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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

DANA EVERTS,

Plaintiff and Respondent,

v.

MARIANNE ENLOW,

Defendant and Appellant.

A136761

(Contra Costa County
Super. Ct. No. D12-00103)

In a proceeding pursuant to the Domestic Violence Protection Act (DVPA), the parties sought approval of their stipulation resolving the litigation, which was granted in part and denied in part by the trial court. Marianne Enlow now appeals from (1) an order dated April 10, 2012, entered pursuant to the parties' stipulation, which revoked all restraining orders issued against her, and directed that neither party shall contact, harass, annoy or disturb the peace of the other party; and (2) an order dated May 22, 2012, which denied her motion for reconsideration, a new trial, modification, or to set aside the April 10, 2012 order. Because Enlow presents no argument as to how she was prejudiced by the April 10, 2012, order, which was entered pursuant to the parties' stipulation, we shall affirm that order. She challenges the May 22, 2012 order on the ground that the trial court erred in refusing to approve those provisions of the parties' stipulation that were not included in the April 10, 2012 order. We conclude the record does not show the trial court exercised its discretion when it denied Enlow's requested relief in its May 22, 2012 order. Accordingly, we shall reverse the May 22, 2012 order and remand the matter for further proceedings.

FACTUAL AND PROCEDURAL BACKGROUND

For several years, Dana Everts and Marianne Enlow were involved in a non-marital relationship and lived together in Everts' house. During the relationship, they held titled interests in each other's separate real properties and held some bank accounts in joint names. Sometime in January 2012, the relationship broke down, and Everts sought and obtained a temporary domestic violence restraining order against Enlow. The trial court continued the matter to February 2, 2012 for a hearing on Everts' request for a permanent restraining order. However, prior to the scheduled February hearing, the parties with the assistance of counsel successfully negotiated a settlement of the pending litigation, which they reduced to a stipulation and order. Specifically, the stipulation and order provided that "[a]ll restraining orders issued in the above-entitled case on January 9, 2012 against Marianne Enlow, a copy of which is attached hereto as Exhibit A, shall be revoked and ordered to be without [e]ffect and null and void from their inception," and "[n]either of the parties shall contact, harass, annoy or disturb the peace of the other party." The stipulation and order also included additional provisions for the disposition of real and personal property jointly held by the parties; a provision concerning the parties' dental insurance coverage; a provision that each party would pay their own attorney fees and costs and execute all documents reasonably necessary to carry out the terms of the stipulation and order; a provision reserving the court's jurisdiction to carry out the terms of the stipulation and order; and a provision that "[c]ommunications between the parties to carry out this agreement shall be made between the parties through their respective attorneys of record."

At the February 2, 2012, hearing before a court commissioner, Evert and his counsel appeared, and Enlow appeared without counsel. The parties submitted their stipulation and order, but the commissioner refused to sign the document, and continued the hearing to March 22. On the continued hearing date of March 22, the commissioner informed the parties he did not have the authority to sign the stipulation and order because it contained provisions for the disposition of the parties' property. However, the

commissioner told the parties they may seek approval from the supervising judge of the court's Family Law Division.

Thereafter, on March 22, 2012, Enlow's counsel sought approval of the parties' stipulation and order from the supervising judge of the Family Law Division. The supervising judge was then presiding over a hearing in an unrelated matter. During a break in that proceeding, the supervising judge reviewed the parties' stipulation and order, in camera, and then advised counsel she would not approve the property distribution provisions because she did not have enough information. The court signed the parties' proposed order, approving the provisions regarding the resolution of the outstanding restraining order, to wit, "[a]ll restraining orders issued in the above-entitled case on January 9, 2012 against Marianne Enlow, a copy of which is attached hereto as Exhibit A, shall be revoked and ordered to be without [e]ffect and null and void from their inception," and "[n]either of the parties shall contact, harass, annoy or disturb the peace of the other party." The court struck the remaining provisions in the proposed order. The order, as modified by the court, was filed on April 10, 2012.

On April 19, 2012, Enlow filed a motion for reconsideration (Code Civ. Proc., § 1008), a new trial (§ 657), modification (§ 662), and to set aside (§ 663) the April 10, 2012, order, essentially requesting the trial court to enter a new order approving those provisions of the parties' stipulation that had been previously stricken by the court. After a hearing on May 22, 2012, the trial court denied Enlow's requested relief. In so ruling, the trial court commented that the stricken portions of the parties' stipulation were a property division between unmarried persons, which was not a "Family Code matter" and exceeded the court's authority under the DVPA. In response to counsel's argument that the court's "general jurisdiction" extended to all issues between the parties, the court found it did not have the authority to approve a stipulation concerning "a completely unrelated matter," without evaluating whether it was "relevant" or "important." The court did not know anything about the case, the stipulation and order had been presented for its signature in the middle of a hearing in an unrelated case, and "none of the property that was discussed was even involved in the DVPA. The DVPA is very clearly about

protecting parties and this well exceeded that. So I'm not going to sign that stipulation. I'm not going to unwind it and you can do what you want." Enlow timely appeals from the orders filed on April 10, 2012, and May 22, 2012.

DISCUSSION

"The purposes of" the Domestic Violence Protection Act "are to prevent the recurrence of acts of violence and sexual abuse and to provide for a separation of the persons involved in the domestic violence for a period sufficient to enable these persons to seek a resolution of the causes of the violence." (Fam. Code, § 6220.) The statutory scheme provides for the issuance of protective orders to prevent specific acts of abuse, such as contacting, molesting, and striking (Fam. Code, § 6320), excluding a party from a dwelling (§ 6321), and other specified behaviors necessary to effect orders under §§ 6320 or 6321 (§ 6322). (Fam. Code, § 6218.) However, the remedies in the DVPA "are in addition to any other civil or criminal remedies that may be available to the petitioner." (Fam. Code, § 6227; see *Bright v. 99¢ Only Stores* (2010) 189 Cal.App.4th 1472, 1481 ["[w]hen a statute states that its remedies are 'in addition to any other remedies . . . which may be available to plaintiff,' its remedies are 'nonexclusive'"].) Thus, we agree with Enlow to the extent she argues the trial court's jurisdiction was not limited to approving only those provisions of the parties' stipulation addressing the protective order requested by Everts. Rather, the court also had jurisdiction to determine whether any of the other provisions of the parties' stipulation were necessary to prevent a "recurrence of the violence and separating the parties, the [DVPA's] purposes." (*Rayan v. Dykeman* (1990) 224 Cal.App.3d 1629, 1634 [in a DVPA proceeding, trial court had authority to accept parties' agreement to transfer title of real property to joint owner as "domestic violence in the case occurred inside the very residence stipulated and ordered transferred"]¹.)

¹ *Rayan* was decided pursuant to the DVPA, which was then set forth in the Code of Civil Procedure former section 540, et. seq. (*Rayan, supra*, 224 Cal.App.3d at p. 1631.) The trial court here refused to follow *Rayan* on the ground it predated the Family Code. However, we conclude *Rayan* remains persuasive authority as the pertinent former Code

However, we reject Enlow’s arguments that the trial court was required as a matter of law to approve the parties’ stipulation in its entirety. “Code of Civil Procedure section 664.6 (hereafter section 664.6) states, ‘If parties to pending litigation stipulate . . . for settlement of the case, or part thereof, the court upon motion, *may enter judgment* pursuant to the terms of the settlement.’ (Italics added.) [2] As this section reveals, a stipulated judgment is indeed a judgment; entry thereof is a judicial act that a court has discretion to perform. . . . ‘While it is entirely proper for the court to accept stipulations of counsel that appear to have been made advisedly, and after due consideration of the facts, the court cannot surrender its duty to see that the judgment to be entered is a just one, nor is the court to act as a mere puppet in the matter.’ ” (*California State Auto Assn. Inter-Ins. Bureau* (1990) 50 Cal.3d 658, 664; see *Baucus v. Riveroll* (1928) 95 Cal.App. 224, 225 [“an order of a court disregarding a stipulation entered into between the parties to an action is discretionary, and . . . such order may be disturbed only when it clearly appears that the order was the result of an abuse of discretion”].) Thus, we conclude the trial court had the discretionary authority to refuse to enter any orders that were not necessary to an appropriate resolution of the DVPA proceeding. However, on this record, we cannot be confident that the trial court’s ruling represents an exercise of its discretion in light of its expressed concerns directed to its jurisdiction under any circumstances to approve the provisions of the parties’ stipulation that were not included in the April 10, 2012 order. Therefore, we shall reverse the May 22, 2012 order, and

of Civil Procedure sections, cited in *Rayan*, were continued in 1993 (Stats. 1993, ch. 219, § 154 et seq.) “without substantive change” in the current Family Code sections. (Cal. Law Revision Com. com. 29F West’s Ann. Fam. Code (2004 ed.) foll. § 6220, p. 693 & § 6227, p. 703; see Fam. Code, § 2 [“[a] provision of [the Family] [C]ode, insofar as it is substantially the same as a previously existing provision relating to the same subject matter, shall be considered as a restatement and continuation thereof and not as a new enactment . . .”].)

² “Except to the extent that any other statute or rules adopted by the Judicial Council provide applicable rules, the rules of practice and procedure applicable to civil actions generally, including the provisions of Title 3a (commencing with Section 391) of Part 2 of the Code of Civil Procedure, apply to, and constitute the rules of practice and procedure in, proceedings under [the Family] Code.” (Fam. Code, § 210.)

remand the matter to the trial court for a reconsideration of Enlow's request for approval of those provisions in the parties' stipulation that were not included in the April 10, 2012 order. Our decision should not be read and we express no opinion on how the trial court should exercise its discretion in deciding the matter.³

DISPOSITION

The April 10, 2012, order is affirmed. The May 22, 2012, order is reversed and the matter is remanded for further proceedings consistent with this opinion. Parties shall bear their own costs on appeal.

Jenkins, J.

We concur:

Pollak, Acting P. J.

Siggins, J.

³ We shall affirm the April 10, 2012, order because Enlow presents no argument as to how she is prejudiced by that order, which was entered pursuant to the parties' stipulation. In light of our determination, we see no need to address Enlow's arguments that the trial court violated the parties' constitutional rights to due process and freedom to contract.