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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

FAYROUZ SULEIMAN,

Plaintiff and Respondent,

v.

EIAD SULEIMAN,

Defendant and Appellant.

D062527

(Super. Ct. No. DV035158)

APPEAL from an order of the Superior Court of San Diego County, Christine K. Goldsmith, Judge. Affirmed.

Boyd Contreras and Karie J. Boyd, Elyse B. Butler, for Defendant and Appellant.

Law Offices of Joseph Samo and Joseph Samo, Christine Gilbert, for Plaintiff and Respondent.

Appellant Eiad Suleiman appeals a three-year order issued under the Domestic Violence Prevention Act (DVPA), Family Code¹ section 6200 et seq., restraining him from coming within 100 yards of his wife, respondent Fayrouz Suleiman, and their children. Eiad² challenges the order as to the children, contending no evidence shows he abused or threatened them. We affirm.

FACTS

We set out the facts from the June 2011 evidentiary hearing in the light most favorable to the court's order. In June 2011, Eiad and Fayrouz were married for seven years and relied on government assistance to purchase food and housing. Eiad had not worked during their marriage, and he often mentioned death and suicide. Many times, Eiad told Fayrouz he wanted her to prove her love by committing suicide alongside him. When Fayrouz asked Eiad what their suicide would do to the children, he responded they would "bring [the children] with [them]." Fayrouz had seen Eiad hurt himself by hitting a wall and his own head with his fists. Eiad had attempted to hit Fayrouz many times in the past though she was able to resist him, and at least once he pushed her. Fayrouz's brother heard Eiad threaten violence, and knew about Eiad's suicide threats from Fayrouz.

In May 2012, Fayrouz called Eiad and asked him to pick her up from her brother's house. Eiad refused, so Fayrouz's brother drove her home. Fayrouz's brothers came

¹ All statutory references are to the Family Code unless otherwise specified.

² For clarity, we refer to the parties by their first names. (See *In re Marriage of Olson* (1993) 14 Cal.App.4th 1, 4, fn. 1.)

inside with her for some tea and discussed taking the Suleimans' daughter to the zoo the next day. After the brothers left, Eiad told Fayrouz she "was putting [her] family before him," and she had "no loyalty." Fayrouz offered to stay with Eiad instead of going to the zoo, but told him she wanted their daughter—who had never been to the zoo—to go with Fayrouz's brothers. According to Fayrouz, Eiad then "jumped like a monster," "went crazy," and attempted to punch her. He ripped off his shirt and threw it at her, hitting her in the eye. Fayrouz had her brothers pick her up. Unhappy, Eiad got a knife from the kitchen, placed it on the table, and told Fayrouz, "If your brothers come here, I'm going to kill them." Police arrived and spoke with Eiad as well as Fayrouz and her brothers, and afterwards Fayrouz left with her brothers and took the couple's infant child with her, but left their five-year old daughter with Eiad.

That month, Fayrouz requested the trial court issue a domestic violence restraining order against Eiad, asking that it protect her and both of their daughters. In a sworn declaration, she stated that Eiad "repeatedly tells me that he wants to commit suicide and once he told me that he was going to kill himself and kill me too" and that he "told me that if he killed himself he would want me and the children to die too so we could all be together." The court heard Fayrouz's request in June 2012 and took evidence from Fayrouz, her brother, Eiad, and his sister. Eiad denied hitting or throwing objects at Fayrouz, or taking out a knife during their argument. He also denied threatening to kill Fayrouz, claiming she had threatened suicide herself. Eiad testified he was in therapy and taking medications for depression and anxiety. Eiad's sister suggested that Fayrouz was faking her eye injury.

After noting that Fayrouz's left eye was red and puffy, the trial court issued the three-year order. It included the children as protected parties, finding "more than adequate" grounds for its decision.

DISCUSSION

Eiad contends the trial court abused its discretion in issuing the order with regard to the children. He argues there was not a showing of good cause sufficient to extend the restraining order to the children. Though he concedes Fayrouz's testimony must be accepted as true, he argues his actions as described by her do not rise to the level of any domestic violence against the children. Specifically, he maintains there was no evidence the children were exposed to his threats or suicide comments. He points out that on the night police were called Fayrouz left their daughter in his care, and he therefore argues it cannot be said Fayrouz was in reasonable apprehension of serious bodily injury to their children.

I. *Applicable Legal Principles*

Under the DVPA, a court may issue a protective order to enjoin specific acts of abuse. (§ 6218.) Section 6300 provides: "An order may be issued under this part, with or without notice, to restrain any person for the purpose of preventing a recurrence of domestic violence and ensuring a period of separation of the persons involved, if an affidavit or, if necessary, an affidavit and any additional information provided to the court pursuant to Section 6306, shows, to the satisfaction of the court, *reasonable proof of a past act or acts of abuse.*" (Italics added; see *S.M. v. E.P.* (2010) 184 Cal.App.4th

1249, 1264.) "[A]buse" means "(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[; or] ¶ (d) To engage in any behavior that has been or could be enjoined pursuant to Section 6320." (§ 6203.) The behavior outlined in section 6320 includes threats and harassment. (§ 6320.)

" "[D]omestic violence in the same household where children are living . . . is a failure to protect [the children] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it." [Citations.] Children can be "put in a position of physical danger from [spousal] violence" because, "for example, they could wander into the room where it was occurring and be accidentally hit by a thrown object, by a fist, arm, foot or leg" [Citation.] [Citations.] Further, . . . "[b]oth common sense and expert opinion indicate spousal abuse is detrimental to children." " (*In re R.C.* (2012) 210 Cal.App.4th 930, 941; see also Fields, *The Impact of Spouse Abuse on Children and Its Relevance in Custody and Visitation Decisions in New York State* (1994) 3 Cornell J.L. & Pub. Pol'y 221, 228 ["Studies show that violence by one parent against another harms children even if they do not witness it"]; Cahn, *Civil Images of Battered Women: The Impact of Domestic Violence on Child Custody Decisions* (1991) 44 Vand. L.Rev. 1041, 1055-1056, fns. omitted ["First, children of these relationships appear more likely to experience physical harm from both parents than children of relationships without woman abuse. Second, even if they are not physically harmed, children suffer enormously from simply witnessing the violence between their parents. . . . ¶ Third,

children of abusive fathers are likely to be physically abused themselves"].) A father's past violent behavior toward a mother is an ongoing concern. (*In re R.C.*, at pp. 941-942.)

II. *Standard of Review*

The trial court has broad discretion in determining whether to grant a domestic violence restraining order. (*Gonzalez v. Munoz* (2007) 156 Cal.App.4th 413, 420; *Loeffler v. Medina* (2009) 174 Cal.App.4th 1495, 1505.) Accordingly, we review the trial court's grant of a restraining order for abuse of that broad discretion, which occurs only if the court's ruling exceeds the bounds of reason, fails to apply correct legal standards, or is without substantial support in the evidence. (*S.M. v. E.P.*, *supra*, 184 Cal.App.4th at p. 1265; *Gonzalez*, at p. 420.) When the parties do not request findings of fact, we assume the trial court made the factual findings necessary to sustain its order. (*Michael U. v. Jamie B.* (1985) 39 Cal.3d 787, 792-793, superseded by statute on another ground as stated in *In re Zacharia D.* (1993) 6 Cal.4th 435, 448.)

We review the court's express and implied factual findings for substantial evidence. (*Richardson v. Superior Court* (2008) 43 Cal.4th 1040, 1046, fn. 4 [implied findings]; *Sabbah v. Sabbah* (2007) 151 Cal.App.4th 818, 822-823; *In re Marriage of Slivka* (1986) 183 Cal.App.3d 159, 162.) To determine whether there is such evidence, we "must view the evidence in the light most favorable to the party prevailing below. [Citation.] The weight of the evidence and the credibility of witnesses are matters for the trier of fact and not for the appellate court. [Citation.] "The test is not whether there is

substantial conflict in the evidence but whether there is substantial evidence in favor of the respondent.' " (*Harland v. State of California* (1977) 75 Cal.App.3d 475, 482-483.)

III. *Substantial Evidence Supports the Restraining Order*

Eiad's appellate contentions seek to draw inferences adverse to the trial court's order from facts in the record that could possibly indicate neither Fayrouz nor the children ever felt threatened. In this way, Eiad contravenes the substantial standard of review. The trial court plainly believed Fayrouz, and impliedly found she reasonably feared for the safety of her children, in view of Eiad's past suicide threats suggesting the children should be killed along with himself and Fayrouz, and his display of a knife with the children in the house. We decline to reweigh the evidence or second guess the credibility of any witness. (*In re Marriage of Balcof* (2006) 141 Cal.App.4th 1509, 1531; *Harland v. State of California, supra*, 75 Cal.App.3d 475, 482-483.) There was ample evidence on which the trial court relied to issue the restraining order, including Eiad's abuse of Fayrouz. (See *In re R.C., supra*, 210 Cal.App.4th at p. 941)

DISPOSITION

The order is affirmed.

O'ROURKE, J.

WE CONCUR:

McDONALD, Acting P. J.

AARON, J.