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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

L.H.-S.,

Plaintiff and Respondent,

A137171

v.

**(Alameda County
Super. Ct. No. RF12651869)**

ODAYSA MONBERASAI,

Defendant and Appellant.

_____ /

Defendant Odaya Monberasai appeals from a permanent restraining order (form DV-130) issued on October 23, 2012 prohibiting him from contacting plaintiff L.H.-S. (plaintiff) and her family. He contends: (1) there was insufficient evidence he violated the temporary restraining order or that he was a threat to plaintiff; (2) the trial court judge asked biased and leading questions at the October 23, 2012 hearing; and (3) plaintiff made false allegations about him.

We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In October 2012, plaintiff moved the court to reissue a domestic violence restraining order to keep Monberasai away from her, her husband, and her two minor

children.¹ Following a hearing on October 19, 2012, the court issued a temporary restraining order (form DV-110) ordering Monberasai to, among other things, stay 100 yards away from plaintiff, her husband, and the children. The court also issued a child custody and visitation order (form DV-140) and a “no travel with children” order (form DV-145).

On October 23, 2012, the court held a hearing and heard evidence from the parties and from five witnesses. At the conclusion of the hearing, the court issued a restraining order after hearing (form DV-130) ordering Monberasai to, among other things, stay at least 100 yards away from plaintiff, her husband, and the children until October 2017. The court concluded “sufficient evidence has been presented and the temporary restraining order is now made permanent until 10/23/2017.” It made a finding pursuant to Family Code section 3044, ordered Monberasai to attend a “batterer’s treatment program[,]” and awarded plaintiff sole legal and physical custody of the children. The court also issued a “no travel with children” order.

Monberasai timely appealed. In his notice designating record on appeal, he elected to proceed without a reporter’s transcript. (Cal. Rules of Court, rule 8.130(a)(4).) Monberasai checked the box on the Judicial Council form indicating he elected to proceed “WITHOUT a record of the oral proceedings in the superior court.” In doing so, he acknowledged he understood “that without a record of the oral proceedings in the superior court, the Court of Appeal will not be able to consider what was said during those proceedings in determining whether an error was made in the superior court proceedings.”²

DISCUSSION

“The fatal problem with this appeal is that [Monberasai] fails to provide us with a reporter’s transcript from his court trial or any other adequate statement of the evidence.

¹ The court apparently issued a similar restraining order in September 2009.

² After the court issued the restraining order, it granted Monberasai a waiver of various court fees, none of which include the fees associated with the preparation of the reporter’s transcript.

The record consists solely of a partial clerk’s transcript Generally, appellants in ordinary civil appeals must provide a reporter’s transcript at their own expense. [Citations.] In lieu of a reporter’s transcript, an appellant may submit an agreed or settled statement. [Citation.]” (*Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 186 (*Foust*); *Le Font v. Rankin* (1959) 167 Cal.App.2d 433, 436-437 [an appellant who raises a point requiring consideration of the oral proceedings must obtain and file a reporter’s transcript in the appellate court].)

“In numerous situations, appellate courts have refused to reach the merits of an appellant’s claims because no reporter’s transcript of a pertinent proceeding or a suitable substitute was provided. [Citations.] [¶] The reason for this follows from the cardinal rule of appellate review that a judgment or order of the trial court is presumed correct and prejudicial error must be affirmatively shown. [Citation.] ‘In the absence of a contrary showing in the record, all presumptions in favor of the trial court’s action will be made by the appellate court. “[I]f any matters could have been presented to the court below which would have authorized the order complained of, it will be presumed that such matters were presented.” [Citation.] This general principle of appellate practice is an aspect of the constitutional doctrine of reversible error. [Citation.] “A necessary corollary to this rule is that if the record is inadequate for meaningful review, the appellant defaults and the decision of the trial court should be affirmed.” [Citation.] ‘Consequently, [appellant] has the burden of providing an adequate record. [Citation.] Failure to provide an adequate record on an issue requires that the issue be resolved against [appellant].’ [Citation.]” (*Foust, supra*, 198 Cal.App.4th at pp. 186-187.)

Monberasai’s claim that the court erred by issuing the restraining order “cannot be resolved on an appeal utilizing only . . . the clerk’s transcript. Without a reporter’s transcript or the exhibits presented at [the hearing] we cannot undertake a meaningful review of [Monberasai’s] argument on appeal. . . . [Monberasai] seems to want this court to reevaluate [plaintiff’s] credibility and reweigh the evidence presented below, but we can do neither. [Citations.]” (*Foust, supra*, 198 Cal.App.4th at pp. 187-188; *Pringle v. La Chapelle* (1999) 73 Cal.App.4th 1000, 1003, fn. omitted.) “By failing to provide an

adequate record, [Monberasai] cannot meet his burden to show error and we must resolve any challenge to the order against him.” (*Hotels Nevada, LLC v. L.A. Pacific Center, Inc.* (2012) 203 Cal.App.4th 336, 348.)

In the table of citations in his opening brief, Monberasai asks this court to obtain the reporter’s transcripts for the October 19 and 23, 2012 hearings “[i]f need be[.]” He provides no authority for this request. (*Berger v. California Ins. Guarantee Assn.* (2005) 128 Cal.App.4th 989, 1007 [failure to support contention with authority “constitutes a waiver of the issue on appeal”].) We note that where an appellant elects to proceed without a reporter’s transcript and where the reviewing court determines a transcript is necessary to “to prevent a miscarriage of justice,” the court may “order the record augmented” with the reporter’s transcript, with the cost to be borne by the appellant. (Cal. Rules of Court, rule 8.130(a)(4); see also *Chodos v. Cole* (2012) 210 Cal.App.4th 692, 699, fn. omitted.) We decline to augment the record on our own motion.

DISPOSITION

The restraining order issued on October 23, 2012 is affirmed.

Jones, P.J.

We concur:

Simons, J.

Bruiniers, J.