

**IN THE DISTRICT COURT OF ROCK COUNTY, NEBRASKA**

**CHERYL ROSBURG ARROWSMITH,**  
Petitioner,

vs.

**BRAD ARROWSMITH,**  
Respondent.

Case No. CI01-17

**ORDER DENYING REQUEST  
FOR HEARING**

**DATE OF HEARING:** No hearing held.

**APPEARANCES:**

For petitioner: None.

For respondent: None.

**SUBJECT OF HEARING:** Respondent’s request for hearing on ex parte domestic abuse protection order.

**ORDER:** IT IS ORDERED that:

1. The file shows that respondent was served with an ex parte domestic abuse protection order on July 11, 2001. Any request for hearing must be “return[ed]” to the clerk of the district court within five days from the date of service. NEB. REV. STAT. § 42-925 (Reissue 1998). The last day for filing was Monday, July 16, 2001, a date on which the court was open and capable of receiving filings. The respondent’s request for hearing is signed and dated by the respondent on July 18, 2001, and filed on July 19, 2001.

2. Nebraska does not follow a “mailbox rule” unless the statute expressly so provides. *Creighton St. Joseph Hosp. v. Tax Eq. & Rev. Comm.*, 260 Neb. 905, 620 N.W.2d 90 (2000); *State v. Parmar*, 255 Neb. 356, 586 N.W.2d 279 (1998). Section 42-925 does not so provide.

3. Even if a “mailbox rule” did apply, the request itself shows that it was not signed until July 18, and consequently could not have been mailed before that date. Thus, the respondent did not timely “return” the request for hearing.

4. Even if the five-day requirement of § 42-925 is directory and not jurisdictional, the court considers that the five-day rule should be strictly enforced in the absence of any showing of sufficient cause

why compliance could not be achieved. The statutory scheme demonstrates the legislative intent that the proceedings be accomplished swiftly and with appropriate finality. Because there is no showing of any good cause for the late filing of the request, the five-day requirement should be enforced.

5. The request for hearing is denied. The ex parte order is thereby deemed to become final and no longer subject to hearing. This order constitutes a final order.

Signed in chambers at Ainsworth, Nebraska, on July 20, 2001.  
DEEMED ENTERED upon the date of filing by the court clerk.

If checked, the Court Clerk shall:

- : Mail a copy of this order to all counsel of record and to any pro se parties.  
Done on \_\_\_\_\_, 20\_\_ by \_\_\_\_.
- 9 Enter judgment on the judgment record.  
Done on \_\_\_\_\_, 20\_\_ by \_\_\_\_.
- 9 Mail postcard/notice required by § 25-1301.01 within 3 days.  
Done on \_\_\_\_\_, 20\_\_ by \_\_\_\_.
- : Note the decision on the trial docket as: [date of filing] Signed "Order Denying Request for Hearing" entered denying [subject, from order].  
Done on \_\_\_\_\_, 20\_\_ by \_\_\_\_.

Mailed to:

BY THE COURT:

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William B. Cassel  
District Judge