom he has never been adjudicated the father, with only thirteen days' notice to the mother and statutory custodian and without having to prove anything other than the assertions of domestic abuse.

Second, while I recognize that the goals of the Domestic Abuse Act are laudable and serve an important purpose in protecting our citizens, I do not believe the Act should be utilized in situations such as this when other remedies are available that provide greater protection for the child. As stated in *Wills*, *supra*, at 4–5:

> The purpose of the Domestic Abuse Act is set forth in the act, which provides in pertinent part that the "General Assembly hereby finds that this chapter is necessary to secure important governmental interests in the protection of victims of abuse and the prevention of further abuse through the removal of offenders from the household and other injunctive relief *for which there is no adequate remedy in current law.*"

(Emphasis added.)

Here, Robinson had an adequate remedy at law—a cause of action for paternity; but, because he chose to utilize this special proceeding, he was able to (1) obtain custody of an

infant child; (2) on an expedited basis; (3) while the mother was incarcerated and unable to attend the hearing to dispute his claims; (4) without proving paternity; (5) without proving his fitness as a parent; and (5) without a determination that custody was in the best interest of the child. While I agree that the procedural posture of how this case came before us prevents a reversal, I firmly believe that there has been a miscarriage of justice in this case.

Dustin A. Duke, Center for Arkansas Legal Services, for appellant.

No response.