

ARKANSAS COURT OF APPEALSDIVISION I
No. CV-12-460

MICHAEL ALAN DUGAS

APPELLANT

V.

KATHY JEAN KELLS

APPELLEE

OPINION DELIVERED JUNE 19, 2013

APPEAL FROM THE FAULKNER
COUNTY CIRCUIT COURT,
[NO. 23-DR-11-1131]HONORABLE DAVID L.
REYNOLDS, JUDGE

AFFIRMED

ROBERT J. GLADWIN, Chief Judge

Michael Alan Dugas appeals from the order of protection filed February 6, 2012, in Faulkner County Circuit Court, granting a ten-year protective order to appellee Kathy Jean Kells. On appeal, Dugas contends that the circuit court erred in granting Kells's petition because (1) the petition failed to meet the requirements of Arkansas Code Annotated section 9-15-201 (Repl. 2009); (2) there was insufficient proof to support an order of protection; and (3) there was no proof of service. We affirm.

On September 6, 2011, Kells filed a petition for an ex parte temporary order of protection against Dugas, alleging that they were married and that she was afraid of him because there was an immediate and present danger of domestic abuse. The threat of harm she alleged as the most recent act of abuse was that Dugas threatened to commit suicide. The petition alleged specifically that Dugas did not threaten her. The acts of previous abuse Kells alleged were as follows:

The petitioner was out of town and the respondent broke into her work office and called her from her work stating that he deleted her “Therapist Helper File” which she needs from [sic] work. He was also texting her telling her that he was deleting her billing system. The respondent has called the petitioner several times, when he couldn’t reach her he started calling the petitioner’s mother. The respondent has been calling her names such as “deceptive bitch” [sic] which she considers to be emotionally abusive. The petitioner removed all of the weapons from the home when she left, the respondent has been trying to convince her to bring a semi-automatic rifle with a scope back to him. The respondent told the petitioner that he put a GPS on her car and has been tracking her with a GPS on her phone. He has also been driving past her work constantly. She feels that he has hired someone to follow her. She has seen people parked near her home and business, watching the house and her work. The respondent has also told her that “he is watching her.” About 4 years ago the respondent forced his way into a locked door, which took the frame off of the door. The petitioner was trying to get away from him, he started physically wrestling with her. Bruises were left on the petitioner. The petitioner was outside [at] the fire pit and she was able to lock him out until police arrived. Petitioner said there has been lots of arguing in the past 6 months where the respondent will wake her up at 3:00 a.m. screaming at her and not allowing her to sleep. Respondent has punched holes in the wall and thrown things against the wall.

An ex parte order of protection was granted and filed September 6, 2011, prohibiting Dugas from “committing any criminal act against the victim(s) including, but not limited to: acts of violence or Domestic Abuse, A.C.A. § 9-15-103(3); Harassment A.C.A. § 5-71-208; Harassing Communications A.C.A. § 5-71-209; Stalking A.C.A. § 5-71-229; or Terroristic Threatening A.C.A. § 5-13-301.” The order states that Kells was in immediate and present danger of domestic abuse and that a hearing was set for October 3, 2011. The order states, “If you fail to appear, the Court will likely make this Order permanent without further notice to you.” By order filed October 3, 2011, the protective order was continued for 120 days and reset for January 6, 2012, at 10:30 a.m. at the request of Dugas and by agreement of the parties.

Dugas filed a motion for relief on November 30, 2011, alleging that a divorce had been pending between the parties since September 6, 2011, and that they were attempting to schedule discovery depositions.¹ He requested that the circuit court “relax” the protective order so that he might attend Kells’s discovery deposition. Kells responded that Dugas was attempting to intimidate her in hopes that she would dismiss the protective order.

Dugas then filed a motion for continuance on December 9, 2011, claiming that the hearing on Kells’s domestic-abuse petition set for January 6, 2012, at 10:30 a.m. should be continued to allow time for him to conduct discovery in the divorce action. Dugas’s attorney then withdrew from the case by motion and order filed December 15, 2011.

On December 28, 2011, Dugas filed another motion for continuance through a second attorney of record, citing the complex issues involved, his new attorney’s recent introduction to the case, and the “considerable” necessary discovery that needed to be prepared. An order was filed on January 6, 2012, continuing the order of protection until February 6, 2012, at 10:30 a.m.

The next pleading, filed January 31, 2012, was a motion for continuance in both the pending divorce and domestic-abuse cases, alleging that Dugas was without an attorney and needed more time to prepare. On February 2, 2012, an order relieving Dugas’s counsel was filed. On that same date, Kells responded to the latest motion for continuance, denying that either matter should be continued, citing the many instances where the domestic-abuse petition had been reset.

¹This motion is not included in Dugas’s addendum, but is contained in the record.

On February 6, 2012, a hearing on Kells's petition for an order of protection was held wherein Lieutenant Alisha Taylor of the Faulkner County Detention Center testified, when asked if Dugas was in custody, that Dugas had "cash bonded" at 11:00 a.m. that day.² Kells's attorney explained to the circuit court that she had notified Dugas's attorney by letter dated January 9, 2012, that the hearing had been reset for 2:00 p.m. on February 6, 2012. After the attorney withdrew, she sent a letter to Dugas on February 2, 2012, informing him of the February 6, 2012 hearing at 2:00 p.m. The circuit court filed a Minute Order reflecting that Dugas failed to appear after having been served, granted an ex parte order of protection for ten years, and assessed court costs against Dugas. A final order of protection was filed at the same time, finding that Dugas had been provided with proper notice and the opportunity to be heard and that Kells was in immediate and present danger of domestic abuse. A notice of appeal was filed on March 6, 2012.

On April 3, 2012, Dugas filed a motion for relief from judgment under Arkansas Rule of Civil Procedure 60 (2012), alleging that there was no proof presented supporting Kells's allegations; that the order of protection violated his constitutional rights to own a weapon and invaded his right to privacy; that his last attorney would not communicate with him; that the circuit court granted the order without notice to Dugas; that he had expected his attorney to appear at the February 6, 2012 hearing, but the attorney did not; that Dugas subpoenaed witnesses to appear at 9:00 a.m. on February 6, 2012, for the 10:30 a.m. hearing; that Dugas had never received notice of the time change of the hearing; that a neighbor, who was a

²Dugas had apparently been arrested on the morning of February 6, 2012, but there is nothing included in the record to explain his arrest.

police officer, could have acted on the warrant for Dugas's arrest at any time before February 6, 2012; and that a Arkansas Rule of Civil Procedure 54(b) certificate should be issued for appeal purposes.

Dugas filed a supplement to his motion for relief from judgment under Rule 60 that included a letter exhibit from his doctor dated April 6, 2012, stating that Dugas was under extreme levels of stress on February 6, 2012, and would not have been able to represent himself in court on that date. The circuit court did not rule on Dugas's motion.

A notice of appeal filed after the judgment is entered, but before a posttrial motion is resolved, is effective to appeal the underlying judgment. Ark. R. App. P.–Civ. 4(a) and (b). A party who seeks to appeal from the grant or denial of a motion to vacate, alter, or amend the judgment shall amend the previously filed notice of appeal within thirty days. Ark. R. App. P.–Civ. 4(b)(2) (2012). There is no amended notice of appeal in the abstract or record, and this precludes our consideration of Dugas's arguments contained in the motion.

Arkansas Code Annotated section 9-15-201(e)(1)(A) defines domestic abuse as physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault between family or household members. Dugas admits in his reply brief that Kells's petition complies with the statute. Therefore, the only remaining arguments for this court to address are those contained in his Rule 60 motion. Because we are precluded from examining these, we affirm.

Affirmed.

GLOVER and VAUGHT, JJ., agree.
Michael Alan Dugas, pro se appellant.
Pamela S. Osment, for appellee.