

Cite as 2023 Ark. App. 512  
**ARKANSAS COURT OF APPEALS**  
DIVISION III  
No. CV-22-387

JEREMY WRIGHT

APPELLANT

Opinion Delivered November 8, 2023

V.

APPEAL FROM THE WHITE  
COUNTY CIRCUIT COURT  
[NO. 73DR-21-321]

CATRINA WRIGHT

APPELLEE

HONORABLE CRAIG HANNAH,  
JUDGE

AFFIRMED

---

**ROBERT J. GLADWIN, Judge**

This is an appeal from a final order of protection entered by the Circuit Court of White County in favor of appellee, Catrina Wright (“Catrina”) and against the appellant, Jeremy Wright (“Jeremy”) for the term of one year. In this one-brief appeal, Jeremy argues that the circuit court lacked personal jurisdiction over him because there was no valid service of process; thus, the final order of protection must be reversed; and furthermore, that the circuit court abused its discretion in its denial of his motion for reconsideration.

I. *Background Facts*

On April 20, 2021, Catrina filed a petition for an ex parte temporary order of protection against Jeremy. In an affidavit accompanying the petition, Catrina alleged that she and Jeremy had been married for twenty-six years, and their marriage had consisted of controlling and fearful acts by Jeremy that had escalated in the last three months.

Specifically, Catrina attested that Jeremy verbally threatened to kill her; called her parents and threatened to do the same; and threatened to ruin her career. Attached to the petition were text messages from Jeremy to Catrina that documented his threat to kill her the next time he saw her. A summons for Jeremy was issued by the White County Circuit Clerk on April 28.

Catrina filed an amended petition for order of protection on June 3. She listed several specific threats she received from Jeremy, including, but not limited to, the following (1) he stated he was going to shoot her between the eyes, then kill himself; (2) he sent a picture via text with the barrel of his rifle in his mouth; (3) he sent a text saying that he was going to “come after” her father; and (4) he sent a text that he was going to kill her when he returns home. Documentation of the threats were attached to the amended petition. Regarding physical abuse, Catrina alleged that Jeremy would “bow up” to intimidate her; had spit in her face; punched holes in the wall by her; had thrown furniture at her; and had shot a gun above her head during an argument. The petition requested that the court exclude Jeremy from Catrina’s residence and her place of employment; prohibit Jeremy from any contact directly or through an agent; and require Jeremy to pay filing fees, service fees, court costs, and Catrina’s attorney fees.

On June 7, the circuit court entered an ex parte order of protection, effective until June 29. The order advised Jeremy to appear before the court on June 29 at 9:00 a.m. On June 24, Justin G. Mercer (Mercer) filed an entry of appearance on behalf of Jeremy and a simultaneous motion for continuance of the hearing set for June 29, explaining that Jeremy

was currently working in Lubbock, Texas, and unable to attend. In his motion, Jeremy states “[t]hat the Court has jurisdiction over the parties and the subject matter herein.” The circuit court denied Jeremy’s request for a continuance; however, an ex parte order of protection was later entered rescheduling the hearing to August 24.

The hearing commenced on August 24; Mercer appeared on behalf of Jeremy as did John Bell (Bell), who entered his appearance on said date as Mercer’s co-counsel. Bell noted a preliminary objection, stating that his appearance was “necessitated by the fact that Mr. Wright was unaware that a continuance had been requested and that he had—his attorney had agreed to waive service.” Furthermore, Bell argued:

I understand that Mr. Mercer had previously sent an email in which he agreed to waive service on behalf of Mr. Wright. I would also note that the sheriff’s office continued to attempt service on Mr. Wright even after this new hearing was scheduled, the return of service “non est” on August 11th. In any event, Your Honor, whatever has happened has happened, and I would just like to reserve whatever rights Mr. Wright has to object to the service of process up to this point and then allow you—all to proceed, and depending upon how the Court rules, then ask the Court to revisit the service issue.

In response, Katrina’s counsel maintained that Mercer accepted service on behalf of Jeremy and caused to be filed a motion for continuance within 120 days of the filing of the petition. The court noted Bell’s objection, and the hearing commenced with Katrina’s testimony. At the conclusion of the hearing, the circuit court found that Katrina had a reasonable belief to be fearful of Jeremy and granted her a one-year order of protection. The court also held that service was proper.

Jeremy filed a motion for reconsideration or, in the alternative, motion to dismiss for lack of personal jurisdiction and for stay of entry of order on August 25. Attached to the motion was Jeremy's affidavit stating, "[A]t no point did I indicate that I would waive service of process," and "I stand on my assertion of my rights to contest the personal jurisdiction of the Court as raised by my counsel at the hearing on August 24, 2021." Also attached to the motion was an affidavit of J.T. Skinner—the attorney representing Jeremy in the divorce proceedings—indicating that he had advised Catrina's counsel he could not agree to accept service on Jeremy's behalf and, further, that he advised Jeremy he was under no obligation to appear before the court unless and until he was served.

During an email exchange between both parties' counsel and the circuit court, Bell asked the court to hold off on filing the final order of protection until after it had the opportunity to review the motion for reconsideration. Bell highlighted the 2019 amendment to Arkansas Rule of Civil Procedure 4(l) requiring any waiver of service to be in writing and filed with the clerk's office. In response, the court declared, "I don't think service was waived. His attorney accepted service based upon the facts that have been presented."

On August 26, the court entered a final order of protection for a one-year period, effective until August 24, 2022. On September 20, the court entered an order denying Jeremy's motion for reconsideration or, in the alternative, motion to dismiss for lack of personal jurisdiction. On March 17, 2022, for reasons unrelated to this appeal, the circuit court granted Jeremy's motion for extension of time to file a notice of appeal. Jeremy filed

his notice of appeal on March 28, within the time prescribed by the court; this appeal followed.

## II. *Standard of Review*

Appellate courts review a circuit court's factual conclusions regarding service of process under a clearly erroneous standard. *Eliasnik v. Y & S Pine Bluff, LLC*, 2018 Ark. App. 138, 546 S.W.3d 497. Moreover, when the issue presented involves the correct interpretation of an Arkansas court rule, the issue is a question of law that the appellate court reviews de novo. *Holliman v. Johnson*, 2012 Ark. App. 354, 417 S.W.3d 222; *Solis v. State*, 371 Ark. 590, 269 S.W.3d 352 (2007).

## III. *Points on Appeal*

On appeal, Jeremy maintains that the final order of protection and all intermediate orders affecting the resulting final order should be reversed and dismissed because there was no valid service of process. Specifically, Jeremy argues (1) that the Domestic Abuse Act requires valid service of process under Ark. R. Civ. P. 4; (2) that statutory service requirements must be strictly construed; and (3) that he never waived service requirements. Additionally, Jeremy contends that the circuit court abused its discretion in denying his motion for reconsideration.

## IV. *Discussion*

### A. Mootness

As a threshold matter, we first briefly address the issue of mootness. Generally, a case becomes moot when any judgment rendered would have no practical effect upon a then

existing legal controversy. *Davis v. Brushy Island Pub. Water Auth.*, 375 Ark. 249, 290 S.W.3d 16 (2008). Here, the one-year final order of protection was entered on August 26, 2021, and expired on August 24, 2022. However, pursuant to our holding in *Poland v. Poland*, 2017 Ark. App. 178, 518 S.W.3d 98, Jeremy's appeal of the expired final order of protection is not moot due to the adverse collateral consequences that attend a finding of domestic abuse. *See also Kankey v. Quimby*, 2020 Ark. App. 471, 611 S.W.3d 671.

### B. Final Order of Protection

For his first argument on appeal, Jeremy contends that the final order of protection and all prior ex parte orders were entered without personal jurisdiction because Catrina failed to properly effect service. In support, he cites the Domestic Abuse Act, which states in pertinent part in Arkansas Code Annotated section 9-15-204(b)(1) (Supp. 2023), that

[s]ervice of a copy of the petition, the ex parte temporary order of protection, if issued, and the notice of the date and place set for the hearing described in subdivision (a)(1) of this section shall be made upon the respondent:

(A) At least five (5) days before the date of the hearing; and

(B) In accordance with the applicable rules of service under the Arkansas Rules of Civil Procedure.

Therefore, Jeremy argues that because the statute expressly incorporates the rules of civil procedure governing service of process, strict construction of Ark. R. Civ. P. 4 is required.

In *Wills v. Lacefield*, our supreme court held that proceedings filed under the Domestic Abuse Act are special proceedings; therefore, to the extent that the statutes creating the

special proceedings provide for a procedure that is different from our rules of civil procedure, the rules of civil procedure do not apply. 2011 Ark. 262. Here, a discussion regarding any purported conflict between Ark. Code Ann. § 9-15-204(b)(1) and our rules of civil procedure is unnecessary.

Mercer filed an entry of appearance on behalf of Jeremy on June 24, 2021. Therein, Mercer instructed the court and opposing counsel to copy him “with any and all future communications in this case.” Additionally, Mercer filed a motion to continue the June 29 hearing, stating that he had been retained on June 24, and Jeremy was unable to attend the hearing due to work. Importantly, Jeremy asserted in the motion that the circuit court had jurisdiction over the parties. It is well-established that service of valid process is necessary to give a court jurisdiction over a defendant; however, the defense of personal jurisdiction may be waived by the appearance of the defendant without raising an objection. See *Goodson v. Bennett*, 2018 Ark. App. 444, at 7, 562 S.W.3d 847, 855. This court “has long recognized that any action on the part of a defendant, except to object to jurisdiction, which recognizes the case in court, will amount to an appearance.” *Id.*

As indicated above, the entry of appearance and motion for continuance were the first pleadings filed by Jeremy—neither of which objected to jurisdiction—but rather expressly acknowledged the circuit court’s jurisdiction over both parties. Accordingly, the objection conveyed at the hearing regarding service of process and the motion to dismiss for lack of personal jurisdiction were untimely. Jeremy not only waived his challenge to the circuit

court's personal jurisdiction, but he consented thereto. For this reason, it is futile to further discuss Jeremy's arguments regarding insufficient service of process.

### C. Motion for Reconsideration

For his second point on appeal, Jeremy argues that the circuit court's denial of his motion to reconsider or, in the alternative, motion to dismiss for lack of personal jurisdiction was an abuse of discretion. To abuse its discretion, the circuit court must have not only made an error in its decision but also must have acted improvidently, thoughtlessly, or without due consideration. *Reed v. Smith*, 2018 Ark. App. 313, 551 S.W.3d 407.

Prior to entering the order, the circuit court conveyed through email its conclusion based on the facts as presented that counsel accepted service on behalf of Jeremy. Given the testimony presented by counsel for both parties, the entry of appearance, and the motion asserting that the circuit court had personal jurisdiction, we cannot say the court abused its discretion in denying the motion for reconsideration. Moreover, as discussed above, the alternative motion to dismiss for lack of jurisdiction fails because Jeremy submitted to the court's jurisdiction. Thus, we affirm the circuit court's denial of Jeremy's motion to reconsider and alternative motion to dismiss.

### V. Conclusion

For the reasons set forth above, we affirm the circuit court's final order of protection and order denying the motion for reconsideration and to dismiss.

Affirmed.

VIRDEN and BARRETT, JJ., agree.

*Robert S. Tschiemer*, for appellant.

One brief only.