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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Sacramento)

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JENNIFER K. LOZANO,	C068558
Plaintiff and Respondent,	(Super. Ct. No. 05FL01410)
v.	
DONALD E. HUGHES,	
Defendant and Appellant.	

Donald Hughes, father, appeals from two trial court orders. The first, awards Jennifer Lozano, mother, sole legal and physical custody of the parties' three minor children, provides father with visitation and issues a Domestic Violence Protection Act<sup>1</sup> (DVPA) restraining order against father. In the second order, the trial court denied father's request to modify the child custody order, as well as his request for a DVPA restraining order against mother.

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<sup>1</sup> Family Code section 6200.

## BACKGROUND

Father has elected to proceed on a clerk's transcript. (Cal. Rules of Court, rules 8.121, 8.122.) Thus, the appellate record does not include a reporter's transcript of the hearings in this matter. This is referred to as a "judgment roll" appeal. (*Allen v. Toten* (1985) 172 Cal.App.3d 1079, 1082-1083; *Krueger v. Bank of America* (1983) 145 Cal.App.3d 204, 207.)

The limited record we have establishes that in February 2005, mother filed a petition to establish paternity regarding three minor children; she named father as the respondent. Mother concurrently filed a DVPA request for a court order, seeking a restraining order against father. The parties subsequently entered into stipulated mutual conduct orders, which included agreements regarding child custody, visitation, and use of property.<sup>2</sup>

On January 21, 2011, and again on February 10, 2011, father filed "Orders to Show Cause re Modification of Child Custody, Support and Visitation." On March 3, 2011, mother filed another DVPA request for a restraining order against father.

On May 20, 2011, father's motions to modify custody and support were heard along with mother's request for a DVPA restraining order; both parties represented themselves. After considering the evidence, including the testimony of witnesses,

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<sup>2</sup> In response to mother's paternity action, father admitted to being the biological father of the three minor children.

the court found father "repeatedly engaged in abuse" and granted mother's request for a DVPA restraining order.

The court then awarded sole legal and physical custody of the parties' minor children to mother. In support of its decision, the trial court found father failed to rebut the presumption under Family Code section 3044 that "an award of sole or joint physical or legal custody of a child to a person who has perpetrated domestic violence is detrimental to the best interest of the child . . . ."

The court also awarded father parenting time with two of the children on the first, third, and fifth weekends of each month from 6:00 p.m. on Fridays to 7:00 p.m. on Sundays. Father's parenting time with the middle child, who had accused father of molesting her, was suspended until that child was willing to participate. Mother was ordered to have that same child participate in counseling and to include the issue of reunifying with father as part of that counseling.

The parties each were ordered to participate in a minimum of five individual counseling sessions to address issues including anger management, domestic violence awareness, and other matters and additional sessions as deemed necessary by their respective counselors.

Following completion of individual counseling, the parties were ordered to participate in coparenting counseling. The court retained jurisdiction over child custody and visitation and ordered the parties to return to court for a review hearing on December 13, 2011.

On June 24, 2011, father filed another "Order to Show Cause re Modification of Child Support, Custody and Visitation," asking the court to modify the May 20, 2011, custody and visitation order. In support of his request, father argued there were changed circumstances because he had completed anger management/domestic violence awareness classes. He also said mother "violated her own restrai[in]ing order by trespassing at [his] home on 6/17/11."

Three days later, father filed his own DVPA request for a restraining order against mother. In support of his request, father stated that mother came to his "home trespassing breaking her own restrai[in]ing order against me." Father indicated he was advised by a sheriff to obtain his own restraining order. The court denied father's request for a temporary restraining order, and set the matter for trial in July 2011.

On July 27, 2011, the parties appeared for a hearing on both of father's motions. Again, both parties represented themselves. The court denied father's request for a DVPA restraining order noting in the minute order: "prop. not divided." The court also denied father's request to modify the custody and visitation order, finding "no change of circumstances."

Father appeals from the May 20, 2011, order as well as the July 27, 2011, order. The appeals were consolidated.

#### DISCUSSION

On appeal, we must presume the trial court's judgment is correct. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.)

Thus, we must adopt all inferences in favor of the judgment, unless the record expressly contradicts them. (See *Brewer v. Simpson* (1960) 53 Cal.2d 567, 583.)

It is the burden of the party challenging a judgment to provide an adequate record to assess claims of error. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140-1141.) When an appeal is "on the judgment roll" (*Allen v. Toten, supra*, 172 Cal.App.3d at pp. 1082-1083), we must conclusively presume evidence was presented that is sufficient to support the court's findings (*Ehrler v. Ehrler* (1981) 126 Cal.App.3d 147, 154). Our review is limited to determining whether any error "appears on the face of the record." (*National Secretarial Service, Inc. v. Froehlich* (1989) 210 Cal.App.3d 510, 521; Cal. Rules of Court, rule 8.163.)

These restrictive rules of appellate procedure apply to father even though he is representing himself on appeal. (*Leslie v. Board of Medical Quality Assurance* (1991) 234 Cal.App.3d 117, 121; see also *Nelson v. Gaunt* (1981) 125 Cal.App.3d 623, 638-639; *Wantuch v. Davis* (1995) 32 Cal.App.4th 786, 795.)

I

*May 20, 2011 Orders*

A

*DVPA Restraining Order Against Father*

Father contends the trial court erred in granting mother a DVPA restraining order. In its statement of decision, the trial court ruled that father had repeatedly abused mother when, by

his conduct, father impacted mother's "mental or emotional harm." In support of its ruling, the trial court found that, despite the November 2010 conduct order, father "continues to, inter alia, telephonically harass [mother], inveigle her for sex, and disturb [mother's] peace." The court also found that father "is singularly focused on controlling the familial environment and, in particular, [mother]."

As an example of father's abusive conduct, the court noted an incident when father took a garbage bag to measure whether mother's body would fit into it. The court found father's suggestion that "it was merely a joke demonstrates the lack of insight and scope of behaviors he engages to impact the emotional equanimity of both the family and [mother]."

The court's findings are sufficient to warrant the issuance of a DVPA restraining order against father. (See *Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1496-1499.) Without the benefit of a reporter's transcript, we must presume the evidence submitted at trial was sufficient to sustain these findings. (*Ehrler v. Ehrler, supra*, 126 Cal.App.3d at p. 154.)

B

#### *Custody And Visitation Order*

Father further contends the trial court erred in awarding mother sole legal and physical custody of the parties' minor children and limiting his parenting time. In its statement of decision, the trial court concluded that father failed to present evidence to rebut the statutory presumption under Family Code section 3044 that awarding custody to a person who has

perpetrated domestic violence would be detrimental to the children. Such a finding is sufficient to support the court's decision and without a reporter's transcript, we must conclusively presume the evidence was sufficient to sustain that finding. (*Ehrler v. Ehrler, supra*, 126 Cal.App.3d at p. 154.)

C

*Suspended Parenting Time*

Father also contends the trial court erred in suspending his visitation with the parties' middle child. We find no error.

With regard to the middle child, the court ruled that father's visitation would be suspended until the child was willing to participate. Without a reporter's transcript of the hearing on custody, we must presume the court found such an order was in that child's best interest. (*Messer v. Messer* (1968) 259 Cal.App.2d 507, 510 [visitation may be suspended if court determines that would be in the best interests of the child].) Furthermore, we must conclusively presume the evidence was sufficient to sustain that finding. (*Ehrler v. Ehrler, supra*, 126 Cal.App.3d at p. 154.)

II

*July 27, 2011 Orders*

A

*Request For A DVPA Restraining Order Against Mother*

Father argues the court erred again in July 2011 when the court denied his request for a DVPA restraining order against mother. Without a reporter's transcript of the hearing,

however, we must presume the court made sufficient findings to support its decision. That is, we must presume the court found father's safety was not put in jeopardy by mother's conduct. (Fam. Code, § 6340, subd. (a).) Furthermore, we must conclusively presume the evidence was sufficient to sustain the court's findings. (*Ehrler v. Ehrler, supra*, 126 Cal.App.3d at p. 154.)

B

*Request To Modify The Custody And Visitation Order*

Father also claims the trial court erred in refusing to modify the prior custody and visitation order. Father argues that because he completed a parenting class, anger management, and domestic violence awareness counseling, the order should have been modified.

We acknowledge the court made completion of these programs and counseling a prerequisite to modifying the custody order; however, without a reporter's transcript of the hearing, we must presume the court found a modification of that order was not in the children's best interest. (*In re Marriage of Burgess* (1996) 13 Cal.4th 25, 31; *Montenegro v. Diaz* (2001) 26 Cal.4th 249, 255 [overarching concern in statutory scheme governing custody and visitation is in the best interest of the child].) Furthermore, we must conclusively presume the evidence was sufficient to sustain the court's findings. (*Ehrler v. Ehrler, supra*, 126 Cal.App.3d at p. 154.)

On the face of this record, we find no error.

DISPOSITION

The orders of the trial court are affirmed. Costs are awarded to mother. (Cal. Rules of Court, rule 8.278(a)(5).)

\_\_\_\_\_ ROBIE \_\_\_\_\_, J.

We concur:

\_\_\_\_\_ BLEASE \_\_\_\_\_, Acting P. J.

\_\_\_\_\_ DUARTE \_\_\_\_\_, J.