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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

LORI SENATOR FITTON,

Plaintiff and Respondent,

v.

BRUCE RICHARD SENATOR,

Defendant and Appellant.

E058897

(Super.Ct.No. SWV1300290)

OPINION

APPEAL from the Superior Court of Riverside County. Stephen J. Gallon, Judge. Affirmed.

Bruce R. Senator, in pro. per., for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Plaintiff and respondent Lori Senator Fitton (Fitton) requested a domestic violence restraining order against her brother, defendant and appellant Bruce Richard Senator (Senator). (Fam. Code, § 6200 et seq.) Senator moved the trial court for a continuance of the restraining order hearing. The trial court denied Senator's motion for

a continuance and granted Fitton's request for a restraining order. Senator contends the trial court erred by denying his request for a continuance. We affirm the judgment.

FACTUAL AND PROCEDURAL HISTORY

Fitton filed her request for a domestic violence restraining order against Senator on April 15, 2013. Fitton and Senator are siblings. In the request, Fitton alleged Senator had been staying at her house. Fitton wanted Senator to leave the house because he was verbally abusive toward Fitton and her children, but he refused. When Fitton "[f]inally got [Senator] out . . . he went [n]uts." Fitton alleged (1) Senator is a vexatious litigant who threatened to sue her;¹ (2) Senator punched Fitton's oldest son in his face; (3) Senator stole bank account information from Fitton; and (4) Senator threatened to report Fitton to a child welfare agency, in order to have her children removed from her.

The hearing on Fitton's request for a restraining order took place on May 6. Also on May 6, Senator moved for a continuance. Senator did not appear at the hearing, but submitted his motion in writing. In support of his motion, Senator attached his declaration reflecting he had "lumbar neurosurgery" for a "spinal cord disc protrusion" on March 18, 2013. After the surgery, Senator required a bladder catheter, which resulted in his prostate being punctured on March 19.

¹ Senator's name appears on California's list of vexatious litigants. (Vexatious Litigant List (October 31, 2014) <<http://www.courts.ca.gov/documents/vexlit.pdf>> [as of November 6, 2014].)

In Senator's verified points and authorities, he alleged he was unable to sit upright for more than 15 minutes, so he could not commute from his residence in Orange County to the hearing in Riverside County.² Senator requested the restraining order hearing be continued for 30 days, in order to allow him time to prepare his case, which would reflect Fitton's allegations were fabricated and malicious, lacked merit, and "concocted to cover her theft."

Also attached to Senator's motion for a continuance was a December 2012 (presurgery) medical report reflecting Senator had a spinal MRI. The medical report provides Senator had a disc protrusion. Two e-mails were attached to the motion. In an April 28 (postsurgery) e-mail that Senator wrote to two doctors, Senator reported he was unable to sit upright for more than 15 minutes. In the second e-mail, dated April 30 and sent to one doctor, Senator wrote, "I had a little setback yesterday. Went to Home Depot to buy light bulbs then later in the day offered to pick my friend's son up from school." Senator believed the errands caused him to over exert himself, since he needed to take pain medication. Senator requested the doctor give him a prescription for orthopedic shoes.

The trial court denied Senator's request for a continuance. The record on appeal does not include a reporter's transcript. The trial court's reasons for denying the motion

² The hearing took place in the Southwest division of the Riverside County Superior Court; specifically, the case was assigned to Hemet. It appears from Senator's filings that he was residing in Anaheim Hills.

were not provided in the register of actions. The trial court granted Fitton's request for a restraining order.

DISCUSSION

Senator contends the trial court erred by denying his motion for a continuance because Senator "articulate[d] facts to the trial court so to warrant a continuance."

Senator does not explain what facts he presented, but we will assume he is referring to his verified statements regarding his medical condition.

"An order granting or denying a continuance is reviewed under the abuse of discretion standard. [Citation.] Such decisions will be upheld unless a clear abuse is shown, amounting to a miscarriage of justice. [Citations.]" (*Bussard v. Department of Motor Vehicles* (2008) 164 Cal.App.4th 858, 863.) "A trial court abuses its discretion when its decision exceeds the bounds of reason by being arbitrary, capricious or patently absurd. [Citation.]" (*People ex rel. Brown v. Black Hawk Tobacco, Inc.* (2011) 197 Cal.App.4th 1561, 1567.)

Continuances are disfavored, but a trial court may grant a continuance if the moving party provides "an affirmative showing of good cause requiring the continuance." (Cal. Rules of Court, rule 3.1332(c).) One circumstance that may indicate good cause is the unavailability of a party due to illness. (Cal. Rules of Court, rule 3.1332(c)(2).) However, "[i]llness, even of a party, does not mandate a continuance where the trial court concludes the party is able to attend the trial. [Citation.]" (*Lewis v. Neptune Society Corp.* (1987) 195 Cal.App.3d 427, 430.) A

motion for a continuance should be supported by declarations. (Cal. Rules of Court, rule 3.1332(b).)

In Senator's verified points and authorities, he asserted he was unable to sit upright for more than 15 minutes. However, Senator's April 30 e-mail reflects Senator had gone to Home Depot to purchase light bulbs and volunteered to pick up a friend's child from school. Senator's surgery took place on March 18, so the April 30 e-mail was postsurgery. The hearing for the restraining order took place on May 6.

The trial court could reasonably conclude that if Senator were well enough to run errands on April 30, then he would also be sufficiently well to attend a hearing a week later. Senator did not provide a declaration or letter from a doctor verifying his claim that he could not sit upright for more than 15 minutes. As a result, the evidence consisted only of Senator's conflicting statements about his condition. Thus, the trial court's decision was within the bounds of reason and did not constitute an abuse of discretion, due to the evidence that Senator was running errands on April 30.

Moreover, one of the factors to consider when determining whether to grant a continuance is the proximity of the hearing date. (Cal. Rules of Court, rule 3.1332(d)(1).) Senator submitted his motion for a continuance on May 6, which was the day of the restraining order hearing. Thus, the trial court could have also properly denied the motion due to the motion being brought so close in time to the hearing. In sum, whether due to the evidence or due to the proximity of the hearing, we conclude the trial court did not abuse its discretion by denying Senator's motion for a continuance.

In Senator's appellant's opening brief, he cites Code of Civil Procedure section 527, subdivision (d)(4) and asserts it applies in this case. That subdivision provides if a temporary restraining order is granted without notice, then the "opposing party is entitled to one continuance for a reasonable period of not less than 15 days or any shorter period requested by the opposing party to enable the opposing party to meet the application *for a preliminary injunction.*" (*Ibid.*, italics added.)

Senator does not explain how Code of Civil Procedure section 527, subdivision (d)(4), applies in this domestic violence restraining order case. Logically, Code of Civil Procedure section 527, subdivision (d)(4) applies only to civil temporary restraining orders and civil preliminary injunctions, where the injunction is sought under section 527. Temporary civil restraining orders generally cannot be granted without notice to the opposing party, but there are two enumerated statutory exceptions. (Code Civ. Proc., § 527, subds. (c).) Therefore, subdivision (d)(4) explains how to proceed upon a request to continue a civil preliminary injunction hearing when notice of the civil temporary restraining order was not given to the opposing party under those two statutory exceptions.

Unlike civil temporary restraining orders, domestic violence restraining orders may be granted "with or without notice." (Fam. Code, § 6300.) The notice requirement for domestic violence restraining orders is more lenient than the requirement for civil restraining orders. However, without specific legal argument, we cannot determine why Senator believes Code of Civil Procedure section 527, subdivision (d)(4) would apply in a domestic violence restraining order case, since the notice requirements for civil

temporary restraining orders are different than the notice requirements for domestic violence restraining orders. Since Senator has not provided legal argument on the issue, we deem it to be forfeited. (Cal. Rules of Court, rule 8.204(a)(1)(B) [support each point with legal argument]; *Los Angeles Unified School Dist. v. Casasola* (2010) 187 Cal.App.4th 189, 212 [an issue is forfeited if not supported by legal argument]; *People v. Stanley* (1995) 10 Cal.4th 764, 793 [same].)

DISPOSITION

The judgment is affirmed. Respondent, Lori Senator Fitton, is awarded her costs on appeal.

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MILLER
J.

We concur:

McKINSTER
Acting P. J.

RICHLI
J.