

SUPREME COURT OF ARKANSAS

No. 10-568

MARTIN DONALD WILLS,
APPELLANT,

VS.

JANET F. LACEFIELD,
APPELLEE,

Opinion Delivered June 16, 2011

APPEAL FROM THE BAXTER
COUNTY CIRCUIT COURT,
NO. DR-08-388-3,
HON. JOHNNY PUTMAN, JUDGE,

AFFIRMED.

KAREN R. BAKER, Associate Justice

This case raises the issue whether the Arkansas Rules of Civil Procedure apply to proceedings under the Arkansas Domestic Abuse Act, codified at Arkansas Code Annotated sections 9-15-101 through -217 (Repl. 2009). We accepted certification of this case from the court of appeals. Jurisdiction is proper pursuant to Arkansas Supreme Court Rule 1-2(b)(6) (2011), as an interpretation of the Domestic Abuse Act and the Arkansas Rules of Civil Procedure. We hold that the proceedings under the Domestic Abuse Act are special proceedings and affirm the circuit court's order dismissing the motion to set aside the order of protection and applying the notice provision under the Domestic Abuse Act rather than the Arkansas Rules of Civil Procedure.

Appellee Janet Lacefield filed a petition and corresponding affidavit on December 11, 2009, seeking an order of protection against appellant Martin Wills. Lacefield was a resident of Baxter County, Arkansas, and Wills was a resident of Shelby County, Tennessee. The

circuit court of Baxter County entered an ex parte order of protection on December 14, 2009, and scheduled a hearing on the petition for January 12, 2010. Wills was served with the petition and ex parte order on January 6, 2010, six days before the scheduled hearing. On January 8, 2010, Wills filed an application for continuance by facsimile, as well as a request for production of documents and witnesses. Wills requested a continuance of at least sixty days to give him time to review and investigate the allegations contained in the petition and affidavit and to give sufficient advance notice of his absence to his employer. At the January 12, 2010 hearing, which Wills did not attend, the circuit court denied Wills's motion for a continuance and entered a permanent order of protection for a five-year period. The circuit court entered the final order of protection on January 15, 2010.

On January 19, 2010, Wills filed an answer to Lacefield's petition and counterclaimed, alleging abuse of process and fraud and requesting compensation for various damages. In his first amended answer and counterclaim also filed on January 19, 2010, Wills addressed specific statements from Lacefield's petition more particularly, added a defense based on double jeopardy, and argued that none of his actions were tantamount to "domestic abuse" as it is defined under the Domestic Abuse Act.

On January 25, 2010, Wills filed a motion and brief to set aside the order of protection. Wills asserted that he was served seven days prior to the hearing, depriving him of enough time to respond under Arkansas Rule of Civil Procedure 6(c); that he did not have access to an Arkansas law library; that the circuit court should have granted his request for continuance

because he needed additional time to respond; and that his answer, motion to dismiss, and counterclaim filed on January 13, 2010, were within the ten-day-response time permitted under Arkansas Rule of Civil Procedure 6(c). In the motion to set aside the protective order, Wills did not make any of the arguments on the merits that he now makes on appeal. On February 8, 2010, the circuit court entered an order dismissing Wills's motion to set aside the protective order, finding that Wills was timely served at least five days prior to the hearing, as required under Arkansas Code Annotated section 9-15-204(b)(1)(A).

Wills filed separate motions to set aside, dismiss, or stay the default judgment. Wills also filed a notice of appeal on March 9, 2010, bringing an appeal from the February 8, 2010 order dismissing Wills's motion to set aside the January 15, 2010 protective order.

Wills raises many points in his pro se appellate brief. He asserts that the order of protection was erroneous and unsupported by the record, that it was void because it failed to state facts sufficient to state a cause of action, and that the trial court abused its discretion in granting Lacefield an order of protection even though Wills attempted to defend with his application for continuance. However, our initial query is whether the proceedings below were "special proceedings" within the meaning of Arkansas Rule of Civil Procedure 81.

The rules of civil procedure "shall govern the procedure in the circuit courts in all suits or actions of a civil nature with the exceptions stated in Rule 81." Ark. R. Civ. P. 1. Rule 81 states that the rules of civil procedure "shall apply to all civil proceedings cognizable in the circuit courts of this state except in those instances where a statute which creates a right,

remedy or proceeding specifically provides a different procedure in which event the procedure so specified shall apply.” Ark. R. Civ. P. 81(a). This Rule 81(a) exception “is limited to special proceedings created exclusively by statute where a special proceeding is appropriate and warranted.” *In re Adoption of Baby Boy Martindale*, 327 Ark. 685, 689, 940 S.W.2d 491, 493 (1997) (quoting *Sosebee v. Cnty. Line Sch. Dist.*, 320 Ark. 412, 416, 897 S.W.2d 556, 559 (1995)).

This court has determined that other actions were special proceedings, *see, e.g., Martindale, supra* (adoption proceedings are special proceedings); *Screeton v. Crumpler*, 273 Ark. 167, 617 S.W.2d 847 (1981) (will contests are special proceedings); and *Baker v. Rogers*, 368 Ark. 124, 243 S.W.3d 911 (2006) (election contests are special proceedings); however, we have never addressed the nature of proceedings under the Domestic Abuse Act. A civil action is “an ordinary proceeding in a court of justice by one party against another for the enforcement or protection of a private right or the redress or prevention of a private wrong.” *Martindale*, 327 Ark. at 689, 940 S.W.2d at 493. Any proceedings that “are not ordinary proceedings are ‘special proceedings’ created exclusively by statute.” *Id.*

Like adoption and election-contest proceedings, the procedure for securing a protective order pursuant to the Domestic Abuse Act is purely statutory. 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.” Ark. Code Ann. § 9-15-101. Based on the elucidated purpose of the act, the act affords protection for certain victims of abuse that is not available outside of the act. The remedies available under the Domestic Abuse Act are unknown to the common law and are completely governed by statute. We conclude that proceedings filed under the Domestic Abuse Act are special proceedings, so that to the extent 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. *See* Ark. R. Civ. P. 81(c); *Norton v. Hinson*, 337 Ark. 487, 989 S.W.2d 535 (1999).

The expedited nature of the procedure to petition for a protective order is apparent from the statute. Once a petition for protective order is filed under the Domestic Abuse Act, the court must order a hearing to be held not less than thirty days from the date the petition is filed or the next court date, whichever is later. Ark. Code Ann. § 9-15-204(a)(1). The statute requires service of the petition, any ex parte temporary order, and notice of the hearing to be made upon the respondent at least five days before the hearing date. Ark. Code Ann. § 9-15-204(b)(1).

Here, Wills was timely served six days before the hearing. Because this is a special proceeding, the rule regarding service that is provided in the Domestic Abuse Act, and not the conflicting rule of civil procedure, applies. Service was clearly timely under section 9-15-204(b)(1). Because the rules of civil procedure would not apply to the hearing-notice

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provisions, any objections, claims, or arguments that Wills desired to make should have been made at, or prior to, the hearing. Wills failed to make any of the objections, claims, or arguments he now makes on appeal at, or prior to, the hearing; therefore, these issues are not preserved for our review. We will not address an issue that is fully developed for the first time on appeal. *See Davis v. Davis*, 360 Ark. 233, 200 S.W.3d 886 (2005).

Affirmed.