

NOT TO BE PUBLISHED

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(San Joaquin)

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MARTIN L. HOEFT,  
  
Plaintiff and Respondent,  
  
v.  
  
DEXTER JOHNSON,  
  
Defendant and Appellant.

C079641  
  
(Super. Ct. No.  
39201400316089CUHRSTK)

In September 2014, plaintiff Martin Hoeft sought a civil harassment restraining order against defendant Dexter Johnson, who he claimed was his mother's boyfriend. At a hearing in October, Hoeft testified on his own behalf; Johnson did not appear. The court granted Hoeft a restraining order against Johnson.

In February 2015, Johnson filed a motion to set aside the restraining order, claiming he had not been served. In March, the court dropped the hearing on Johnson's motion for lack of a proof of service on Hoeft.

In April 2015, Johnson filed another motion to set aside the restraining order. At a hearing in May, both parties testified. The trial court denied the motion without explanation. Johnson timely appealed. In designating the record on appeal, Johnson elected to proceed without a record of the oral proceedings in the trial court.

On appeal, Johnson contends the trial court improperly denied his motion to set aside the restraining order because he “ ‘waited too long.’ ” Johnson cannot prevail on this issue because he chose to proceed with his appeal on the judgment roll alone.<sup>1</sup> On appeal, we must presume the trial court’s rulings are correct. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) Thus, we must adopt all inferences in favor of those rulings, unless the record expressly contradicts those inferences. (See *Brewer v. Simpson* (1960) 53 Cal.2d 567, 583.) Also, it is the burden of the appellant to provide an adequate record for us to assess claims of error. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140-1141.) When an appeal is on the judgment roll, our review is limited to determining whether any error “appears on the face of the record.” (*National Secretarial Service, Inc. v. Froehlich* (1989) 210 Cal.App.3d 510, 521.)

Here, the face of the record does not show the basis for the trial court’s denial of Johnson’s motion to set aside the restraining order. The minute order on Johnson’s motion simply states that the motion was denied. Under these circumstances, we must presume the trial court had a proper and lawful basis for its ruling. In the absence of a record of the oral proceedings, Johnson has not shown, and cannot show, otherwise.<sup>2</sup>

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<sup>1</sup> Where, as here, the appellate record does not include a record of the oral proceedings in the trial court -- either a reporter’s transcript, an agreed statement, or a settled statement -- the appeal is referred to as a judgment roll appeal. (See *Allen v. Toten* (1985) 172 Cal.App.3d 1079, 1082-1083.)

<sup>2</sup> Johnson filed a motion to strike Hoeft’s respondent’s brief and a motion to strike Hoeft’s opposition to that motion. Those motions are denied as moot.

DISPOSITION

The order denying Johnson's set aside motion is affirmed. Hoeft shall recover his costs on appeal. (Cal. Rules of Court, rule 8.278(a).)

/s/  
Robie, J.

We concur:

/s/  
Raye, P. J.

/s/  
Nicholson, J.