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ARKANSAS COURT OF APPEALS

DIVISION II
No. CV-18-723

RAY SHEPHERD APPELLANT V. CASSANDRA TATE APPELLEE	**Opinion Delivered:** February 27, 2019 APPEAL FROM THE LONOKE COUNTY CIRCUIT COURT [NO. 43DR-18-212] HONORABLE JASON ASHLEY PARKER, JUDGE AFFIRMED

WAYMOND M. BROWN, Judge

This is a one-brief appeal from the circuit court's denial of appellant's motion to set aside its permanent order of protection. On appeal, appellant argues that the circuit court erred in (1) determining that service of the notice of hearing was sufficient and (2) finding that there was sufficient evidence to grant the order of protection.[1] We affirm.

On March 19, 2018, appellee filed a petition for order of protection from appellant. In her accompanying affidavit, appellee asserted that two weeks prior, appellant had drugged and raped her, that she had filed a police report, and she was "scare [sic] for [her] life [appellant] [sic] said he would kill [her] if [she] told any one [sic]." The circuit court

[1]Arkansas Code Annotated section 9-15-205(b) states "[a]ny relief granted by the court for protection under the provisions of this chapter shall be for a fixed period of time not less than ninety (90) days nor more than ten (10) years in duration, in the discretion of the court." The order cannot last longer than ten years. Accordingly, the circuit court's reference to the order being "permanent" is treated as the ten-year maximum.

entered an ex parte order of protection that same date, effective until April 16, 2018, the date upon which a hearing had been set.

Appellant's counsel entered an appearance on April 12, 2018. He also filed a motion for continuance on that date, asserting a scheduling conflict with a previously scheduled matter in another county. In granting the continuance motion, the circuit court entered an amended ex parte order of protection effective until the new hearing date on May 14, 2018. The amended order was electronically filed on April 13, 2018.

Neither appellant nor his counsel appeared at the May 14, 2018 hearing. The circuit court made these findings at the hearing:

> COURT: Okay. Well, let me just take care of – it was originally set for April 16th. Mr. Shepard hired an attorney. He was – it conflicted with his schedule. I believe we got a hold of you and let you know it was reset.
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> . . . .
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> COURT: – to today's date. His attorney was Mr. Allen who filed that motion. I entered a new order resetting that matter for today's date. He and his attorney have not appeared so I will let you proceed. The hallway has been sounded. Was there an answer for Mr. Shepard?
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> THE BAILIFF: No response.
>
> THE COURT: All right. He was served. His attorney filed the continuance by eFiling. The Court filed an – a order by eFiling granting the continuance.

The circuit court then allowed appellee to testify regarding what appellant had "done to make [her] fearful for [her] life or what he's done to make threats against [her] or acts of

violence that he's committed against [her]." In its entirety, appellee's testimony was as follows:

> He raped me and he stuck a gun to my head and I – just other threats and stuff. He hasn't bothered me since the order of protection though, but I'd like to keep it. Because I'm fixing to have a real major surgery after today. And I see like a red truck, because he drives a red truck, and I panic all of the time and I have to see therapy about it. This has been turned over to the proper authorities to be prosecuted. They came to my house and they took my clothes and everything.

The circuit court granted appellee a permanent order of protection immediately following her testimony.

Later on May 14, 2018, appellant's counsel filed a motion to set aside the permanent order of protection asserting that appellant's "counsel did not receive notice of the [amended] ex parte order, and he believes this was because he was not properly entered into the system at the time the Court entered the ex parte order." Accordingly, he argued that neither appellant nor his counsel received notice of the hearing—and therefore failed to appear to contest the order of protection—"[d]ue to the Electronic Filing System malfunction[.]" Also filed on May 14, 2018, was an April 13, 2018 email from the court administrator emailing a file-marked copy of the amended ex parte order to appellant's counsel's email—ryanallenlaw@gmail.com—and that of the Lonoke County Sheriff's Office.

On May 16, 2018, appellant's counsel filed an amendment to his motion to set aside the circuit court's permanent order of protection. Therein, he advised that "[o]n May 16, 2018, the [appellant's] counsel discovered that he had received e-mails regarding the final hearing, but that those e-mail's [sic] were not sent to his primary folder. . . . Because

they were not sent to his e-mail's primary folder, the [appellant's] counsel did not open them, as indicated by the bold typeface." Attached as an exhibit was a copy of what appears to be an inbox list from his email account.

On June 5, 2018, finding that appellant had notice of the court date, the circuit court denied appellant's motion to set aside the permanent protection order. This timely appeal followed.

In *Howell v. Arkansas Department of Human Services*, this court stated:

> Statutory service requirements, being in derogation of common law rights, must be strictly construed and compliance with them must be exact. The same reasoning applies to service requirements imposed by court rules. Proceedings conducted where the attempted service was invalid render judgments arising therefrom void ab initio. Actual knowledge of a proceeding does not validate defective process.[2]

Ark. R. Civ. P. 5(b)(2) states, in part, "When service is permitted upon an attorney, such service may be effected by electronic transmission, including e-mail, provided that the attorney being served has facilities within his or her office to receive and reproduce verbatim electronic transmissions. Service is complete upon transmission but is not effective if it does not reach the person to be served."

Appellant's first argument on appeal is that the circuit court erred in determining that service of the notice of hearing was insufficient. We disagree.

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[2]2018 Ark. App. 117, at 5, 545 S.W.3d 218, 220–21 (quoting *Carruth v. Design Interiors, Inc.*, 324 Ark. 373, 374–75, 921 S.W.2d 944, 945 (1996) (internal citations omitted)).

The circuit court's responsibility was to transmit the filing to him; it did not have a responsibility—and likely had no ability—to ensure that the email arrived in the "primary" folder of appellant's counsel. Appellant's amended motion to set aside the circuit court's permanent order of protection removes any doubt that appellant's counsel received the notice.

Appellant's counsel fails to apprise this court of why his failure to check his email should be deemed a failure to transmit the filing by the circuit court. This court may refuse to consider an argument when the appellant fails to cite any legal authority, and the failure to cite authority or make a convincing argument is sufficient reason for affirmance.[3]

Appellant's second argument on appeal is that the circuit court erred in finding that there was sufficient evidence to grant the order of protection. He asserts that there was "no testimony" at the hearing about the relationship between the parties and that the Domestic Abuse Act is not applicable to a "cousin-in-law." We do not address the merits of this argument.

Appellant provides this court with case law on the standard of review for and basic rule of statutory construction. He also provides the statutory definitions of "domestic abuse" and "family or household members." He then argues in full:

> A close look at A.C.A. § 9-15-103(5) reveals that relationship by blood is limited to the fourth degree of consanguinity while there is no limitation in regards to in-laws. This makes no sense that there would be no limitation in regards to in-laws. It

[3]*Garcia v. Garcia*, 2018 Ark. App. 146, at 6, 544 S.W.3d 96, 100 (citing *Jewell v. Fletcher*, 2010 Ark. 195, at 24, 377 S.W.3d 176, 191; *Moody v. Moody*, 2017 Ark. App. 582, at 12, 533 S.W.3d 152, 160).

> would make more sense if the limitation in regards to in-laws were stricter than blood relatives. A common sense reading of this code provision is that the term "in-laws" is limited by its natural meaning which would be immediate "in-laws." It should only apply to father in-laws, mother in-laws, brother in-laws, and sister in-laws. Any other interpretation would result in an absurd result that was not intended by the legislature.

Appellant's argument lacks any legal argument, being a blanket statement. It is a well-settled principle of appellate law that we will not make a party's argument for him or her.[4] Appellant provides no legal authority to support any of his statements; therefore, we affirm.[5]

Affirmed.

GLADWIN and MURPHY, JJ., agree.

Ryan C. Allen, for appellant.

One brief only.

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[4]*Foster v. Estate of Collins*, 2017 Ark. App. 65, at 4, 511 S.W.3d 900, 903 (citing *Running M Farms, Inc. v. Farm Bureau Mut. Ins. Co. of Ark.*, 371 Ark. 308, 316, 265 S.W.3d 740, 745 (2007); *Kinchen v. Wilkins*, 367 Ark. 71, 238 S.W.3d 94 (2006); *Ark. Dep't of Human Servs. v. Schroder*, 353 Ark. 885, 122 S.W.3d 10 (2003)).

[5]*Garcia*, *supra*.