

SUPREME COURT OF ARKANSAS

IN RE RESPONSE TO THE COVID-19
PANDEMIC—EVICTION FILINGS

Opinion Delivered: April 28, 2020

PER CURIAM

This court has issued several per curiam orders implementing emergency precautions to address the challenges raised by the COVID-19 pandemic. *See In re Response to the COVID-19 Pandemic*, 2020 Ark. 116 (per curiam); *In re Response to the COVID-19 Pandemic*, 2020 Ark. 125 (per curiam); *In re Response to the COVID-19 Pandemic*, 2020 Ark. 132 (per curiam); *In re Response to the COVID-19 Pandemic*, 2020 Ark. 162 (per curiam). We now address another issue that has health and safety implications: residential evictions. Pursuant to our superintending authority under Amendment 80 of the Constitution of the State of Arkansas, we order that beginning the date of this per curiam and ending July 25, 2020, all new eviction complaints for nonpayment of rent or other fees or charges filed under Arkansas Code Annotated section 18-60-304 or section 18-17-901, or failure-to-vacate charges brought under section 18-16-101, are required to affirmatively plead that the property that is the subject of the eviction dispute is not a covered dwelling under the federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law No. 116-136. This temporary pleading requirement merely reflects the Act's moratorium prohibiting

the lessor of a covered dwelling from filing a legal action to recover possession of the property for nonpayment. CARES Act § 4024(b).¹

It is so ORDERED.

WOOD and WOMACK, JJ., dissent.

¹ The dissent is mistaken in suggesting that this pleading requirement constitutes an amendment to Arkansas's eviction statutes and violates the separation of powers doctrine. Rules regarding pleading, practice, and procedure are solely the responsibility of this court. Ark. Const. amend. 80, § 3.

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DISSENTING OPINION.

SHAWN A. WOMACK, Associate Justice

I respectfully dissent from the majority's decision to amend our existing eviction statutes. The majority opinion is problematic for three reasons. It exceeds our constitutional role within the scope of separation of powers, it takes action driven by emotion and not by actual data, and it puts the court in a position of favoring one party over the other prior to the establishment of any facts.

While the goal may be laudable, it is a clear violation of our separation of powers doctrine. Contrary to the majority's claim that this falls under the umbrella of our superintending authority, it is outside that power, and I am concerned that the Arkansas Supreme Court presumed the outcome of a constitutional challenge to the Act without a case before us to analyze.

By declaring that all new complaints for eviction must affirmatively plead that the CARES Act does not cover the property at issue, this court has created an additional requirement to those set by statute. This new requirement exceeds the power granted to this court in section 3 of Amendment 80 to prescribe the rules of pleadings because it conditions a valid eviction action upon compliance with the guidelines set forth in the CARES Act.

It is the legislative branch that has the power and responsibility to proclaim the law through statutory enactments. *Protect Fayetteville v. City of Fayetteville*, 2019 Ark. 28, at 8, 566 S.W.3d 105, 110. Likewise, the power to amend the law also rests with the legislative branch. Nevertheless, this court has supplanted the power of our legislature to react to changing circumstances by taking upon itself the matter of amending our eviction laws. It is for the General Assembly, not the court, to establish public policy. *Shelter Mut. Ins. Co. v. Lovelace*, 2020 Ark. 93, at 9, 594 S.W.3d 84, 88. Accordingly, any policy changes necessitated by the ongoing COVID-19 pandemic—including those changes required to bring our statutory law in line with emerging federal guidelines—should be made by the General Assembly, which is the proper policy-making branch of government.

In addition to the constitutional problems inherent in this order, this is a textbook example of a solution in search of a problem. For the month of March and the first three weeks of April, there were 460 newly filed eviction cases in Arkansas in 2020. This is down from 632 cases during the same period in 2019, representing a 27% decrease in eviction filings. Presumably, the purpose of this order is to protect tenants from an onslaught of eviction suits during the COVID-19 crisis. While it could change in the future, the numbers clearly show that such a scenario is not playing out and that the opposite is actually true, with a dramatic decrease in the number of cases filed. Even when we act constitutionally, we should act based on data and not based on emotion.

Next, by modifying eviction policy and adding additional requirements to the pleadings of one party that exceed what the law requires, the court is tipping the scales of justice. This not only adds a burden to the plaintiff, it also removes the burden from the

defendant to raise the potential coverage of the property by the CARES Act as a defense in their responsive pleading. Further, one cannot ignore the more limited reach of a per curiam as to that of a statutory change enacted by the legislature¹. This order is setting plaintiffs up to fail by creating scenarios where cases are subject to dismissal or the need to file amended pleadings, which will add additional costs and delays.

Respectfully, I must dissent.

WOOD, J., joins.

¹There is no current mechanism in the online legal search engines that link general and temporary per curiams to specific statutory frameworks.

SUPREME COURT OF ARKANSAS

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IN RE RESPONSE TO THE COVID-19
PANDEMIC—AMENDMENTS TO
COURT RULES

PER CURIAM

On March 11, 2020, Governor Hutchinson declared a COVID-19 “State of Emergency,” which remains in effect. In response to the ongoing COVID-19 pandemic, the Supreme Court of Arkansas issued per curiam orders on March 17, March 20, April 3, and April 23, 2020, implementing emergency precautions to help protect the public from unnecessary risks. *See In re Response to the COVID-19 Pandemic*, 2020 Ark. 116 (per curiam); *In re Response to the COVID-19 Pandemic*, 2020 Ark. 125 (per curiam); *In re Response to the COVID-19 Pandemic*, 2020 Ark. 132 (per curiam); *In re Response to the COVID-19 Pandemic*, 2020 Ark. 163 (per curiam). All previously announced suspensions and extensions from the court’s earlier responses to the COVID-19 pandemic remain in effect until further notice.

Today, we announce additional measures to combat the spread of the disease to the public, including the employees of the Arkansas judiciary. Pursuant to our superintending authority under Amendment 80 of the Arkansas Constitution, the Supreme Court of Arkansas announces the suspension of the time requirements under Arkansas Civil Procedure Rules 4(i), 33(b), 34(b), and 36(a) and District Court Rule 3 from the date of this per curiam

until further order of this court. We implement these measures due to the restrictions imposed by social-distancing guidelines.

This Order applies statewide to all courts and court clerks' offices except administrative courts of the executive branch, federal courts, and federal court clerks' offices.

It is so ORDERED.

WOOD AND WOMACK, JJ., dissent.

SUPREME COURT OF ARKANSAS

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Opinion Delivered: April 28, 2020

DISSENTING OPINION.

RHONDA K. WOOD, Associate Justice

I dissent from the court’s decision to suspend court rules because: (1) the action comes at a time when our state is relaxing restrictions, not imposing new ones, (2) litigants can already obtain relief from time deadlines, (3) the decision lacks consultation and input, and (4) extensions, if needed, are best handled on a case-by-case basis.

The court suspends the time requirements under Arkansas Rules of Civil Procedure 4(i) (Time for Service of Complaint), 33(b) (Time to Respond to Interrogatories), 34(b) (Time to Respond to Requests for Production of Documents), 36(a) (Time to Respond to Requests for Admission), and District Court Rule 3 (Time for Service of Complaint). The majority explains that suspension is necessary “to combat spread of the disease to the public, including the employees of the Arkansas judiciary.” This “late in the game” change comes at a time when the State is moving in the opposite direction and has initiated the process of relaxing social-distancing rules. In addition, the responses to interrogatories, requests for

production, and requests for admission do not require in-person contact. None of these require contact with “employees of the Arkansas judiciary.”

Our district and circuit courts have shown tremendous initiative and are holding hearings telephonically and by video conference. As an example, during this pandemic, courts in Arkansas have conducted over 475 dependency-neglect hearings using video technology. If courts can hold contested hearings through video, then certainly an attorney can consult with his client, complete discovery responses, and request an extension if needed.

Second, our rules already permit the trial court to order extensions of time to serve a summons for good cause. Ark. R. Civ. P. 4(i); Ark. Dist. Ct. R. 3. And the parties can always agree to extend the time to respond to discovery requests; if that fails, a party can ask the court for an extension of time. Ark. R. Civ. P. 33(b), 34(b) & 36(a). Because adequate remedies are currently in place to handle deadline extensions, our suspension is unnecessary.

Third, our court has always enacted rule changes deliberately. Requests first go to the appropriate committee, who returns a recommendation to our court. We then evaluate the recommendation and, if appropriate, enact or propose a rule change. None of this was done here. Certainly, the court can act swiftly when an emergency exists. However, the Arkansas judicial system has been operating under the pandemic environment for almost six weeks and the majority’s fears have not materialized. The majority has decided to pull out the umbrella as the rain clouds are leaving.

Finally, courts should handle these matters on a case-by-case basis. Consider for example the suspension of time for service of complaints. The majority grants relief and

extends time for litigants who are not even seeking it. The majority presumes the plaintiff is the only party entitled to relief. However, sometimes the plaintiff files a lawsuit and simply decides not to pursue it. Hundreds of cases are dismissed for lack of service for this reason. Judges can no longer “clean up” dockets by dismissing these expired cases while this *indefinite* suspension exists. Moreover, unserved defendants will now sit in legal limbo until this *indefinite* suspension ends and the case against them can be dismissed. These defendants also need protection from our court. We should allow the existing rules to work as designed so that judges can grant good-cause extensions on a case-by-case basis rather than impose an unnecessary, broad-based remedy.

For these reasons, I dissent.

WOMACK, J., joins.