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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re the Marriage of LISA KRISTIN  
FARMER and FRED S. TOTAH.

LISA KRISTIN FARMER,

Appellant,

v.

FRED S. TOTAH,

Respondent.

D061704

(Super. Ct. No. D533529)  
(Super. Ct. No. DV034328)

APPEAL from an order of the Superior Court of San Diego County, Edline C.

McKenzie, Commissioner. Affirmed.

Lisa Kristin Farmer (Kristin) appeals from an order denying a permanent restraining order against her former husband, Fred S. Totah.<sup>1</sup> On appeal, Kristin asserts that the court abused its discretion because (1) the court failed to consider her reasonable fear of Fred, (2) a three-month time period in which there were no incidents was not a

<sup>1</sup> As is customary in family law matters, we refer to the parties by their first names. (*In re Marriage of Smith* (1990) 225 Cal.App.3d 469, 475, fn. 1.) Although Kristin is a middle name, because the parties use that as her first name, we will likewise do so.

basis for denying the restraining order, (3) the court found multiple instances of abuse had occurred, (4) there was a "grave risk" of future harm, and (5) the burden on Fred of being subject to the restraining order was outweighed by the danger to Kristin. We affirm.

## FACTUAL AND PROCEDURAL BACKGROUND

### *A. Background*

Fred and Kristin were married on June 17, 2007. They have two minor children, Sienna and Christopher. In October 2011 they entered into a marital property and debt settlement agreement, whereby they divided approximately \$36 million in assets.

In November 2011 Kristin requested, and the court issued, a temporary restraining (TRO) order against Fred. The court set the matter for a hearing in December 2011. The hearing on the TRO was conducted over three days in December 2011 and January and February 2012.

### *B. Allegations of Domestic Violence*

The following are descriptions of the incidents of alleged domestic violence, taken from the parties' pleadings and testimony at the hearings.

#### *1. April 10, 2011*

Kristin alleged Fred became angry with her, yelling and screaming at her in an abusive manner. She alleged that he came close to her face and was spitting at her. He told her she was going to be sorry and said, "I'm going to hurt you." At the hearing, Fred denied these allegations.

## *2. July 7, 2011*

Kristin alleged Fred came to the bank where she was doing business, grabbed her by the arm and restrained her using force. She alleged he forcefully yanked paperwork she was reviewing out of her hands. She stated that a bank employee, Dawn Blaikie, was present during the incident and that Fred confronted another bank employee, Cindy Lehman, in an aggressive manner.

At the hearing in December 2011 Fred testified that he was in the bank on the same day when a teller told him that Kristin was meeting with Blaikie. He thought that Kristin was taking his name off bank accounts, closing accounts, and transferring money, even though the attorney who had assisted them with negotiating the marital settlement agreement had advised them not to transfer money. He went into Kristin's meeting with Blaikie and sat next to her. Kristin would not let him see the papers so he took them from her. He denied grabbing her at anytime.

Blaikie testified Kristin came into the bank to make some transfers from accounts and get copies of bank statements. Fred had been a joint holder on those accounts, but he had been removed from them a few months earlier. When Fred came into Blaikie's office Kristin seemed surprised and uncomfortable. Fred seemed upset and a "little bit angry."

Blaikie was uncomfortable so she e-mailed her manager, Lehman, who then came into the office. Lehman asked Kristin and Fred if they would like to be left alone and Kristin and Fred agreed that would be good. When Kristin and Fred were finished with their discussion, Kristin opened the door and told Blaikie they had agreed that Blaikie

would provide copies of the transactions made that day. Blaikie could not recall Fred grabbing Kristin on that day.

The security guard at the bank did not recall ever seeing Fred yell at or grab Kristin. She was never asked to intervene to separate Fred and Kristin or to keep Fred from hitting or grabbing Kristin.

3. *July 8, 2011*

Kristin alleged that Fred was sitting outside their residence and when she went outside to bring him a drink, he grabbed her wrists with great force, bruising them. He then asked her to sit next to him and told her in a low voice that he had the ability for great violence. He told her he received great joy from hurting her and that he did not care about the consequences to himself. This left her fearing for her safety.

According to Fred, they had a discussion that day, but he denied threatening or hurting her.

4. *October 26, 2011*

Kristin alleged that on this date Fred came to the offices of her business known as Autism Community Education Services (ACES). He had been terminated by way of a letter from employee Scott Neilson a few days before. According to Kristin, he came into the building yelling for Neilson to come face him. When she heard his voice she ran into her office because she was scared because of his previous threats. She locked the door, and he then shook the handle on the door with "great force." She then called 911.

However, she did not hear Fred threaten Neilson physically. She also admitted that in a meeting they had the following day, she apologized to Fred for hurting his

feelings with the firing. The parties had agreed as part of the marital settlement agreement that Fred would maintain his employment at ACES for three years.

According to Fred, he and Neilson yelled at each other, but he never directed any threats toward Scott. He yelled at Neilson because he was angry about the termination. He waited outside the building for the police to arrive. When they did, they asked him to leave, and he did so.

*5. October 29, 2011*

Kristin alleged that on this date, while he was still living at the residence, he approached her for a hug. She stated that she did not resist the hug because their daughter was watching. She alleged that while he was holding her right arm, he used his left hand to grab her vagina, squeezing and applying pressure. She pushed Fred back and told her not to touch her like that. She alleged that Fred then told their daughter that "mommy" was having sex with her bodyguard.

*6. November 16, 2011*

Fred was at the residence to visit the children. He was standing on the stairs asking for a hug from her and at the same time blocking her path. When she refused, he grabbed her wrist and pulled her towards him so hard that she lost her footing. He began saying disturbing things to her in a voice loud enough that the children could hear. He told her she was "going to pay."

According to Fred, when he arrived at the residence he was introduced to a man by Kristin, who told him that he was her bodyguard. She had previously introduced the man as her fitness trainer. Fred believed the man was Kristin's lover because he had seen

them going upstairs together and the man had left clothing in the master bedroom. Fred was upset because he did not feel Kristin should have a person she had just met sleep in the house with his young children present.

When the children were put to bed that evening, he did not threaten, grab or try to restrain her. He admitted he was angry, but he was not verbally abusive to her.

*7. November 17, 2011*

Kristin alleged that on the following day, after following her into the garage to say goodbye, he squeezed her buttocks, and restrained her for over a minute until she stopped resisting and he finally let her go. Kristin alleged that she feared for her and her daughter's safety, so she quickly got into her car and locked the door. Based upon Fred's pattern of behavior, she was in great fear for her safety.

Fred stated that when he followed Kristin into the garage he did not grab her, make any sexual contact, or restrain her.

*8. Testimony of Bodyguard*

Kristin's bodyguard, Paul Vaden, testified that he never saw Fred hit or touch Kristin. He had heard Fred talk down to her in a controlling manner and on one occasion heard Fred yelling at her over the speaker on her cell phone.

*C. Court's Order*

On February 21, 2012, the court issued its oral ruling from the bench, stating as follows:

"The backdrop of this case was of course the end of a relationship and the separation of the parties and the negotiation of a marital settlement agreement or postnuptial agreement, which I haven't

heard anything except briefly about the testimony, but that's the backdrop. And I think there was a lot of mistrust going on over the summertime, and I think it culminated on October 26th when Mr. Totah came to the workplace of Ms. Farmer, and then we had that incident, and then the incidents that the court is most concerned with transpired after that incident. [¶] In this particular case, the Court had to look at the backdrop under which these circumstances were alleged to have occurred. The Court has to consider the testimony of both parties, and I did hear from both parties, and they were not consistent in their testimony, so naturally the Court has to look at the credibility of the witnesses. And that is often, or not, corroborated by other third-party witnesses, but the Court does have the ability to listen to the testimony of the parties themselves and determine whether or not the Court finds that testimony credible. [¶] And we are dealing with—remember, under the Family Code this is the Domestic Violence Prevention Act. The Court is being asked to consider whether or not Mr. Totah has engaged in behavior that is defined as abuse under Family Code section 6320, and there is a list of behavior that is considered abuse. And in this particular case, one of those would be sexual assault. I guess the Court would be looking specifically as to whether or not Mr. Totah committed sexual assault or whether or not Mr. Totah disturbed the peace of Ms. Farmer. [¶] The other part of abuse that the Court would be looking at in this particular case would be whether or not there has been a sexual assault, and in this particular case the instances that were alleged were on November 17th, Ms. Farmer testified that Mr. Totah grabbed her and held her by her buttocks, and also on the [October] 29th incident Ms. Farmer testified Mr. Totah grabbed at her crotch.<sup>[2]</sup> Mr. Totah's testimony was basically he was trying to make peace and that he was trying to give her a hug, and he denies both of these particular instances. [¶] The Court again has to look at the backdrop in this case, and this was a case in which the parties were not getting along. There was a lot of tension between the parties. Mr. Totah was concerned on October 26th that he was no longer working at Ms. Farmer's business and found out in a rather surprising manner, one that was probably not the best way to handle it, but nonetheless he was not happy about that decision, as evidenced by the exhibits and the testimony. [¶] And so this kind of predated what happened in November, and then we have the

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<sup>2</sup> The court mistakenly referred to this event as occurring on November 29, when it occurred on October 29.

situation there where Mr. Totah learned that Ms. Farmer had employed or was seeing, whichever he believed or whichever one the Court believes, Mr. Vaden, and he wasn't happy about that, and he wasn't happy that his children were potentially being exposed to another man in the home, and he wasn't happy about that. So the testimony is this gesture of hugging was done in a conciliatory manner or peaceful way, and I don't find that consistent with the evidence and what the backdrop of this case was, and I do believe that those two instances constitute a sexual assault within the meaning of Family Code section 6203. So on those two alone, the Court sustains and finds Ms. Farmer has met her burden of proof by a preponderance of the evidence, which is the standard. [¶] The next part of this though is a little more difficult because the Court has to, under Family Code [section] 6220, look at the purpose of the Domestic Violence Prevention Act. And the purpose of this division is to prevent the recurrence of acts of violence and sexual abuse and provide for a separation of the persons involved in the domestic violence for a period such to enable these persons to seek a resolution of the causes of their violence. [¶] In this particular case, the last alleged instance occurred in November, and the parties have both engaged attorneys in this case. The court has heard and continues to make orders regarding child custody and visitation to protect the children. The Court has also made different orders that guard against the parties having any direct contact with one another. The Court does not have any information that Mr. Totah has violated the current orders, although there has been some concern about how clear my order was I think in one of the past child custody orders. [¶] But I think that sufficient time has elapsed that the parties are no longer living together, their business ties are finished, and it appears they have negotiated some sort of settlement, although I don't know about that. But I don't know that it would—I don't know that this Court really needs to continue the restraining order in this case. *I find that it has met its purpose*, but the Court is specifically making a finding of domestic violence. [¶] And so if there are any other instances which occur that would suggest Mr. Totah is not complying with court orders regarding child custody and visitation, the Court would look very seriously at whether or not it should entertain, if there is another request for [a] domestic violence restraining order, *but in this particular case the purpose has been met. . . .* [¶] . . . Under the Family Code, we are required to consider the criminal background of each party, and there is no information, no criminal background for Mr. Totah, and that is a factor the court has considered in this case . . . ." (Italics added.)

The court thereafter issued a minute order reflecting its ruling.

## DISCUSSION

### I. *STANDARD OF REVIEW*

We review the denial of a restraining order under the abuse of discretion standard since such an order " " 'rests in the sound discretion of the trial court upon a consideration of all the particular circumstances of each individual case . . . . ' " ' " (*In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1495, quoting *Salazar v. Eastin* (1995) 9 Cal.4th 836, 849–850.) " "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.' " (*Gonzalez v. Munoz* (2007) 156 Cal.App.4th 413, 420.) "To the extent that we are called upon to review the trial court's factual findings, we apply a substantial evidence standard of review." (*Loeffler v. Medina* (2009) 174 Cal.App.4th 1495, 1505.)

### II. *PURPOSE OF THE DVPA*

The purpose of the Domestic Violence Prevention Act (DVPA) is set forth in Family Code section 6220, which provides, "The purposes of this division are to prevent the recurrence of acts of violence 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." (See also *Polin v. Cosio* (1993) 16 Cal.App.4th 1451, 1455 [citing § 6220's predecessor].)

### III. ANALYSIS

#### A. *Kristin's Attack on Specific Findings Made by the Court*

Kristin attacks each finding made by the trial court. We address each contention in order.

##### 1. Trial Court's Finding Re: Parties' Financial Issues:

"The backdrop of this case was of course the end of a relationship and the separation of the parties and the negotiation of a marital settlement agreement or postnuptial agreement, which I haven't heard anything except briefly about the testimony, but that's the backdrop."

Kristin argues the trial court made unwarranted assumptions that the parties' financial issues had been resolved. Kristin asserts that although the postnuptial agreement (PNA) had been signed, the parties' dissolution had just commenced. She had not made a decision yet as to whether or not she would challenge the validity of the PNA. She asserts the parties had joint real estate holdings and Fred managed the building where Kristin's office was located. She contends they are parents, will have frequent interactions and were actively engaged in custody litigation.

However, the record reflects the parties had been in a relationship for 10 years and there was no history of domestic violence. Fred had no criminal background. The parties had resolved their property and custody issues in the PNA. Kristin testified she did not know if she supported the PNA or not, but she believed Fred did not accept it. Fred testified he had spent \$100,000 over six months in dividing their assets and resolving the PNA, therefore he was not going to dispute the PNA. Thus, based upon this evidence,

the court's finding there was no present dispute regarding the division of the parties' estate was reasonable.

With regard to Kristin's argument Fred managed the building where her business is located, the record reflects Kristin was awarded a 75 percent majority interest in this building. Thus, if Kristin did not want Fred managing the building, she could terminate him.

Moreover, there was also no active custody litigation at the time the order was issued. In fact, Kristin's attorney asked the trial court to order the parties to comply with the custody and visitation terms set forth in the PNA. There was no conflict at the time the trial court denied the permanent restraining order and no evidence there would be future conflict. Finally, the trial court had issued orders regarding professionally supervised visitation exchanges which also kept the parties from interacting.

## *2. Trial Court's Finding Re: Mistrust Between Parties*

"[T]here was a lot of mistrust going on over the summertime, and I think it culminated on October 26th when Mr. Totah came to the workplace of Ms. Farmer, and then we had that incident, and then the incidents that the court is most concerned with transpired after that incident."

Kristin asserts the mistrust continues, but ignores the fact the evidence before the trial court reflected many of the issues creating conflict had been resolved. As we have discussed, *ante*, the PNA had been resolved, Fred had been terminated as an employee of the business, and there was no active custody litigation. Furthermore, the parties had filed for divorce and were each represented by counsel.

3. *Trial Court's Finding Re: Credibility:*

"In this particular case, the Court had to look at the backdrop under which these circumstances were alleged to have occurred. The Court has to consider the testimony of both parties, and I did hear from both parties, and they were not consistent in their testimony, so naturally the Court has to look at the credibility of the witnesses. And that is often, or not, corroborated by other third-party witnesses, but the Court does have the ability to listen to the testimony of the parties themselves and determine whether or not the Court finds that testimony credible."

Kristin asserts the credibility issues were resolved against Fred and the trial court specifically found that the incidents did occur and constituted domestic violence and sexual abuse. However, a finding of domestic violence does not mandate the trial court issue a permanent restraining order. Here, the court, exercising its discretion, determined such measures were unnecessary given the circumstances of this case.

4. *Trial Court's Finding Re: Abuse and Purpose of DVPA:*

"And we are dealing with—remember, under the Family Code this is the Domestic Violence Prevention Act. The Court is being asked to consider whether or not Mr. Totah has engaged in behavior that is defined as abuse under Family Code section 6320, and there is a list of behavior that is considered abuse. And in this particular case, one of those would be sexual assault. I guess the Court would be looking specifically as to whether or not Mr. Totah committed sexual assault or whether or not Mr. Totah disturbed the peace of Ms. Farmer. [¶] The other part of abuse that the Court would be looking at in this particular case would be whether or not there has been a sexual assault, and in this particular case the instances that were alleged were on November 17th. Ms. Farmer testified that Mr. Totah grabbed her and held her by her buttocks, and also on the [October] 29th incident Ms. Farmer testified Mr. Totah grabbed at her crotch. Mr. Totah's testimony was basically he was trying to make peace and that he was trying to give her a hug, and he denies both of these particular instances."

Kristin contends there were no adverse consequences for any of Fred's actions. She argued one of the purposes of the DVPA was to "enhance perpetrator accountability and here Respondent got a pass."

However, as we have discussed, *ante*, the purpose of the DVPA is set forth in section 6220, and it is *not* to "enhance perpetrator accountability." The purpose is to prevent recurrences of domestic violence and provide for a separation of the parties. The trial court here specifically acknowledged that purpose and found it was unnecessary to issue the permanent restraining order because the trial court determined the domestic violence was unlikely to reoccur under the circumstances of this case.

5. *Trial Court's Finding Re: Hiring of Bodyguard:*

"And so this kind of predated what happened in November, and then we have the situation there where Mr. Totah learned that Ms. Farmer had employed or was seeing, whichever he believed or whichever one the Court believes, Mr. Vaden, and he wasn't happy about that, and he wasn't happy that his children were potentially being exposed to another man in the home, and he wasn't happy about that."

Kristin asserts Vaden is still employed by her to protect her from Fred and thus the tension still exists. First, there is no evidence regarding whether Vaden is still employed by Kristin. Second, while the evidence reflects Fred was unhappy when he first learned Kristin had an unknown man in the home with the children, it does not reflect that the bodyguard was a source of ongoing tension between the parties.

6. *Trial Court's Finding Re: Sexual Assault:*

"So the testimony is this gesture of hugging was done in a conciliatory manner or peaceful way, and I don't find that consistent with the evidence and what the backdrop of this case was, and I do believe that those two instances constitute a sexual assault within the

meaning of Family Code section 6203. So on those two alone, the Court sustains and finds Ms. Farmer has met her burden of proof by a preponderance of the evidence, which is the standard."

Kristin contends this is the "most distressing" finding by the trial court since past sexual violence would logically be predictive of future violence against the victim. She argues the trial court found these instances constituted domestic abuse and yet still denied her further protection.

However, courts are not mandated to issue a permanent restraining order once domestic violence has occurred, but rather can utilize their broad discretion to determine whether issuing such an order is necessary to prevent further violence under the existing facts and circumstances. Here, the trial court, exercising its discretion, determined no such permanent order was necessary.

*7. Trial Court's Finding Re: Purpose of DVPA:*

"The next part of this though is a little more difficult because the Court has to, under Family Code [section] 6220, look at the purpose of the Domestic Violence Prevention Act. And the purpose of this division is to prevent the recurrence of acts of violence and sexual abuse and provide for a separation of the persons involved in the domestic violence for a period such to enable these persons to seek a resolution of the causes of their violence."

Kristin asserts that she does not understand why this phase is so "difficult." However, the court merely was acknowledging its decision was difficult because although it did find domestic violence had occurred, it also determined the evidence reflected it was unnecessary to issue a permanent restraining order to prevent further violence or provide for a separation of the parties.

8. *Trial Court's Finding Re: Last Incident of Abuse:*

"In this particular case, the last alleged instance occurred in November, and the parties have both engaged attorneys in this case."

Kristin contends the last instance of domestic violence occurred only three months earlier and Fred was subject to a TRO—which has since been dissolved—during that time frame. Here the court was noting there had been no further acts of abuse and the parties had engaged attorneys so any further contacts between them were minimized. This finding, in conjunction with the trial court's other findings, demonstrates the trial court did not abuse its discretion in denying the permanent order.

9. *Trial Court's Finding Re: Parties Having Direct Contact:*

"The Court has also made different orders that guard against the parties having any direct contact with one another."

Kristin questions what orders the trial court was referring to, contending there were no orders preventing all contact between the parties.

However, the court never stated that it made orders guarding against any and all direct contact. Instead, the trial court's findings accurately state that it had made other orders guarding against the parties having direct contact because the trial court had ordered professionally supervised visitation exchanges.

Kristin contends there is nothing to keep Fred from returning to her business or confronting her in the bank. However, the court did not find that either of the instances, at Kristin's business or at the bank, constituted domestic violence.

10. *Trial Court's Findings Re: Fred's Compliance with Orders:*

"The Court does not have any information that Mr. Totah has violated the current orders."

Kristin concedes this is true, but argues it is also true that there were restraining orders in place which if he violated would have put him in jail. Here, it was proper for the court to note that Fred did not violate the TRO and that this was yet another factor warranting denial of the permanent restraining order.

11. *Trial Court's Findings Re: Separation or Parties:*

"But I think that sufficient time has elapsed that the parties are no longer living together, their business ties are finished, and it appears they have negotiated some sort of settlement, although I don't know about that."

Kristin questions if this is a proper ground for denying domestic violence restraining orders, why are they offered for up to five years after a dissolution. She argues Fred is angry and threatened to harm her and this is unlikely to stop while they continue to litigate. She argues a temporary lapse in harassment is no guarantee that there will not be future domestic violence.

However, as stated, *ante*, it is not the law that anytime a trial court finds there has been domestic violence it is mandated to issue permanent restraining orders and must do so for a duration of five years.

12. *Trial Court's Finding That Fred Had No Criminal Background:*

"There is . . . no criminal background for Mr. Totah, and that is a factor the Court has considered in this case . . . ."

Kristin concedes this was a proper factor for the trial court to consider, but argues the lack of a criminal record is no guarantee against domestic abuse. The fact Fred had no criminal record was only one factor on which the trial court based its decision. Nevertheless, it is an important factor. Fred had been married previously for 16 years with no history of domestic violence and had been with Kristin for 10 years with no history of domestic violence. His lack of a criminal history was a proper factor for the court to consider.

13. *Trial Court's Finding Re: No Need To Continue TRO:*

"I don't know that this Court really needs to continue the restraining order in this case. I find that it has met its purpose, but the Court is specifically making a finding of domestic violence."

Kristin contends this finding by the trial court is an oxymoron because in the same sentence the court found domestic violence occurred, but found the temporary restraining order had met its purpose and elected not to continue it. Again, the trial court has broad discretion when determining whether to grant permanent restraining orders based on the particular facts of each individual case. Furthermore, section 6340 does not mandate that the trial court issue permanent restraining orders once it finds domestic violence has occurred.

14. *Trial Court's Finding Re: Separation of Parties and Resolution of Issues:*

"The parties are separated now, and there [are] no ties between them other than the children, and the Court has made specific orders regarding the contact that the parties have in this relationship."

Kristin asserts the parties' dissolution had just commenced, the parties co-owned the building where ACES was located and Fred wanted relief from the TRO so he could visit this building, custody was being litigated and she had no court order protecting her.

The issue of the parties' continued ties was addressed more specifically above. It is Fred's position the parties' PNA resolved all of the issues between the parties and he intended to accept that agreement. Kristin did not know whether she accepted it or not. Furthermore, Kristin was awarded a 75 percent interest in the building where ACES was located and could dictate whether or not Fred continued to manage that building.

There was nothing in the record demonstrating "the child custody arrangements are being heavily litigated" as argued by Kristin. Instead, the record reflects Kristin wished to comply with the custody and visitation terms already set forth in the PNA. Fred's counsel discussed making some changes as to visitation only, but no motion was filed.

Finally, the trial court did find there were two instances of sexual assault which constituted domestic violence when Fred groped Kristin in the crotch and on the buttocks. However, the trial court found the backdrop of this case, under which these two instances occurred, did not warrant issuing a permanent restraining order. Such a finding cannot be said to "exceed the bounds of reason" given all of the circumstances and factors the trial court considered here.

#### *B. Other Arguments Raised by Kristin*

Kristin asserts that the court abused its discretion here because "the trial court failed to give any consideration to [Kristin's] real and reasonable fear of further violence

from [Fred], or the purpose of the DVPA, including enhancing the safety of victims and holding perpetrators of domestic violence accountable." However, this misstates the court's ruling and the purposes of the DVPA.

The court, after hearing three days of testimony from the parties and witnesses, made detailed findings about the history of the abuse, the separation of the parties, and the lack of any events in the three months leading up to its ruling. The court further specifically stated that it was considering the purpose of the DVPA which, as is stated above is "to prevent the recurrence of acts of violence and sexual abuse and to provide for a separation of the persons involved in the domestic violence for a period such to enable these persons to seek a resolution of the causes of the violence." The court found, given the then-status of the parties' relationship, that the TRO had served this purpose and was no longer needed. The court also noted that if there were any indication Fred would repeat any abuse, or disobey any orders regarding custody or visitation, that it would consider reinstating the restraining order. Thus, the court considered all the factors necessary under the DVPA. There is no authority for the proposition that the court was required to consider Kristin's subjective fear, if the facts demonstrate that it was within the court's discretion to not issue a permanent restraining order.

Kristin asserts the purpose of the DVPA is to enhance victim safety and ensure batterer accountability. Again, Kristin's characterization of the purpose of the DVPA is incorrect. The purpose of the DVPA is expressly set forth in section 6220, which we have quoted, *ante*.

Kristin also argues "[a]t least four of the assaults took place in the presence or earshot of the children." First, the trial court found there had been two instances of domestic violence, not four. Second, there was no evidence that the children either saw or heard at least one of those two incidents. There is nothing in the record to show that on November 17th, their daughter witnessed Fred grabbing Kristin's buttocks. There is no evidence the parties were arguing or that their daughter overheard anything.

Kristin's argument that Fred did not even receive a "slap on the wrist" is also unavailing.

Fred was excluded from his home by the TRO issued on November 23, 2011. The trial court also granted legal and physical custody of the parties' children to Kristin under the TRO and Fred was given no visitation (not even supervised) with them. He had no telephone contact until after December 31. Fred was subject to the temporary restraining order for three months. Furthermore, the TRO became part of the trial court's public records. As a result, the issuance of the TRO has potential long-term consequences to Fred.

In support of her contention that the court was required to consider her "reasonable fear" of Fred, Kristin cites *Ritchie v. Konrad* (2004) 115 Cal.App.4th 1275 and *Loeffler v. Medina, supra*, 174 Cal.App.4th 1495, two cases that involved "renewals" of permanent restraining orders. However, those cases do not support her contention because the courts there merely held that in order to obtain a renewal the protected party need not show that further abuse has occurred, but must at least make an objective showing that "the protected party entertains a 'reasonable apprehension' of future abuse." (*Ritchie*,

*supra*, at pp. 1289-1290.) Thus, these cases are distinguishable because they addressed the protected party's *burden of proof* to obtain a *renewal* of a permanent restraining order, not what factors *a court* must consider in deciding whether to issue a permanent restraining order in the first instance.

The third case relied upon by Kristin to argue the court should have considered her reasonable fear of Fred is *In re Marriage of Nadkarni*, *supra*, 173 Cal.App.4th 1483. That case is also inapplicable. In that case the Court of Appeal found that the husband's conduct constituted "disturbing the peace of the other party," and therefore constituted abuse that could be restrained. (*Id.* at p. 1499.) Here, however, the issue is not whether abuse occurred. The court made a finding that there was abuse. Accordingly, *Nadkarni* does not assist in our analysis.

Kristin also asserts that because the TRO barred Fred from possessing a firearm and that order was also now rescinded, this is a "cause for worry." However, there is nothing in the record to suggest that Fred owned a firearm. In her application for the TRO, she stated that she "did not know" if he possessed one. In his response, Fred stated that he did not own one and had never owned one in his life. Thus, this factor does not show the court abused its discretion.

Kristin asserts the court abused its discretion in not issuing the permanent restraining order because of the degree of abuse involved. She asserts that because of the nature of the abuse there was a "grave risk" of future harm. However, in doing so, she relies upon *Maurizio R. v. L.C.* (2011) 201 Cal.App.4th 616 (*Maurizio*), which is inapposite to the issues raised here.

In *Maurizio*, the mother abducted her child from Italy and brought the child to the United States. (*Maurizio, supra*, 201 Cal.App.4th at p. 621.) The father filed an action under the Hague Convention to have the child returned to Italy. The trial court concluded that returning the child to Italy would not pose a "grave risk" of harm to the child, as the mother asserted. (*Id.* at pp. 630-631.) The Court of Appeal affirmed the trial court's decision. In doing so, the Court of Appeal noted that article 13b of the Hague Convention provides an exception to returning a child to its home country where "there is a grave risk that [the child's] returned would expose [him or her] to physical or psychological harm or otherwise place [the child] in an intolerable situation." (*Maurizio*, at p. 633.) There, the court found that there were three categories of abuse, (1) "relatively minor"; (2) "substantially more than minor, but . . . less obviously intolerable"; and (3) a "grave risk" of harm. (*Id.* at pp. 635-636.)

We are not presented here with an action under the Hague convention, and thus the holding in *Maurizio* is irrelevant to our analysis. Moreover, even if we were to analyze the trial court's decision under this standard, the facts here do not show a grave risk of harm. In *Maurizio*, the court described those cases presenting a grave risk of harm as where, for example, the father had repeatedly and severely beaten his wife in the presence of the children. (*Maurizio, supra*, 201 Cal.App.4th at p. 636.) We do not have that type of abuse here. There was no evidence Fred severely beat Kristin. Here the court found there were two instances of Fred groping Kristin over her clothing. Finally, Kristin never argued before the trial court that it use such an analysis in determining whether to grant a permanent restraining order.

Kristin also cites three out-of-state cases, *Marriage of Freeman* (2010) 169 Wash.2d 664 [239 P.3d 557, 562-563], *Hill v. Inouye* (1998) 90 Haw. 76 [976 P.2d 390, 398-399], and *Spence v. Kaminski* (2000) 103 Wash.App. 325 [12 P.3d 1030] for the proposition that she need not demonstrate that there was recent abuse in order to obtain a permanent restraining order. However, as we have discussed, *ante*, the court here did *not* base its decision solely on the grounds there had been no recent episodes of abuse. Rather, the court considered the purpose of the DVPA as set forth in section 6220 and determined that a permanent restraining order was not necessary to prevent a recurrence of domestic violence or provide for a separation of the parties.

Finally, Kristin asserts that the burden on Fred in being subject to a restraining order "might" have been a factor the court considered in refusing to order a permanent restraining order. However, there is nothing in the record showing that the court considered such a factor in reaching its decision. Rather, as described, *ante*, the court properly considered the purpose of the DVPA and the particular facts of this case that were relevant to its decision.

In sum, given all the circumstances of this case, which the court examined in great detail, we cannot say the court's decision constituted an abuse of discretion.<sup>3</sup>

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<sup>3</sup> We note that in reaching our decision in this matter we have considered the amicus curiae briefs filed by the Family Violence Appellate Project and the National Family Justice Center Alliance, and Fred's response.

DISPOSITION

The order is affirmed. Fred shall recover his costs on appeal.

NARES, J.

WE CONCUR:

BENKE, Acting P. J.

AARON, J.