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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

TURESI HITHE FANIEL,

Plaintiff and Respondent,

v.

ANDREW MANLEY,

Defendant and Appellant.

B232160

(Los Angeles County  
Super. Ct. No. BQ030118)

APPEAL from an order of the Superior Court of Los Angeles County,  
Mark A. Juhas, Judge. Affirmed.

Willoughby & Associates, W. Anthony Willoughby, Jason J. Buccat and  
Danielle R. Claxton for Defendant and Appellant.

Law Office of Herb Fox and Herb Fox for Plaintiff and Respondent.

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Appellant Andrew Manley (Manley) seeks to reverse the trial court's issuance of a restraining order against him in favor of Respondent Turesi H. Faniel (Faniel).

Manley contends that the trial court abused its discretion (1) in issuing a restraining order on the basis of its finding that Manley threatened Faniel with a firearm because there is no competent, relevant evidence supporting such a finding; (2) in issuing a restraining order on the basis that Manley controlled Faniel because control is not a legal basis for finding abuse under Family Code section 6203<sup>1</sup> and, further, the evidence does not support a finding of such control; and (3) when it found that Manley was not credible and that Faniel was credible.

As we conclude that the trial court's restraining order is supported by substantial evidence and that it did not abuse its discretion in issuing that order, we will affirm.

### ***FACTUAL AND PROCEDURAL BACKGROUND<sup>2</sup>***

Manley, a married man, first met Faniel approximately ten to 15 years ago when

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<sup>1</sup> Family Code section 6203 defines "abuse" to include 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 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."

Family Code section 6320 states, in relevant part, "(a) The court may issue an ex parte order enjoining a party from molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, including, but not limited to, making 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, and, in the discretion of the court, on a showing of good cause, of other named family or household members."

<sup>2</sup> The factual and procedural background is drawn from the record, which includes a one-volume Clerk's Transcript and a two-volume Reporter's Transcript.

he provided an education service to the special needs children in Faniel's group home. Beginning in 2006, while Manley remained married, the two began dating. Although the parties dispute when they split and who broke up with whom, they both agree that they were in a "dating relationship" as defined in Family Code section 6210<sup>3</sup>. Faniel testified that the relationship continued through September of 2009, while Manley testified that he ended the relationship in April of 2008. Over the course of their relationship, Manley gave Faniel cash on a monthly basis and provided her with a Jaguar vehicle to drive.

On May 21, 2010, Faniel filed an application for a temporary restraining order (TRO) against Manley. A TRO was issued and served on Manley on May 26, 2010. The TRO required that Manley surrender all of his firearms to a law enforcement agency within 24 hours of being served. However, Manley did not comply with the TRO's firearm surrender requirement until August of 2010. The weapons he surrendered include a 9 mm semi-automatic Uzi, a 12-gauge shotgun, a .45 caliber semi-automatic Colt with a magazine, a .44 magnum Super Comanche revolver with wooden grips, a .357 magnum revolver and an undercover .38 special revolver. A trial on the permanent restraining order was held over five days: August 25, 2010, September 16, 2010, September 22, 2010, September 27, 2010 and September 29, 2010.

During the trial, Faniel testified that Manley was violent and threatened her with violence on a regular basis. In her live testimony, Faniel stated that Manley "has

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<sup>3</sup> Family Code section 6210 states, " 'Dating relationship' means frequent, intimate associations primarily characterized by the expectation of affection or sexual involvement independent of financial considerations."

shaken, choked, attacked, pushed and shoved” her on several different occasions. More specifically, she testified that Manley choked her twice in 2007, four times in 2008 and once in 2009. Faniel also testified that in August or September of 2008, while drinking and during the course of an argument, Manley pushed her down on the couch, grabbed her by the neck and pointed a handgun to her head telling her, “bitch, I will kill you. I will kill you. I will make it where no one will find you.” This more serious incident was corroborated by Faniel’s mother, Bettye Decquir (Decquir), who testified that Manley admitted to having done this to Faniel during a telephone call with her mother in 2010.<sup>4</sup> Later in 2008, Manley threatened Faniel through a friend stating that “he was going to see her in the gutter,” “he was going to see her fall on her face” and she would “lose everything that she had.” Faniel’s mother also testified that Manley told her sometime in 2009 that “he would see my daughter lying in the gutter.”

Manley was also very controlling and jealous. Faniel testified that in 2006, Manley used scissors to forcibly cut off Faniel’s sweat pants while she was wearing them, despite her pleas for him to stop. Her testimony was corroborated by her friend, an eye-witness to the event, Vivian Goodman (Goodman). Throughout their

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<sup>4</sup> The trial court somewhat questioned Faniel’s mother’s intentions as she admitted to accepting a check from Manley in the amount of \$1,200 in May of 2010, shortly after the conversation she had with Manley described above. On cross, Decquir stated that she accepted the check on behalf of her son who was having some financial difficulties at the time. The trial court stated, “I have to be frank. Please don’t misunderstand. I am not moralizing. But I would think your mother would say ‘okay. My family will take care of my son. I don’t need your money. If the price that comes with that is you are going to threaten to kill my daughter, that is too high a price for me to pay.’ And so that is why I am making these comments before closing argument because maybe there is a very good – very good argument for it.” The trial court did not state, however, that it did not believe Decquir’s testimony.

relationship Manley engaged in other controlling behaviors such as instructing Faniel in what she should wear, covering her immediately upon exiting a pool and not allowing her to lounge while only wearing a swimsuit, accusing Faniel of having a sexual relationship with her son, and isolating her from her family and friends.

Additionally, Faniel testified that Manley told her lies with the intent to manipulate and control her. For example, he told her that he was a special operations member of the FBI and CIA. Manley previously was in the U.S. Navy and now was a reserve Probation Officer for Los Angeles County. He carried a concealed weapon. He told Faniel that, as part of his duties in special operations, he once was assigned to “get rid of” the wife of another team member because she had cheated on the team member. Faniel testified that these statements instilled fear in her.

In September of 2009, he took the Jaguar back by taking possession of it without Faniel’s knowledge from her mother’s backyard where the car was parked during her visit there. In early 2010, soon after Faniel purchased a replacement vehicle, her car window was broken and one of her tires was slashed. Later, her car was tagged with “304” and someone spray-painted “304” and “PUNK FAGGOT” on her house door. Shortly thereafter, her car was set on fire. The vandalism was corroborated by photographs of Faniel’s car and home. Although Faniel believed Manley was behind the destruction and she feared for her safety as a result, she failed to produce any evidence that linked the vandalism directly to Manley.

Manley, during his live testimony, accused Faniel of extorting \$35,000 from him by threatening to call his wife and inform her of the affair. He testified that he gave

Faniel \$7,000 a month from July through November of 2008 (totaling \$35,000). Faniel denies ever calling Manley's wife or threatening to do so and stated that Manley provided for her on a monthly basis while they were a couple and the \$7,000 a month was part of that.

Faniel testified that after the TRO was issued, she saw Manley on two separate occasions in June and July of 2010, drive by her house. She also testified that seeing him frightened her.

On October 1, 2010, the trial court granted Faniel's request for a restraining order covering a period of two years. It issued its Statement of Decision regarding the order on January 6, 2011. The trial court found that Manley committed domestic violence against Faniel in violation of Family Code section 6300, that Manley and Faniel were in a "dating relationship," that Manley violated the terms of the TRO issued in May of 2010, and that Faniel was generally more credible than Manley. The trial court also found that Faniel's accusation that Manley cut off her sweat pants with scissors was credible and that, along with other evidence "including the financial payments, provides sufficient evidence of control over [Faniel] to allow for a restraining order." The trial court also found that Manley "carried a gun . . . [and] that he threatened [Faniel] with a gun." It stated that "[t]he threat with the gun is use of a firearm that supports the granting of a restraining order." The trial court noted "that all of the complained about acts in this matter ceased upon [Faniel's] filing of the restraining order."

Manley filed a notice of appeal on February 23, 2011.

## ***ISSUES ON APPEAL***

Manley contends that the trial court abused its discretion (1) in issuing a restraining order on the basis of its finding that Manley threatened Faniel with a firearm because there is no competent, relevant evidence supporting such a finding; (2) in issuing a restraining order on the basis that Manley controlled Faniel because control is not a legal basis for finding abuse under Family Code section 6203 and, further, the evidence does not support a finding of such control; and (3) when it found that Manley was not credible and that Faniel was credible.

## ***DISCUSSION***

### *1. Standard of Review*

This case involves the Domestic Violence Prevention Act (DVPA). (Family Code §§ 6200 et seq.) “The DVPA authorizes issuance of an order restraining a person ‘for the purpose of preventing a recurrence of domestic violence and ensuring a period of separation of the persons involved, if an affidavit . . . shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse.’ ([Family Code] § 6300.) For purposes of the DVPA, ‘abuse’ is defined as intentionally or recklessly causing or attempting to cause bodily injury, sexual assault or placing a person in ‘reasonable apprehension of imminent serious bodily injury.’ [Citations.] [Family Code section 6320 authorizes the court to ‘issue an ex parte order enjoining a party from molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, [and making] annoying telephone calls . . . , destroying personal property, contacting, either directly or indirectly, . . . coming within a specified distance of, or

disturbing the peace of the other party, and, . . . other named family or household members.’ ” (*Gonzalez v. Munoz* (2007) 156 Cal.App.4th 413, 421.)

We review the granting of a protective order under the DVPA for abuse of discretion. (*Gonzalez v. Munoz, supra*, 156 Cal.App.4th at p. 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.’ [Citation.]” (*Id.*, at pp. 420-421.)

Having reviewed the statutory framework governing restraining orders under the DVPA and the applicable standard of review, we now turn to our analysis of the issues on appeal.

2. *The Trial Court Did Not Abuse Its Discretion in Issuing the Restraining Order*

Manley contends that the trial court abused its discretion in issuing a restraining order on the basis of its finding that Manley threatened Faniel with a firearm because there is no competent, relevant evidence supporting such a finding. We disagree. The record contains Faniel’s live testimony that, in the course of an argument, Manley pushed Faniel down, held her by the neck and pointed a gun to her head. The testimony further shows that Manley threatened to kill Faniel at that point. This very serious incident is corroborated by the testimony of Faniel’s mother. The record also contains Faniel’s testimony that Manley “has shaken, choked, attacked, pushed and shoved” Faniel on different occasions. Faniel testified that she feared for her life as a result of

Manley's behavior. Although these events occurred over 2007 to 2009, and Faniel did not state that Manley engaged in such contact as recently as 2010, Family Code section 6300 only requires "a showing of past abuse, not a threat of future harm" . . . and "a protective order under the DVPA [can be issued] on the basis of an affidavit showing past abuse. [Citation.]" (*Gdowski v. Gdowski* (2009) 175 Cal.App.4th 128, 137.)

Such evidence supports the trial court's finding that Manley threatened Faniel with a firearm and in a number of other ways placed her in reasonable apprehension of imminent serious bodily injury. We easily conclude that the trial court's order, based on its findings, does not exceed the bounds of reason and is, thus, not an abuse of discretion.

Under Family Code section 6203, placing a person in reasonable apprehension of imminent serious bodily injury is considered "abuse" such that a trial court may issue a restraining order. As the evidence demonstrates that Manley engaged in such abuse when he held a gun to Faniel's head and threatened to kill her in combination with additional threatening statements and actions, we need not address Manley's second contention that the trial court abused its discretion in issuing the restraining order on the basis that Manley "controlled" Faniel because control is not a legal basis for finding abuse under Family Code section 6203.

3. *The Trial Court's Credibility Determination Is Not an Abuse of Discretion*

Manley last contends that the trial court abused its discretion when it found that Manley was not credible and that Faniel was credible. We disagree.

Conflicting evidence is not enough to show that the trial court abused its discretion. “The trial court . . . was able to assess credibility and resolve any conflicts in the evidence. Its findings . . . are entitled to great weight. Even though contrary findings *could* have been made, an appellate court should defer to the factual determinations made by the trial court when the evidence is in conflict. This is true whether the trial court’s ruling is based on oral testimony or declarations. [Citation.]” (*Shamblin v. Brattain* (1988) 44 Cal.3d 474, 479.)

Here the trial court expressly stated that it found Faniel’s testimony “throughout the trial, . . . to be more credible in her recitation of the facts than the court found [Manley].” The trial court also found Faniel “to be credible in her testimony as to the actions of [Manley].” “ [I]t is the exclusive province of the [trier of fact] to determine the credibility of a witness. . . . ’ [Citation.] . . . The testimony of a single witness may provide sufficient evidence. [Citation.]” (*Sabbah v. Sabbah* (2007) 151 Cal.App.4th 818, 823.) We will not disturb the trial court’s credibility determination on appeal.

***DISPOSITION***

The trial court's restraining order is affirmed. Turesi Hithe Faniel shall recover her costs on appeal.

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CROSKEY, J.

WE CONCUR:

KLEIN, P. J.

KITCHING, J.