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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

OLGA AKILOV,

Plaintiff and Appellant,

v.

VLADIMIR LEO ROSENBLUM,

Defendant and Respondent.

A134628

(City & County of San Francisco  
Super. Ct. No. FDV-11-808927)

Olga Akilov, who has been protected by a series of protective orders against her former husband, Vladimir Leo Rosenblum, appeals the entry of an order directing her to stay away from him. We find in the record no justification for such an order against her. Moreover, the order purports to be “a non-CLETS Stay-Away Order”<sup>1</sup> for which there is no authority. We shall therefore reverse the order.

**Background**

Akilov and Rosenblum were married in July 2006. Akilov filed a petition to dissolve the marriage in 2008 and their divorce became final in April 2011. Based on physical beatings and other acts of abuse, in October 2007 Akilov obtained in the Sonoma County Superior Court a five-year restraining order against Rosenblum, pursuant to the Domestic Violence Prevention Act, Family Code section 6200 et seq. The record before us on the present appeal does not contain a clear record of other proceedings, but it appears that in November 2008 Rosenblum was convicted of a criminal offense in

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<sup>1</sup> CLETS stands for the California Law Enforcement Telecommunications System.

connection with his treatment of Akilov, was jailed at some point for failure to have appeared when ordered to do so, and was placed on probation conditioned on compliance with an additional stay-away order. For sending threatening emails to Akilov's daughter that were directed to Akilov in violation of the outstanding protective orders, the Sonoma County court on January 28, 2011, issued a "Criminal Protective Order—Domestic Violence" against Rosenblum, pursuant to Penal Code sections 136.2 and 1203.97. This order directed Rosenblum to stay away from Akilov for an additional three years. On July 29, 2011, the San Francisco Superior Court issued another criminal protective order against Rosenblum based on additional communications from him in violation of the outstanding protective orders.

On September 27, 2011, Akilov filed an application for a renewed protective order in the Superior Court in San Francisco, where she then resided. Rosenblum filed an answer accusing Akilov of repeatedly lying about his conduct and asserting that "in reality I am the one who needs a protection from Olga Akilov." On October 19, however, the San Francisco Superior Court issued a permanent renewal of the restraining order against Rosenblum. Rosenblum filed a notice of appeal from this order, but the appeal was subsequently dismissed for Rosenblum's failure to prosecute the appeal (No. A133664, April 25, 2012).

Rosenblum filed his application for the order that is the subject of the present appeal on November 2, 2011. This application, filed under the Domestic Violence Prevention Act, alleges that Akilov had acted inconsistently with the protective orders she had obtained against him by having contacted him about returning certain "belong[ings] and money," and that her false accusations had caused his prior arrest and jailing. Akilov filed an answer, detailing her responses to Rosenblum's allegations and reciting her version of events over the past five years. At the hearing on the application, the court did no more than have the parties confirm under oath the truth of the statements contained in their papers, and indicate that they had no corrections to make to their papers. The court then stated, "I am going to make a finding today, it is not a domestic violence incident. There will be a no harassment order that's made and stay away 25

yards. So no communication with Mr. Rosenblum.” When Akilov’s counsel objected, the court reiterated, “It’s a one year no harassment stay-away order from him. That’s the order.” “Make sure it [is] clear that this is not a domestic violence finding. It’s no harassment only.” The written order, dated December 7, 2011, states: “The court ordered a non-CLETS Stay-Away Order protecting Vladimir Leo Rosenblum from Olga Akilov” and provides that for one year Akilov “must not harass, attack, strike, threaten, assault (sexually or otherwise), hit, follow, stalk, molest, destroy personal property, disturb the peace, keep under surveillance, or block movements of Vladimir Leo Rosenblum,” “must not contact (either directly or indirectly), telephone, or send messages or mail or e-mail, or take any action, directly or through others, to get the addresses or locations of any protected persons or of their family members, caretakers, or guardians,” and “must stay at least 25 yards away from Vladimir Leo Rosenblum, . . . his home, workplace and vehicle.”

Akilov has timely appealed from the December 7, 2011 order, and has properly perfected her appeal. Rosenblum has failed to file a respondent’s brief.<sup>2</sup>

### **Analysis**

Although Rosenblum’s application was made under the Domestic Violence Prevention Act, Family Code section 6200 et seq., the trial court correctly recognized that Rosenblum’s showing was insufficient to justify an order against Akilov under that act. Even assuming the truth of Rosenblum’s assertions, Akilov did not engage in abuse as defined in Family Code section 6203, nor in behavior that can be enjoined pursuant to Family Code section 6320. (See, e.g., *S.M. v. E.P.* (2010) 184 Cal.App.4th 1249, 1266.) The trial court made clear that it did not find a “domestic violence incident.” Instead, the trial court apparently considered its order to be issued pursuant to Code of Civil Procedure section 527.6, subdivision (b)(3), which authorizes temporary restraining orders and injunctions prohibiting harassment, defined as “unlawful violence, a credible

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<sup>2</sup> Rosenblum did file a request for oral argument, which was denied because of his failure to have filed a brief in compliance with California Rules of Court, rule 8.200(a)(2). Akilov waived oral argument.

threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner.”

The court’s order cannot stand for several reasons. Rosenblum’s evidence no more showed harassment as defined in Code of Civil Procedure section 527.6 than it showed abuse as defined in Family Code section 6203. Moreover, while the court found no domestic violence, the language of its order largely tracks the language of Family Code section 6320, which authorizes an injunction against “molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, including, but not limited to, annoying telephone calls as described in Section 653m of the Penal Code, destroying personal property, contacting, either directly or indirectly, by mail or otherwise, coming within a specified distance of, or disturbing the peace of the other party.” Having found no abuse within the meaning of the Family Code provisions, there was no basis for the injunction that the court entered.

Since Akilov’s attorney represented to the court that Akilov in all events intended to stay away from Rosenblum, the court may well have believed that no harm would result from an order compelling her to do so – in effect placing the two parties under mutual protective orders. But mutual protective orders are not justified unless there is evidence and a finding of abuse by both parties. (Fam. Code, § 6305 [“The court may not issue a mutual order enjoining the parties from specific acts of abuse described in Section 6320 (a) unless . . . each party presents written evidence of abuse or domestic violence and (b) the court makes detailed findings of fact indicating both parties acted primarily as aggressors and that neither party acted primarily in self-defense”]; *Monterroso v. Moran* (2006) 135 Cal.App.4th 732, 736 [“A trial court has no statutory power to issue a mutual order enjoining parties from specific acts of abuse described in section 6320 without the

required findings of fact.”].)<sup>3</sup> There is growing recognition that entering a protective order against an innocent party who has been the victim of abuse can, indeed, be harmful. (See, e.g., *id.* at p. 738; Judicial Council of Cal., Advisory Com. on Gender Bias in the Courts, *Achieving Equal Justice for Women and Men in the California Courts*, Final Report (July 1996) [the committee “received convincing testimony that victims of domestic violence who have not engaged in an act of violence are confused, humiliated, and degraded by orders restraining them from such conduct”]<sup>4</sup>; Topliffe, *Why Civil Protection Orders Are Effective Remedies for Domestic Violence But Mutual Protective Orders Are Not* (1992) 67 Ind. L.J. 1039, 1060-1061 [“The issuance of a mutual order can reinforce the batterer’s belief that the problem is not his but is the result of external factors. He could easily understand a mutual protection order to mean that the court blames the victim as much as the batterer. [¶] Furthermore, the victim herself can recognize this implicit message.”].)

There is a further reason the court’s order is improper. The court designated its order as a “non-CLETS Stay-Away Order,” apparently under the impression that a protective order issued pursuant to Code of Civil Procedure section 527.6 need not be reported to the Department of Justice through the California Law Enforcement Telecommunications System (CLETS), as Family Code section 6380 requires the court to do when entering a protective order under the Family Code. However, that is not so. Section 6380, subdivision (b) requires the court to report to the Department of Justice protective orders issued pursuant to numerous provisions other than those in the Family Code, including Code of Civil Procedure section 527.6. There is thus no authority for the issuance of a “non-CLETS” stay-away order and the order which purports to be such must be set aside.

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<sup>3</sup> Although Family Code section 6305 refers to protective orders issued pursuant to provisions of the Family Code, the same reasons to refrain from issuing such an order against an innocent party apply when the order is issued pursuant to Code of Civil Procedure section 527.6.

<sup>4</sup> This report can be accessed at <<http://www.courts.ca.gov/documents/f-report.pdf>> [as of Aug. 8, 2012].

**Disposition**

The December 7, 2011 order is reversed.

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Pollak, J.

We concur:

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McGuinness, P. J.

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Siggins, J.