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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

THERESA ANNTIONETTE LUCIDO,

Plaintiff and Respondent,

v.

STEPHEN LAWRENCE DEMAINE,

Defendant and Appellant.

C070090

(Super. Ct. No. FL040407)

Theresa Anntionette Lucido obtained a domestic violence restraining order against her former husband, Stephen Lawrence DeMaine. (Fam. Code, § 6200 et seq.) In this pro se judgment roll appeal from the restraining order, DeMaine asks us to reverse the restraining order because the trial court abused its discretion by denying his request for a continuance of the hearing on Lucido's petition.

We find no error and shall affirm the order.

BACKGROUND

DeMaine has elected to proceed on a clerk's transcript. (Cal. Rules of Court, rule 8.122.) As a result, the appellate record does not include a reporter's transcript of the hearing that gave rise to the restraining order challenged in this appeal. 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.)

Lucido and DeMaine are the parents of two school-aged boys. They are divorced, and share legal custody of the boys, who live primarily with Lucido, with DeMaine having visitation.

In August 2011 (all date references are to 2011), Lucido filed a petition for a temporary restraining order and injunction to prevent her ex-husband from harassing her and coming within 100 yards of her home, vehicle, and workplace. In support of the petition, Lucido averred that DeMaine obsessively sends multiple texts and emails each day with demands concerning their parenting arrangements. He also parks his vehicle in her driveway and sleeps there, while waiting for his visitation with the boys to begin. On another recent occasion, when DeMaine came to pick up things from the house where Lucido lives with their sons, he used obscene and profane language, "stalked [her] residence, filming and photograph[ing] with his cell phone [and] sitting in his vehicle in front of [her] home" and then made calls with threats, saying " 'if he cannot have [her] than no one else can.' " In short, Lucido averred, DeMaine's "harassing, stalking behavior" is frightening: "even though we have been divorced since 2004 he continues to interfere and believes we are still married."

The court issued a temporary restraining order and set the matter for hearing on September 7.

In his answer, DeMaine denied engaging in any harassing conduct, and denied using obscene or profane language. Moreover, DeMaine averred, Lucido is not afraid of

him, and the stay away order violates his property rights because he still owns the residence where Lucido lives with the boys.¹

Both parties were present at the scheduled hearing on September 7; according to a declaration later submitted by Lucido, the matter was continued to November 9 with DeMaine's assent. (No transcript or minute order of that hearing is in the record on appeal.) The temporary restraining order was likewise continued until November 9.

Sometime before the November 9 hearing, DeMaine requested a continuance of that hearing, because "I have friends flying into San Diego, and staying with me in San Diego County for the period November 7, 2011 through November 11, 2011."

In the interim, Lucido filed a supplemental declaration, in which she averred that DeMaine violated the temporary restraining order by continuing to text her "excessive[ly]" on matters that do not pertain to his court-ordered visitation.

At the November 9 hearing, DeMaine did not appear. No transcript of the hearing appears in the appellate record, but the minute order of the hearing states that the court denied DeMaine's written request for a continuance "as the court does not find good cause." The court granted Lucido's request for restraining order.

DeMaine's application for an order vacating the restraining order was denied.

DISCUSSION

I. Standards Applicable to this Appeal

On appeal, we must presume the trial court's judgment or order is correct. (*Boyle v. CertainTeed Corp.* (2006) 137 Cal.App.4th 645, 649-650.) Error is never presumed; rather, we adopt all inferences in favor of the judgment or order appealed from, unless the record expressly contradicts them. (*Brewer v. Simpson* (1960) 53 Cal.2d 567, 583; *Rossiter v. Benoit* (1979) 88 Cal.App.3d 706, 712.)

¹ A July 2011 stipulation in the parties' dissolution action, however, required DeMaine to transfer ownership of the residence to Lucido.

It is the burden of the party challenging an order on appeal to provide an adequate record to assess error. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140-1141.) An appellant must present an analysis of the facts and legal authority on each point made, and also must support the arguments with appropriate citations to the material facts in the record. If he fails to do so, the argument is forfeited. (*County of Solano v. Vallejo Redevelopment Agency* (1999) 75 Cal.App.4th 1262, 1274; *Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856.)

Although DeMaine is representing himself on appeal, he is held to the same standards as an attorney. (*In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 830 [“self-represented parties are entitled to no greater consideration than other litigants and attorneys”]; *Gamet v. Blanchard* (2001) 91 Cal.App.4th 1276, 1284 [pro se litigants are not entitled to special exemptions from rules of court].)

Because DeMaine has chosen to appeal “on the judgment roll” (*Allen v. Toten, supra*, 172 Cal.App.3d at pp. 1082-1083), we ““must conclusively presume that the evidence is ample to sustain the [trial 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.)

II. DeMaine’s Appeal Lacks Merit

DeMaine contends the trial court erred in refusing his request for a continuance of the November 9 hearing on Lucido’s petition for a domestic restraining order, and in granting Lucido’s request. In fact, he asserts, the trial court “refused to either grant or deny, but instead ignored and refused to consider, [his] request for a brief continuance” of the hearing on Lucido’s petition, as well as his opposition to the petition.

DeMaine makes no citation to the record to support these contentions. Accordingly, we must deem them forfeited. (Cal. Rules of Court, rule 8.204(a)(1)(C);

Maria P. v. Riles (1987) 43 Cal.3d 1281, 1295-1296; *City of Lincoln v. Barringer* (2002) 102 Cal.App.4th 1211, 1239-1240.)

Even were they not forfeited, neither contention has merit.

DeMaine insists the trial court either “was unaware of” his request for a continuance of the November 9 hearing, or it “ignored and refused” to rule on it. But the minute order of that hearing shows the court did neither of these things. Rather, it denied DeMaine’s request after finding he failed to show good cause for granting it.

Nor has DeMaine shown the court erred in denying his request for a continuance. A motion for continuance is addressed to the sound discretion of the trial court. (*Link v. Cater* (1998) 60 Cal.App.4th 1315, 1321.) Absent a reporter’s transcript of the hearing, we cannot entertain DeMaine’s contention the trial court abused its discretion in denying the continuance. Instead, we presume official duties have been regularly performed (Evid. Code, § 664), and this presumption applies to the actions of trial judges. (*People v. Duran* (2002) 97 Cal.App.4th 1448, 1461, fn. 5; *Olivia v. Suglio* (1956) 139 Cal.App.2d 7, 9 [“If the invalidity does not appear on the face of the record, it will be presumed that what ought to have been done was not only done but rightly done”].) Thus, we presume the trial court’s denial of the request was correctly done.

Moreover, our review of the record supports the trial court’s conclusion that DeMaine failed to show good cause for a continuance. The presence of DeMaine’s houseguests does not constitute good cause for continuing the hearing on Lucido’s petition.

We likewise reject as unsupported by the record DeMaine’s suggestion that the trial court ignored or refused to consider his opposition to Lucido’s petition because he did not appear at the November 9 hearing on Lucido’s petition. A trial court’s decision to grant a restraining order, including a protective order under the Domestic Violence Prevention Act (Fam. Code, § 6200 et seq.), rests within its sound discretion. (*S.M. v. E.P.* (2010) 184 Cal.App.4th 1249, 1264.) We presume on this silent record that the trial

court properly exercised its discretion by correctly applying the law and giving due consideration to the evidence before it, including written submissions by the parties (see *Olivia v. Suglio, supra*, 139 Cal.App.2d at p. 9), and that the evidence was sufficient to justify issuing the order (*Ehrler v. Ehrler, supra*, 126 Cal.App.3d at p. 154.)

DISPOSITION

The orders are affirmed. Lucido shall recover her costs. (Cal. Rules of Court, rule 8.278(a)(1).)

BLEASE, J.

We concur:

RAYE, P. J.

HULL, J.