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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re the Marriage of SEPIDEH and
ESMAEIL FARSHI.

SEPIDEH MOJTAHEDZADEH,

Plaintiff and Respondent,

v.

ESMAEIL FARSHI,

Defendant and Appellant.

D060218

(Super. Ct. No. D528075)

APPEAL from an order of the Superior Court of San Diego County, Christine K. Goldsmith, Judge. Affirmed as modified. Motion to take judicial notice denied.

Defendant and appellant Esmaeil Farshi (Father) appeals a 2011 domestic violence restraining order (DVRO) that prevents him from contacting his former wife, plaintiff and respondent Sepideh Mojtahedzadeh (Mother) and their two children, for a stated period (until 2066). (Fam. Code, § 6200 et seq., the Domestic Violence Prevention Act (DVPA); all statutory references are to this code unless noted.) Father contends the order

was issued contrary to his own evidence, or alternatively, it is void because its duration exceeds the five years expressly permitted by the statutory scheme. He also appears to challenge the family court's exercise of discretion in denying his own cross-petition for such an order.

In response, Mother argues that the family court acted well within its discretion and in compliance with the evidence when it issued the restraining order, except she concedes the reporter's transcript of the hearing indicated that the duration of the order should be five years from date of issuance, while the written order is to the contrary. She proposes that the written order be modified on appeal, to comply with the statutory scheme. (§ 6345; Code Civ. Proc., § 43.)

The record substantially supports the issuance of the order on Mother's petition, and the order denying Father's cross-petition, based upon the evidence presented and the trial court's interpretation of the applicable legal standards. However, section 6345, subdivision (a) clearly provides that the proper duration of such an order is not more than five years, unless the court, in its discretion, orders a shorter effective period (the order "may have a duration of not more than five years . . ."). (*Ibid.*) We affirm the order as modified, with directions to the trial court to issue a corrected DVRO restraining the conduct of Father, to clarify that its duration is five years, or until June 26, 2016.

FACTUAL AND PROCEDURAL BACKGROUND

A. Mother's Request for DVRO

In 2011, the parties were married and had one son who was about age 2 and one daughter, age 14. Mother is highly trained in medicine and Father, the same in physics,

and they formerly lived in Iran. On February 8, 2011, Mother filed a petition seeking a temporary DVRO under the DVPA, which was granted. Her supporting declarations stated that Father lost his job in 2008, and he had become increasingly angry and abusive over the past year. They separated in January 2011, after a period in which Mother was out of town and Father stayed home and had apparently cut the wires to some of the appliances and left trash around the house. Mother stated that Father came back to the house and threatened her on February 3, 2011, in the presence of the children, upsetting them all. He was granted supervised visitation but did not pay the fees and it did not take place.

On February 16, 2011, Father had apparently started the process of selling their house to friends, allegedly without her permission, and he had a notice to quit posted upon the front door. Somebody interfered with the operation of the electrical box outside the house.

On February 28, 2011, Mother filed her petition for dissolution and later obtained a reissuance of the DVRO. Numerous contested hearings ensued on the support and property division issues in the dissolution, and interim orders were made. Father filed a responsive declaration, claiming that Mother had previous domestic violence offenses, is an agent of the Islamic Republic of Iran, and is under investigation by the FBI, Homeland Security, and the IRS for stealing his company's antiterrorism security technology. He contended that the DVRO she obtained caused his company's guns to be unfairly taken away.

The DVRO was reissued several times, the matters were consolidated, and the hearing was set for June 20, 2011, when oral testimony would be presented according to Mother's request. On June 13, 2011, Mother lodged numerous documents in support of her request for the order, including the 60-day notice to quit, e-mails between them on the property issues, and information about Father's mental problems and his prescriptions for treatment of depression and other ailments.

B. Father's Request for DVRO; Rulings

On June 8, 2011, Father filed his answer to the DVRO proceedings and lodged supporting documents. On June 16, 2011, Father filed a cross-petition for a restraining order to keep Mother away from him and his parents. He alleged that Mother had threatened him with a knife and cursed him in the February 3, 2011 incident, and threatened him again in May 2011.

Mother filed an answer denying his allegations and notifying the court that Father's guns that had been at the house had been turned in to law enforcement. She attached a copy of a sheriff's report of her claims of identity theft by Father in May 2011, causing her credit card losses of \$1,250.87.

The contested evidentiary hearing began on June 20 and concluded on June 27, 2011. Both parties testified, as did their daughter, Mother's relative Mohammad Jebelli, and Father's parents, with the help of a Farsi interpreter. Father offered tape recordings of his conversations in Turkish with Mother during the February 3, 2011 incident, when they argued and alleged threats were made. The judge responded that the tapes would not be useful to her, since she had no knowledge of the Turkish language, but Father could

explain in testimony what was said during those three conversations in January and February 2011. Father did so.

In Father's testimony, he explained that agents of the Iranian regime were following him, and the FBI and Homeland Security were cooperating with him against Mother's activities on behalf of the Iranian National Guard and Revolutionary Guard. He stated that Mother had threatened him on May 31 after a hearing. Mother denied such allegations.

Both Mother and their daughter testified about police officers coming to the family home the week between the two hearings, and taking the son and daughter to the Polinsky Children's Center overnight, on suspicion of child abuse by Mother, as reported by Father. A worker there talked to Mother about preparing a safety plan and advised Mother not to go home, but to stay at a nearby hotel, because child protective services personnel thought that Mother's and the children's lives were in danger from Father. The children were returned the next day, and although the police came back a few days later at the request of Father, the children were not again taken out of the home.

The minute order of June 27, 2011 states that the court considered the pleadings and the exhibits that had been presented, and determined that "there is sufficient cause to issue a permanent restraining order" against Father and "the expiration date of the restraining order will be 6/26/66 for computer purposes." The form order has 2066 penciled in. The court found that there was not enough evidence to issue a restraining order against Mother (the petitioner) and denied the cross-petition.

The court's oral statement of decision, as taken down by the court reporter, instead granted Mother a DVRO for a five-year period, to expire June 26, 2016. The court found that Mother had made an extremely credible case for a restraining order to protect her safety and the safety of the children, based on Father's past actions. The court denied Father's cross-petition.

Father sued the original family court judge (Judge Christine Goldsmith) in federal court, and she recused herself from further proceedings July 5, 2011.

C. Appellate Proceedings; Judicial Notice Request

On July 22, 2011, Father appealed from the DVRO granted against him, apparently also challenging the order denying his own request. Both parties lodged their exhibits with this court. Numerous filings postdating the notice of appeal, on remaining issues in the dissolution action, are also included in the clerk's transcript.

Additionally, Mother has filed an amended motion to take judicial notice of numerous pleadings and orders filed in other cases that Father has brought against Mother in California and Arizona, and the action against Judge Goldsmith, and the dissolution judgment issued in this case in December 2011. All of these were filed later than the notice of appeal in this case. This motion was deferred for this merits panel to decide, and we now address it. (Evid. Code, § 459; Cal. Rules of Court, rule 8.252(a); all further rule references are to the California Rules of Court.)

Generally, review on appeal is based solely on the evidence before the trial court at the time of the challenged ruling, particularly in a discretionary matter such as the issuance of a DVRO. (See *Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14

Cal.4th 434, 444, fn. 3.) Although an appellate court has limited authority to admit additional evidence, this authority must be "exercised sparingly." (*In re Zeth S.* (2003) 31 Cal.4th 396, 405; Code Civ. Proc., § 909.) There is no justification for doing so in this case, which presents limited issues for resolution, all based upon the showing made before the trial court. The motion is denied.

DISCUSSION

Father appears to claim there were incidents of corruption or irregularities at the family court level that operated against him, or that he did not get a fair hearing on all of the available evidence. He attacks the order as excessive and void, as the statute only allows a five-year term for the order. (§ 6345.) In his reply brief, he disagrees with any suggested reduction of the term of the order, instead seeking to have it wholly vacated.

To address the issues that have been validly raised in Father's appeal, we set forth applicable standards of review for evaluating the record, and explain the proper limitations upon our scope of review.

I

APPLICABLE STANDARDS

A. Review

This dispute was heard on companion petitions for DVRO's. A trial court has broad discretion in determining whether to grant such an order under this statutory scheme. (See § 6345, subd. (a); *Gonzalez v. Munoz* (2007) 156 Cal.App.4th 413, 420 (*Gonzalez*); *Loeffler v. Medina* (2009) 174 Cal.App.4th 1495, 1505 (*Loeffler*).

Abuse of discretion occurs if the trial court exceeds the bounds of reason, or fails to apply correct legal standards and thereby takes action outside the confines of the applicable principles of law, or acts without substantial support in the evidence.

(*Gonzalez, supra*, 156 Cal.App.4th 413, 420-421.) As a trier of fact, a trial judge is required to reject evidence only " 'when it is inherently improbable or incredible, i.e., " 'unbelievable *per se*,' " physically impossible or " 'wholly unacceptable to reasonable minds.' " [Citations.] " (*Lenk v. Total-Western, Inc.* (2001) 89 Cal.App.4th 959, 968.)

On appeal, we do not reweigh the evidence or second guess the credibility of a witness. (*In re Marriage of Balcof* (2006) 141 Cal.App.4th 1509, 1531.) In determining whether substantial evidence supports the court's order, we view the evidence in the light most favorable to the order. (*In re Marriage of Drake* (1997) 53 Cal.App.4th 1139, 1151; *Loeffler, supra*, 174 Cal.App.4th at p. 1505.)

Where there is a discrepancy between the reporter's transcript and a written order, the general rules are that the oral pronouncement controls, or the version entitled to the most credence, under all the relevant circumstances, is accepted. (*People v. Farrell* (2002) 28 Cal.4th 381, 384, fn. 2; *People v. Smith* (1983) 33 Cal.3d 596, 599.)

As an appellant, Father has the burden of providing an adequate record and of showing that error occurred and that it was prejudicial. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295-1296; *Aguilar v. Avis Rent A Car System, Inc.* (1999) 21 Cal.4th 121, 132.) The arguments on appeal must be restricted to documents in the record, and we generally may not consider references to matters outside the record. (Rule 8.204(a)(2)(C) [appellant's opening brief must provide a summary of significant facts limited to matters

in the record on appeal].) Absent an adequate record to demonstrate error, a reviewing court presumes the judgment or order is supported by the evidence. (*In re Angel L.* (2008) 159 Cal.App.4th 1127, 1136-1137.)

It is well established that "[i]n propria persona litigants are entitled to the same, but no greater, rights than represented litigants and are presumed to know the [procedural and court] rules." (*Wantuch v. Davis* (1995) 32 Cal.App.4th 786, 795.) For any appellant, "[a]ppellate briefs must provide argument and legal authority for the positions taken. 'When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived. [Citations.]" (*Nelson v. Avondale Homeowners Assn.* (2009) 172 Cal.App.4th 857, 862.) "We are not bound to develop appellants' arguments for them. [Citation.] The absence of cogent legal argument or citation to authority allows this court to treat the contention as waived." (*In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 830.)

B. Statutory Scheme

The DVPA permits a court, upon a showing of "reasonable proof of a past act or acts of abuse," to issue a protective order restraining any person from contact, for the purpose of preventing a recurrence of domestic violence. (§§ 6220, 6300; *S.M. v. E.P.* (2010) 184 Cal.App.4th 1249, 1264.) "Abuse" in this domestic violence context may include, under section 6203, subdivision (c), placing "a person in reasonable apprehension of imminent serious bodily injury to that person or to another," or engaging "in any behavior that has been or could be enjoined pursuant to Section 6320." (§ 6203, subd. (d).) Among the behaviors that may justify a DVRO, section 6320 includes

"molesting, attacking, striking, stalking, threatening . . . harassing, telephoning . . . destroying personal property, contacting, either directly or indirectly, by mail or otherwise, coming within a specified distance of, 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." (§ 6320, subd. (a).)

Abuse, even if nonviolent, may warrant the issuance or renewal of such a protective order. (*In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1496; § 6345.) "[S]ection 6320 broadly provides that 'disturbing the peace of the other party' constitutes abuse" (*Nadkarni, supra*, at p. 1497.) "[T]he plain meaning of the phrase 'disturbing the peace of the other party' in section 6320 may be properly understood as conduct that destroys the mental or emotional calm of the other party." (*Id.* at pp. 1497-1498.) To obtain such an order, a protected party has the burden to show by a preponderance of the evidence that a reasonable person would have a " 'reasonable apprehension' " of future abuse. (*Ritchie v. Konrad* (2004) 115 Cal.App.4th 1275, 1290.)

II

ANALYSIS

A. Respective Showings: DVRO

We first acknowledge that Father's arguments on appeal are diffuse, extremely difficult to understand, and unsupported by record citations or legal argument. Basic appellate procedure required Father as an appellant to summarize the relevant underlying facts fairly, but instead, he makes only broad based attacks and arguments about the political and legal systems and their participants, according to his particular world view.

Such factual statements in appellate briefs not supported by citations to the record are improper and cannot be considered. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246.)

Although we could consider Father's apparent claims that the order is not supported by the record to be waived, we exercise our discretion to examine the record for any evidentiary and legal support for the DVRO granted, and for the denial of the cross-petition.

We reiterate that Father has made no factual showing to support his serious allegations of corruption or other misfeasance at the family court proceedings. Instead, the reporter's transcript shows that the judge conscientiously gave Father a chance to be heard and to explain his position, but he could not or did not offer any support for it.

The record fully supports Mother's request for injunctive relief arising from the dysfunctional interactions between Father, the children, and herself, up to and including the time of hearing. "A grant or denial of injunctive relief is generally reviewed for abuse of discretion. [Citation.] This standard applies to a grant or denial of a protective order under the DVPA." (*Gonzalez, supra*, 156 Cal.App.4th at p. 420.) "The scope of discretion always resides in the particular law being applied by the court, i.e., in the " 'legal principles governing the subject of [the] action. . . . ' " (*S.M. v. E.P., supra*, 184 Cal.App.4th 1249, 1264-1265.)

Numerous hearings and continuances of these related matters had occurred, and the trial judge was very familiar with the history of the case. Absent an indication to the contrary, we are required to presume the trial court applied the correct legal standards in making its discretionary determinations. (*In re Angel L., supra*, 159 Cal.App.4th 1127,

1136-1137; *Gonzales, supra*, 156 Cal.App.4th at pp. 420-421.) With respect to the decisions to grant Mother's petition, and to deny the request by Father, there is no basis in the record to show the court abused its discretion in any way in evaluating these competing requests.

B. Duration of DVRO

Section 6345, subdivision (a) provides in relevant part that "in the discretion of the court," a DVRO issued after notice and hearing "may have a duration of not more than five years, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party." Under subdivision (c) of this section, "The failure to state the expiration date on the face of the form creates an order with a duration of three years from the date of issuance." (§ 6345.)

Here, the written minute order and form order seem to provide an expiration date of June 26, 2066, but as acknowledged in the respondent's brief, "some confusion exists in the record regarding whether the superior court intended the June 27, 2011 Order's duration to be five years or fifty five years" Specifically, the reporter's transcript shows the court set an expiration date of June 26, 2016, to be entered into the court computer, and that latter date is appropriate as in compliance with the express terms of section 6345. (*People v. Farrell, supra*, 28 Cal.4th 381, 384, fn. 2.)

The appropriate action for this court is to modify the June 27, 2011 order to confirm its expiration date is June 26, 2016. No issues are currently before us regarding any future modification requests that may be made according to statute. We affirm the DVRO as it is so modified and corrected.

DISPOSITION

The order is affirmed as modified to clarify that pursuant to section 6345, the duration of the order is five years, and the trial court shall prepare a modified and corrected order. Costs are awarded to Respondent.

HUFFMAN, Acting P. J.

WE CONCUR:

HALLER, J.

IRION, J.