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

JAMES P. GRIER,
Defendant and Appellant,
v.
NANCY TRUONG,
Plaintiff and Respondent.

A139010, A139913
(Alameda County
Super. Ct. No. AF13673706)

In case No. A139010, James Grier appeals from a domestic violence restraining order directing that he not harass or contact his ex-wife, Nancy Truong, and her husband Aleh Baturyn. He contends the court failed to make mandatory findings, the evidence was insufficient to prove harassment, and that the court based its ruling on a preconceived prejudice and animosity against him while ignoring evidence that Truong and Baturyn conspired to harass and defraud him, the court, and others. Grier also asserts the court committed various evidentiary errors. None of his contentions are supported by the record or the law, so we affirm the order.

In a second appeal, No. A139913, which we order consolidated with the appeal in No. A139010, Grier challenges subsequent findings that he violated the restraining order. That order is not appealable, so we dismiss case No. A139913.

BACKGROUND

Truong and Grier separated in 2006 and divorced in 2007. Truong, the primary caretaker of the parties' children, subsequently married Baturyn. In April 2013, Truong filed a request for a domestic violence restraining order pursuant to the Domestic

Violence Prevention Act (Fam. Code, § 6200 et. seq., hereafter the DVPA).¹ She alleged that Grier had recently threatened to kill her and Baturyn if she pursued him for child support. She also asserted Grier had been stalking and harassing her by hacking into her e-mails, bank accounts and phone records, and “has been following my movements which I’ve had no idea until recently.” She did not know how Grier had accessed her computer or obtained her e-mail password, but she discovered he had done so in 2012 when he moved for child support and attached e-mail correspondence between her and her attorney to his moving papers. Then, Truong stated, “[i]n Family Court, Grier presented more emails in which he claimed that I conspired with a Dr. White to defraud my employer and [the] Court. I have no idea who Dr. White is and how there were emails between me and Dr. White. I believe that Grier, using my email and password, started an email conversation with someone he made up, Dr. White, to try to get me in trouble with my employer and the Court.”

Grier was also harassing Truong by using a false identity to send printouts from a fake computer dating account for Baturyn to Truong and her sisters. In February 2012, one of Truong’s sisters told police that Grier, using a false return address, had sent her and another sister such disparaging printouts about Baturyn from fake internet accounts. Truong had also reported this incident to the police. “The harassment continued with Grier subpoenaing my medical records which has nothing to do with the Family Court case, my husband’s bank account, filing a Domestic Violence Restraining Order (DVRO) with this court and dropping it when he did not get a temporary restraining order and went to another court and filed another DVRO request (denied again), and submitting to the court and [sic] names and addresses of my relatives and my husband’s relatives.” In addition, Truong had recently learned that Grier, who did not hunt for sport, had purchased an assault rifle with a sniper scope and was target shooting. She feared for her safety and that of her family.

¹Unless otherwise specified, further statutory references are to the Family Code.

The court immediately issued a temporary restraining order and set a hearing on Truong's request for a permanent restraining order for April 26, 2013. The parties represented themselves at the hearing, as they do on appeal. Grier denied having threatened Truong or Baturyn and argued that Truong's application for a restraining order was in retaliation for his pursuing a harassment action against the couple. He attacked Truong's credibility with allegations that she and Baturyn had conspired to extort child support from him and commit disability fraud on Truong's employer. Grier admitted that he accessed Truong's e-mail account without her permission in 2010 because he "was concerned that [she] was going to go and perpetrate a fraud against my family." He also admitted that once in 2006 he obtained e-mails between Truong and her attorney "because [Truong's] computer was open at that time."

Among numerous attachments to Grier's opposition was a January 25, 2012 e-mail to Truong in which he informed her he had been sent a packet of internet printouts revealing that Baturyn posted nude pictures of himself on a website, impersonated women on social network sites, frequented and offered advice on websites where women discuss hygiene items pertaining to their genitalia, frequented and belonged to internet clubs that exploit women, and supported the burning of the Koran "and apparently issues that might be determined as racist tendencies." Grier told the court that he was sent the information by a stranger who identified himself as Steve West who "has issues with Ms. Truong and Mr. Baturyn," and he passed it along to Truong "[b]ecause I was under the impression that Mr. Baturyn was engaging in relationships outside of the context of his marriage." He suggested that Steve West sent the disparaging information (or misinformation) to both parties because Truong's "lifestyle choices have made her the unfortunate recipient of resentment."

Grier denied that he hacked into Baturyn's Sprint account, created a fake dating website using Baturyn's name and photograph, or sent falsified e-mails or internet printouts to Truong's sisters. He had subpoenaed information in a separate child support proceeding from Truong's bank and cell phone carrier accounts in order to determine whether Truong had misrepresented her unemployment benefits. He denied owning an

assault rifle, but admitted that at one time he had one for hunting. He had purchased two scopes for his hunting rifles within the previous two years. He could generally hit within 6 inches of the bull's eye from a hundred yards away, but "[t]hat doesn't mean that I am stalking anyone." He had never been arrested or charged with a crime.

The court issued the requested restraining order prohibiting Grier from contacting or harassing Truong and Baturyn or possessing any firearms for five years. The court commented: "Much of the information that has been shared gives pause. There are areas in which the privacy of Ms. [Truong] and her husband have been invaded that are separate and apart from any legal proceedings. [¶] You have admitted that you did not have permission to access e-mails that were being transmitted either to or from your ex-wife, although you have explanations for subpoenaed documents, and anything that is subpoenaed in a court file has some weight, but the court is also listening to determine whether there is any frustration or abuse of the subpoena process as it relates to this matter, not necessarily other matters that are pending. [¶] So, notwithstanding any of the litigation that's going on, but taking a look solely at the things that are before this court, and particularly the electronic invasions that have taken place and the distance between the date of dissolution and the ongoing communications, and leading the content of some of these communications of which you admit you have sent, it appears to this court that there was a previous domestic relationship, an ongoing one because of the children, and that there has been harassment and domestic violence and a level of stalking." Grier filed a timely appeal from the order.

DISCUSSION

I. The Restraining Order

The DVPA authorizes issuance of a protective order, "with or without notice, to restrain any person for the purpose of preventing a recurrence of domestic violence . . . if an affidavit . . . shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse." (§ 6300.) Abuse means any of the following: "(a) Intentionally or recklessly to cause or attempt to cause bodily injury. [¶] (b) Sexual assault. [¶] (c) To place a person in a reasonable apprehension of imminent serious bodily injury to that

person or to another. [¶] (d) To engage in any behavior that has been or could be enjoined pursuant to Section 6320.” (§ 6203.) Section 6320, in turn, covers a broad range of behavior: “molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning . . . , destroying personal property, contacting, either directly or indirectly, by mail or otherwise, coming within a specific distance of, or disturbing the peace of the other party” (§ 6320.)

We review a grant or denial of a protective order under the DVPA for abuse of discretion. (*Gonzalez v. Munoz* (2007) 156 Cal.App.4th 413, 420.) “ ‘The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.’ ” (*Ibid.*) Nor may we substitute our opinion as to the credibility of the witnesses for that of the trial court. (*Romero v. Eustace* (1950) 101 Cal.App.2d 253, 254 (*Romero*)).

The court did not abuse its discretion here. Truong presented substantial evidence that Grier was harassing her and her husband by, among other things, threatening to kill them, accessing her confidential e-mail account, concocting and disseminating false e-mail correspondence purportedly to show that Truong conspired to defraud her employer and the court, and sending Truong and her sisters false and disparaging information about her husband. This conduct is readily within the scope of the DVPA, which provides expansive protection against myriad forms of domestic violence, both physical and non-physical. (Fam. Code, §§ 6203, subd. (d), 6211, 6320; *In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1498–1499 (*Nadkarni*)). Grier’s contention that the evidence was insufficient to support a restraining order under the DVPA merely restates his own interpretation of the evidence, which the trial court reasonably rejected.

Grier asserts the court failed to make mandatory findings that he engaged in a course of conduct constituting harassment, communicated a credible threat of violence, caused Truong to suffer substantial emotional distress, and that his actions served no legitimate purpose. But his argument is premised upon a conflation of the showing required for a restraining order under the DVPA with the more specific requirements of

Code of Civil Procedure section 527.6. The Code of Civil Procedure authorizes a restraining order on behalf of any victim of harassment, defined as “unlawful violence, a credible 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.” (Code Civ. Proc., §527.6, subd. (b)(3).) In contrast, the court may issue a protective order under the DVPA on the basis of an affidavit, with or without additional evidence, that shows “reasonable proof of a past act or acts of abuse,” which is a different and broader basis than permitted under the Code of Civil Procedure. (§ 6300; *Nakamura v. Parker* (2007) 156 Cal.App.4th 327, 334; *Gdowski v. Gdowski* (2009) 175 Cal.App.4th 128, 137.)

Grier argues the court violated his constitutional rights to confrontation and cross-examination by, as we understand it, failing to require Truong to produce at the hearing the disparaging materials purportedly sent to her sisters by the mysterious “Steve West.” It is not clear what use those materials or any cross-examination about them might have served, as there was no real issue about the nature of those materials that required their production in court. The question, rather, was simply whether it was Grier who sent the documents to Truong’s sisters. The court credited Truong’s evidence, including Baturyn’s testimony, that he did so, and we must accept its credibility determination. (*Romero v. Eustace, supra*, 101 Cal.App.2d at p. 254.) Moreover, Grier did not ask for the opportunity to question Truong’s sisters on this (or any) point in the trial court, so he has forfeited that claim on appeal. (See generally 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, §400, pp. 458–459.)

In a similar vein, Grier argues the court improperly relied on the e-mails he had obtained from Truong’s computer in 2006 because they were part of a record that was ordered to be sealed in a separate child support modification proceeding. But those e-mails were only relevant in this proceeding to show that Grier had accessed Truong’s e-

mail account without her permission, a fact Grier *conceded*. Even assuming arguendo that the e-mails were not admissible,² the asserted error was thus necessarily harmless.

Grier's remaining arguments are a hodgepodge of attacks on the trial court, whose rulings he claims were arbitrary, unreasonable, and based on "personal disdain" and a preconceived belief in his guilt. Suffice it to say that our careful review of the record reveals no support for any such accusations. The record demonstrates no reversible error, and substantial evidence supports the restraining order, so we affirm it.

II. The Contempt Order

At an August 2, 2013 hearing on an order to show cause for contempt, the trial court found Grier had violated the restraining order and continued the case to September 6 for a contempt hearing. Grier has filed a notice of appeal from the August 2 order, but the order is not appealable (Code Civ. Proc., §§ 904.1, subd. (a)(1), 1222). (*Bermudez v. Municipal Court* (1992) 1 Cal.4th 855, 861, fn. 5; *Davidson v. Superior Court* (1999) 70 Cal.App.4th 514, 522.) Grier argues his appeal is nonetheless proper because the August 2 order includes a "distinct separable order" denying his request for a jury trial on the contempt charges, but there was no such ruling. Rather, the court merely noted Grier's request for a jury trial and explained that it would be addressed at the hearing on September 6. Finally, the fact that Grier levies accusations of judicial bias and misconduct against the trial court in both appeals does not, as he maintains, give this court jurisdiction over an unappealable order.

²To be clear, we need not and do not decide that question.

DISPOSITION

Appeal No. A139913 is dismissed. The restraining order is affirmed. Truong is awarded costs on appeal. (Cal. Rules of Court, rule 8.278.)

Siggins, J.

We concur:

McGuiness, P.J.

Pollak, J.