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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

ALEXANDRA M. KAY,

Respondent,

v.

JOHN ROBINSON III,

Appellant.

A144948

(Alameda County
Super. Ct. No. HF14735595)

This is an appeal of an order of protection issued by the family court pursuant to the Domestic Violence Prevention Act (DVPA) (Fam. Code, § 6200 et seq.), restraining John Robinson III (Robinson), and protecting Alexandra Kay (Kay), Kay and Robinson’s five-year-old son, and Kay’s older son.¹ On appeal, Robinson contends that the family court abused its discretion because it issued the restraining order on the basis of insufficient evidence; that the family court lacked jurisdiction to rule on the restraining order; and that he will be harmed if the restraining order is not overturned. We find no error by the family court, and we will affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Kay and Robinson have a son who is now five years old. The record reflects that Kay and Robinson have had a volatile relationship for several years. At issue here is an order of protection issued by the superior court on March 23, 2015, against Robinson

¹ All statutory references are to the Family Code unless otherwise specified.

protecting three individuals: Kay, Kay and Robinson's then four-year-old son, and Kay's 20-year-old older son, who is not related to Robinson.²

A. *Procedural Context*

In August 2014, Kay filed a request for a domestic violence restraining order against Robinson, alleging that Robinson abused her on multiple occasions. The family court issued a temporary restraining order protecting Kay and her older son. The court also issued a child custody and visitation order giving legal custody of the younger son to Kay and Robinson, and physical custody to Kay, with Robinson having visitation the first and third weekends of each month, and overnights every Wednesday. A hearing on the restraining order was scheduled for later in the month, and then reset for September because Robinson had not been served with notice. Neither Kay nor Robinson appeared at court on the scheduled date, and the hearing was therefore dropped by the court.

On March 4, 2015, Kay filed a new request for a domestic violence restraining order in the form of personal conduct and stay-away orders, this time seeking protection for her son with Robinson as well as for her older son and herself. She alleged that Robinson abused her on several occasions in February, and on March 4. On March 5, the family court issued a temporary restraining order against Robinson, ordered legal and physical custody to Kay with no visitation by Robinson until order of the court, and set a hearing for March 23.

Kay and Robinson appeared at the hearing and were questioned by the family court judge; neither was represented by counsel.³

² The Clerk's Transcript includes filings and orders that postdate Robinson's notice of appeal, including Robinson's May 2015 request for orders granting him custody and staying the restraining order, and supporting papers; as well as a "Child Custody Recommending Counseling Report." Because these papers were not before the family court when it issued its March 23, 2015 ruling, we disregard them here, and we also disregard statements of fact in Robinson's brief to the extent the statements rely on those papers.

³ Robinson is represented by counsel in this appeal.

B. *Kay's Testimony*

Kay testified that on February 11, 2015, she was at her boyfriend's residence, and saw Robinson's car drive by. She was scared, and she left and went to a nearby store. As she was about to go into the store, she met Robinson who said he did not want any boyfriend of hers around their child, and that she "was the cause of the way that things . . . were." She testified that Robinson then pointed a handgun at her, and then left.

She testified that on several occasions Robinson sent her texts and left phone messages that were abusing and threatening. She testified that Robinson would see the names of friends on her phone, and leave her messages if she did not answer the phone, or send her texts accusing her of "sucking their dick, or, you know, selling pussy." She testified that some of his messages showed that he was stalking her, "that he's coming, he's coming now, he's coming to Richmond, he's coming wherever I'm at, that he's gonna find me." She testified that he would go to the coffee shop she frequented, and seek out her friends, including calling them to try to find out where she is.

She testified that in late February, Robinson bruised her when she was trying to leave his house. She had gone to his house and said she needed her freedom, and he pushed her into the house, and locked the door. They spoke for a while, and then she felt she needed some fresh air and went to the balcony, threw her bag over, and tried to jump over to get away. While she was trying to do that, Robinson dragged her back. She testified that this incident took place in front of their son.

She also testified that Robinson threatened her older son on the pretext that the son owed him money.

C. *Robinson's Testimony*

Robinson denied that he accused Kay of "selling pussy," but admitted that he sometimes accused her of "sucking dick." He explained that he and Kay "get vulgar with each other. Just like any other couple, we have arguments. So therefore, we both have said negative things toward each other." He testified that Kay was physically abusive to herself, slapping her face and pulling her hair out. He told the family court that he

wanted to talk about his son; the judge responded that the first issue was the request for a restraining order, after which custody would be addressed.

Asked by the judge if he had anything to say about the incident on the balcony Robinson responded, “I don’t—who was there? Where’s the witnesses? [¶] . . . [¶] I mean, I don’t have anything to substantiate what she’s saying because it’s all claims and it’s all, you know, propaganda and drama for some court papers to get signed, so—I mean, we have arguments, Your Honor, just like anybody else. You know, it is what it is. I mean, but sometimes people exaggerate points and exaggerate things too.” Asked about the incident outside the store, he said it never happened, and he was never there. Asked if he had ever held a handgun, he answered, “Of course.” The family court then asked when he had last held a handgun. Robinson responded, “I can’t give you a date, I mean, when the last time was I held a handgun.” He could not give an approximate date, either.

D. *The Court’s March 23, 2015 Orders*

At the hearing, the family court stated, “I’ve given you [Robinson] many opportunities to talk about what happened. I find Petitioner’s allegations that she fears you because you have been abusive credible and I’m [going to] issue a restraining order. [¶] . . . [¶] In light of the fact that this is a case where the allegations involve a gun and Respondent has not denied that at some undetermined time in the past [he] has had a gun, I’m going to give [Kay] a five-year restraining order.” The family court issued an order against Robinson, protecting Kay, her older son, and Kay and Robinson’s son. The order included their son because of Kay’s testimony that he was present during one of the incidents of abuse. The order prohibits Robinson from harassing them, contacting them or attempting to obtain their addresses, and requires him to stay 100 yards away from them, but allows Robinson to interact with their son per court orders. The court also issued a child custody and visitation order for Kay and Robinson’s son, pursuant to which

Kay was granted legal and physical custody, with the child spending the first and third weekends of each month with Robinson.⁴

This appeal of the restraining order timely followed.⁵

DISCUSSION

Because no respondent's brief has been filed and argument has been waived, we decide this appeal on the record and the opening brief. (Cal. Rules of Court, rule 8.220(a)(2).) We presume that the challenged order is correct, and we indulge "all intendments and presumptions . . . in favor of its correctness." (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) As appellant, Robinson has the burden to affirmatively demonstrate error, even though Kay has not filed a respondent's brief. (*Kriegler v. Eichler Homes, Inc.* (1969) 269 Cal.App.2d 224, 226-227.)

A. *Applicable Law*

"The Domestic Violence Prevention Act (DVPA) (Fam. Code, § 6200 et seq.) exists 'to prevent acts of domestic violence, abuse, 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.' (§ 6220.)" (*Cueto v. Dozier* (2015) 241 Cal.App.4th 550, 559, fn. omitted.) Under the DVPA, "a court may issue a protective order to restrain any person for the purpose of preventing a recurrence of domestic violence and ensuring a period of separation of the persons involved. (§§ 6220, 6300.)" (*S.M. v. E.P.* (2010) 184 Cal.App.4th 1249, 1264 (*S.M.*))

⁴ Robinson does not challenge the March 23, 2015 child custody and visitation order, which was in any event superseded by an amended order issued by the family court on July 20, 2015.

⁵ Robinson's notice of appeal, which was filed by his counsel, identifies the family court's March 23 order as an order after judgment, appealable under Code of Civil Procedure section 904.1, subdivision (a)(2). Robinson's opening brief states the order is appealable as a judgment under Code of Civil Procedure section 904.1, subdivision (a)(1). The record does not reflect the entry of any judgment in the underlying case; however, the March 23 order is appealable under Code of Civil Procedure section 904.1, subdivision (a)(6) as an order granting an injunction. (*Isidora M. v. Silvino M.* (2015) 239 Cal.App.4th 11, 16, fn. 4.)

Family Code section 6300 provides that, “An order may be issued under this part, with or without notice, to restrain any person for the purpose specified in Section 6220 if an affidavit or testimony . . . shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse. The court may issue an order under this part based solely on the affidavit or testimony of the person requesting the restraining order.” (§ 6300.)

The DVPA defines domestic violence as “abuse perpetrated against” certain individuals, including a person with whom the respondent has had a child. (§ 6211, subdivision (d).) “Abuse” is defined in section 6203 as “(1) To intentionally or recklessly cause or attempt to cause bodily injury. [¶] (2) Sexual assault. [¶] (3) To place a person in reasonable apprehension of imminent serious bodily injury to that person or to another. [¶] (4) To engage in any behavior that has been or could be enjoined pursuant to Section 6320.” (§ 6203, subd. (a).) Among the behavior that can be enjoined pursuant to section 6320 is “molesting, attacking, striking, stalking, threatening, . . . harassing, telephoning, . . . coming within a specific distance of . . . the other party, and, in the discretion of the court, on a showing of good cause, of other named family or household members.” (§ 6320, subd. (a).)

After notice and a hearing (§ 6340), a court can issue a protective order under the DVPA (§§ 6218, 6320, 6322.7) with a duration of up to five years. (§ 6345.)

We review the trial court’s decision issuing a restraining order under the DVPA for an abuse of discretion. (*S.M.*, *supra*, 184 Cal.App.4th at p. 1264; *Gonzalez v. Munoz* (2007) 156 Cal.App.4th 413, 420.) We review the court’s factual findings supporting the restraining order for substantial evidence. (*J.J. v. M.F.* (2014) 223 Cal.App.4th 968, 975, citing *Sabbah v. Sabbah* (2007) 151 Cal.App.4th 818, 822.) The “substantial evidence” standard is deferential to the trial court. (*Bickel v. City of Piedmont* (1997) 16 Cal.4th 1040, 1053 (*Bickel*).) We do not reweigh the evidence. “ ‘Where findings of fact are challenged on a civil appeal, we are bound by the “elementary but often overlooked principle of law that . . . the power of an appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted,” to support the findings below. (*Crawford v. Southern Pacific Co.*

(1935) 3 Cal.2d 427, 429.) We must therefore view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor.’ ” (*Bickel, supra*, 16 Cal.4th at p. 1053.) “Moreover, we defer to the trier of fact on issues of credibility.” (*Lenk v. Total-Western, Inc.* (2001) 89 Cal.App.4th 959, 968.) The testimony of a single witness, even that of a party, may constitute substantial evidence. (*In re Marriage of Mix* (1975) 14 Cal.3d 604, 614 (*Mix*); see also § 6300 [protective order under DVPA can be issued “based solely on the . . . testimony of the person requesting the protective order”].)

B. *Robinson Has Forfeited His Claims of Error*

1. *Substantial Evidence*

Robinson argues that the family court erred in “[t]hreatening [him] with sequester through imprisonment if he sought out the residence where his toddler was being held, or visited his school, contacted or communicated with his child based upon unsubstantiated evidence of abuse.” He argues that the facts and evidence presented at the March 23, 2015 hearing do not justify the protective order, because only one witness, Kay, presented testimony at the hearing, and her testimony consisted “completely of self-serving hearsay.”

These arguments lack merit on their face. As an initial matter, we note that Kay was not the only witness to present testimony at the hearing: Robinson also testified. And Robinson does not identify the portions of Kay’s testimony that he contends are hearsay. Certainly there are no hearsay issues with such testimony as, “He aimed a gun at me.”

In any event, Robinson has forfeited his claim of lack of substantial evidence because he has not set forth, discussed and analyzed all the evidence on the points that he disputes. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881; *Schmidlin v. City of Palo Alto* (2007) 157 Cal.App.4th 728, 737-738.) Robinson contends that the family court’s finding of a past act or acts of abuse is not supported by substantial evidence, and therefore he must set forth in his brief all the material evidence on the point, presenting the facts in the light most favorable to the judgment. (*Boeken v. Philip Morris, Inc.*

(2006) 127 Cal.App.4th 1640, 1657-1659; see Cal. Rules of Court, rule 8.204(a)(2)(C) [appellant’s opening brief must “[p]rovide a summary of the significant facts limited to matters in the record”].) But Robinson’s brief says nothing about his testimony that he had handled a handgun, and that he could not give an approximation of the last time he had done so, even though the family court stated on the record that this was its reason for granting a five-year protective order. His brief is silent as to Kay’s testimony about the incident on the balcony, and her testimony that the incident took place in front of their child, even though the family court stated on the record that this testimony was part of the reason for including the son as a protected party in the restraining order. His brief says nothing about his threats to her and her older son, or about the phone messages he left for her, or about his contacting her friends for information about her whereabouts.

Robinson has also forfeited his claim of error because his arguments rest on factual assertions that are not supported by citations to the record (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246 (*Nwosu*)) and because his arguments lack citation to authority.⁶ (*Allen v. City of Sacramento* (2015) 234 Cal.App.4th 41, 52 (*Allen*).)

If we reached the merits of Robinson’s claim, we would reject it, and not just because Robinson states incorrectly that Kay was the only witness or that her testimony consisted entirely of hearsay. Even if Kay were the only witness, the lack of “independent supporting evidence”—that is, testimony from witnesses other than Kay—would not be fatal to the family court’s decision to issue a protective order. (*Mix, supra*, 14 Cal.3d at p. 614; § 6300.) The family court found credible Kay’s testimony that she feared Robinson because he had been abusive to her. The family court heard testimony from both Kay and Robinson, stated that it found Kay more credible than Robinson and noted that Robinson had not denied some of the allegations in the application for the protective order.

⁶ We remind Robinson’s counsel that California Rules of Court, rule 8.204(a) sets forth requirements for the contents of appellate briefs.

We see no basis for an argument that a witness's testimony is insubstantial because it is self-serving. If Kay's testimony was self-serving, so was Robinson's. The family court found Kay more credible, and Robinson gives us no reason to question the family court's finding. We see no basis for an argument that the family court here was presented with, least of all swayed by, "accusations about the Appellant not relevant to the hearing." We see no basis for an argument that Kay's testimony was "generalized" and therefore did not constitute substantial evidence. To the contrary, in responses to questions from the family court, Kay provided details of dates, times and specific events, including abusive conduct in front of Kay and Robinson's son, in addition to her more general accounts of abusive conduct toward herself and her older son, some of which Robinson admitted. Nor are we persuaded by Robinson's bald statements that Kay "had sought in the past to get a restraining order placed on [him] and had not been successful," and that Kay's "evidentiary showing . . . would not pass muster had it been the first time she went before the trial Court to get the restraining order."

2. *Jurisdiction and Harm to Robinson*

Robinson contends that the family court lacked jurisdiction to rule on Kay's request for a restraining order. First, he claims that the matter was not heard in the proper venue, because it was heard in Hayward when it should have been heard in Alameda. Second, he states, "Most importantly the fact that the Appellant did not waive his rights to be governed mediated or judged by the Superior Court of California, Alameda County, this in itself left the court with no authority or jurisdiction to govern, enforce, or restrict Appellant in his pursuit of liberty in order to raise his son." Neither of these issues was raised below, and accordingly both of them have been forfeited.⁷ (*Newton v. Clemons* (2003) 110 Cal.App.4th 1, 11.) Moreover, the arguments have been forfeited because they rest on factual assertions that are not supported by citations to the record (*Nwosu*,

⁷ In the introduction to his brief, Robinson cites some colloquy with the court. At one point in that colloquy, Robinson used the word "authority," but clearly not in the context of whether the court had jurisdiction over him.

supra, 122 Cal.App.4th at p. 1246) and because they are presented without citation to authority. (*Allen, supra*, 234 Cal.App.4th at p. 52.)

Robinson also contends that “[t]he restraining order should also be overturned because this result will have an irreversibly harmful effect on the Appellant’s inalienable custody rights.” Because Robinson does not provide legal argument on this point with citation to authority, we can, and do, “treat the point as forfeited and pass it without consideration.”⁸ (*Allen, supra*, 234 Cal.App.4th at p. 52.)

DISPOSITION

The family court’s restraining order is affirmed.

Miller, J.

We concur:

Kline, P.J.

Richman, J.

⁸ In the introduction to his brief, Robinson contends that there was an “established relationship” between the trial court and Kay; that “the trial court hastily processed this complaint without vetting these allegations”; and that “[t]herefore, a symbolic and improper aligning occurred between the Appellee and Department 507 [the family court] using its status and influence so as to discriminate against Appellant.” These contentions are not developed in the body of the brief or supported by any factual or legal authority, and we do not consider them further.