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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

WILLIAM ODIGIE,
Defendant and Appellant,
v.
AKIKO ODIGIE,
Plaintiff and Respondent.

A131976
(Alameda County
Super. Ct. No. HF11558368)

William Odigie (Father) appeals from a restraining order and temporary child custody and visitation order. He claims his due process rights were violated because he did not receive notice of the hearing on the temporary restraining order, and was denied a continuance of the hearing on the permanent restraining order. We find no violation of Father’s due process rights, and affirm the orders.

PROCEDURAL AND FACTUAL BACKGROUND

Respondent Akiko Odigie (Mother) is married to Father, and they have a son born in 2007. On January 28, 2011, Mother filed a request for a temporary restraining order against Father based on an incident on January 12, 2011. She also sought an order giving her physical and legal custody of their son.

Mother’s declaration submitted with the request for a temporary restraining order stated on January 12 around 6:15 p.m., Father became angry and began yelling at their son when he began to cry. Wife “stepped in between him and [their] son and [Father] sat back down. [She] tried to comfort [their] son and told him that it was going to be okay. [Father] came back . . . and confronted [her] about what [she] was saying. [Father] told

[her] not to complain about him in front of [their] son. [Father] was standing very close to [her] and jabbing his finger in [her] face in an aggressive manner.” Wife stayed silent because she was “really scared.” “Then he grabbed [Mother’s] jaw with his right hand and squeezed really hard for about 30 seconds.” It was “very painful” and she “couldn’t speak.” Father “dropped his hand and went back to the couch.” Mother took their son into the bedroom to “hide” from Husband. Later that evening, Father “acted like nothing had happened.”

When Mother woke the following morning, her jaw “still hurt very badly” and she “had some sharp pains on the inside of [her] jaw and . . . couldn’t yawn without pain.” Mother contacted her doctor, who told her she had to inform the police. At the doctor’s appointment that day, the police came and took a report. Mother’s doctor found “minor swelling in [her] cheek but no severe injury.” Wife was still in pain two weeks after that incident.

In a second incident on January 22, 2011, Father again became angry and screamed at their son. Mother attempted to go to their son, but Father “used his legs to block [her] movement.” Mother also reported their son is afraid of Father. Father has hit their son, and once “shook him by the arms until he stopped crying.”

The court issued a temporary restraining order on February 1, 2011. On March 11, Father appeared at the hearing on the domestic violence restraining order, though he had not been served with notice. The court informed him “If you were not personally served, you can request a continuance. If you waive any service problems, then I can hear the matter today.” Father responded “That’s fine.” After a break, the court stated “I understand that you want to get a lawyer. Correct?” Father responded “I’m thinking about it.” The court explained. “Okay. You know what? I can continue the case. Now, you’re here but there was no proof of service so you would be entitled to a continuance in any event if you wanted one. If you want to talk to a lawyer, I can keep the [temporary restraining] order in place right now until you come back in three weeks or two weeks if you want.” Father responded he was not aware of the allegations against him, though he had received some papers from the court. The court again explained

“Mr. Odigie, you don’t have to waive proof of service. You need to be served with the papers, so the petitioner has to serve him [¶] . . . [¶] [I]f you want me to handle the case today, I can, but you would need to waive any proof of service problems. It’s up to you.”

Mother’s attorney then gave Father the “packet for service.” The court asked Father if he wanted to “take a look at the paperwork and I can call the case again?” to which he agreed.

After another break, the court recalled the case and asked Father: “Mr. Odigie, you were served just a few minutes ago. Do you want to proceed or you want to come back?” Father stated he would like to proceed. The court asked “So you waive any service irregularities; is that right? Father responded “Correct.”

Mother then testified, elaborating on the information in her declaration. She stated in another incident a week earlier, Father told her “any man would torture me because I am such a wrong person.”

Father submitted some documents to the court, which it described as “something with this case number and the parties and it’s a writeup, which is essentially four pages long, and there [are] apparently e-mails from the petitioner or to the petitioner.” The court took another recess in order to review the documents.

After the recess, the court indicated it had reviewed the materials “carefully.” The court also asked “you both were put under oath. Correct?” Both Mother and Father responded “Yes.”

Father then testified Mother’s allegations were not true and she was “making all this up” He stated “how do you grab somebody’s jaw and then it becomes the way she’s describing it? The whole thing did not last more than three minutes.” He also stated his son was not afraid of him, and in fact wanted to sleep with him. When Father agreed he could, Mother “threatened” him and said “that would be strange. I have to tell the authorities that a grown man sleep with a young boy.” He stated “after I reminded her that for the past three years my son sleep with her . . . she kept quiet.”

The court indicated it found “the restraining order needs to be issued. [¶] Now, with respect to your relationship with your son, you have all agreed this morning to a temporary situation where you would have supervised visitation with your son. I cannot let you see your son unsupervised right now, Mr. Odigie. That is subject to change because you will be going to the family law department and that judge can modify the order” At that point, Father stated “In that case, Your Honor, I think I will need for this to be adjourned so that I can talk to a lawyer because this is—whether you believe me or not, this thing did not happen the way my wife is describing it.”

The court issued a five-year domestic violence restraining order against Husband, ordered the parties to mediation regarding custody and visitation, and set a Family Law hearing for April 21, 2011. This timely appeal followed.

DISCUSSION

Father asserts he was denied his due process rights in a number of ways.

He first claims he was not served with the application for the temporary restraining order. He was not required to be. Family Code section 6300 provides in part: “An order may be issued under this part, *with or without notice*, to restrain any person for the purpose of preventing a recurrence of domestic violence and ensuring a period of separation of the persons involved” (Fam. Code, § 6300, italics added.)

Father avers he did not have the opportunity to review the petition served on him in court at the March 11, 2011 hearing. He did. The record reflects the court recessed the proceedings to allow Father to review the petition. And, after the recess, Father provided the court with a written response, and testified.

Father also asserts he was denied his due process rights because the court would not continue the hearing on the domestic violence restraining order. As we have recounted in the prior section, the court gave Father numerous opportunities to have the hearing continued. Father repeatedly waived the irregularities in service and repeatedly indicated he wanted to proceed that day. Only after the court had ruled against him did he state “[i]n that case . . . I think I will need for this to be adjourned . . . I can bring friends, male, female, and they will testify it is not my style.” The court responded “They

were not there when this event happened. It's not going to help to have a lawyer now because I've already heard the issue and I have determined that there's good cause for the restraining order to be issued and it is going to be issued. You already waived any service problems so I am going to issue the restraining order." We perceive no due process violation.

Father also claims "no one was sworn in for the proceeding." The record reflects otherwise. The clerk's minutes of the hearing indicate "Akiko Odigie sworn for Petitioner as a witness and under Direct Examination. [¶] William Odigie sworn for Respondent as a witness and under Direct Examination." The reporter's transcript reflects the court asked Husband and Wife "you both were put under oath. Correct?" Both Mother and Father responded "Yes." And, as in *Estate of Da Roza* (1947) 82 Cal.App.2d 550, "we must assume the [judicial] officer performed his duty and that the witnesses were sworn. The burden is on the appellant to show, on appeal, that the witnesses were not sworn. Moreover, the record discloses no objection at the hearing on the part of appellant to their testimony on the ground that the witnesses were not sworn. We must presume that appellant failed to object to the evidence on that ground. He thereby waived his objection to the competency of the evidence." (*Id.* at pp. 555-556.)

Father contends he "did not get an opportunity to speak at this hearing to rebut these allegations. The Court rushed [Father] and the Proceeding." Again, the record reflects otherwise. Father was placed under oath and testified, denying the allegation and claiming "these things did not happen." The court did not rush the proceeding. To the contrary, the court took numerous recesses to allow Father to review pleadings and decide whether he wanted a continuance.

Father's final contention is that, based on *Griswold v. Connecticut* (1965) 381 U.S. 479, he was denied his constitutional rights to protection of his " 'individual interest in avoiding disclosure of personal matters' " and the "mutual care, company, love and affection of his child[]." *Griswold* found married couples have a marital privacy interest that the state could not invade by making contraceptive use criminal. (*Id.* at pp. 484-485.) It nowhere suggested an individual has a constitutional right not to testify in order

to “ ‘avoid[] disclosure of personal matters.’ ” Nor did it hold that a custody and visitation order issued after a hearing is a denial of due process or an unconstitutional infringement on a parent’s rights in relation to his or her child.

DISPOSITION

The order is affirmed.

Banke, J.

We concur:

Margulies, Acting P. J.

Dondero, J.