

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

KAREN GOEBELBECKER,

Plaintiff and Respondent,

v.

MARCO DEVOCHT,

Defendant and Appellant.

E063574

(Super.Ct.No. RIV1500325)

OPINION

APPEAL from the Superior Court of Riverside County. L. Jackson Lucky IV,
Judge. Affirmed.

David A. Kay for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

The trial court entered a protective order under the Domestic Violence Prevention Act (DVPA) (Fam. Code, § 6200 et seq.) enjoining defendant and appellant, Marco DeVocht, from contact with plaintiff and respondent, Karen Goebelbecker, and several members of her family. The protective order also bars DeVocht from possessing firearms.

DeVocht contends the trial court abused its discretion by entering a protective order based on insufficient evidence that he committed abuse. DeVocht also contends the superior court erred by entering a protective order depriving him of his Second Amendment right to keep a firearm for self-protection without first determining that such a restriction was necessary.

We affirm.

I

FACTUAL BACKGROUND

Prior to the incidents that gave rise to the protective order, DeVocht and Goebelbecker were involved in a long-term romantic relationship. DeVocht is a citizen of Holland, but when he visited the United States he stayed with Goebelbecker in a house located at 5532 Sunset Ridge Drive, Riverside, California. Goebelbecker owns the house, but DeVocht contributed a significant sum to enable her to buy the property and also paid for some furnishings and utilities. Goebelbecker testified they had agreed he would be added to the title if they married. Goebelbecker's daughter, Mary Taylor, and three grandchildren also reside in the home.

In December 2014, Goebelbecker informed DeVocht she did not want to continue their relationship. According to Goebelbecker, on December 23, 2014, DeVocht told her by telephone that he was going to come to California and visit her. Goebelbecker told him he was not welcome in her home. DeVocht objected, claimed it was "his house," and threatened he would take Goebelbecker to court and force her to sell the house. Goebelbecker said she was afraid to leave her home and parked her car in the garage to

make sure DeVocht would not know she was home. According to DeVocht, he traveled to Riverside on December 23, 2014, picked up his van, and stayed with a friend.

In her petition, Goebelbecker complained that DeVocht continued harassing her and her family. She reported she received “[c]onstant harassment via phone, text and email making threats to me regarding taking my home from me.” She also requested protection for her family because “they are being contacted via telephone and text messages to get in contact with me using several different numbers.” Goebelbecker’s daughter, Mary, testified her “mother had stopped answering his phone calls” and DeVocht “started calling myself and also my siblings, but when it would come up on our phone, it would come up as . . . a familiar number. For example, I got a phone call coming home from work. It came up on my phone on caller ID as my brother Jay. . . . And when I picked up my phone, it was [DeVocht].”

On March 2, 2015, DeVocht returned to Riverside. He testified he had heard Goebelbecker had been having medical problems and he returned to check on her. When DeVocht arrived in Riverside, he went to Goebelbecker’s house and discovered the lock had been changed. DeVocht rang the doorbell, and Goebelbecker’s 13-year-old granddaughter answered. When she saw DeVocht, she attempted to close the door on him. However, DeVocht blocked the door with his foot and forced his way into the house. DeVocht testified he did not believe the granddaughter had the right to exclude him “because it’s Karen Goebelbecker and my house. That’s our place where we—and I only stayed away to respect Karen and to give her some time and to go over things in her mind to respect her.” Goebelbecker’s granddaughter ran to the back of the house where

the bedrooms were located and called her mother, Goebelbecker's daughter Mary. Mary called her brother Jason, who lived within a mile of Goebelbecker's house.

Meanwhile, DeVocht found Goebelbecker in the family room. According to DeVocht, they sat together on the couch, kissed, and had a conversation. After a while, Jason and his wife arrived, and Jason and DeVocht had a heated conversation. Later still, Mary arrived. Mary testified her daughter was in a car calling 911 and Goebelbecker was inside the house and "look[ed] [like] she was crying [and] [h]er face was bright red." According to Mary, DeVocht said he had a right to be in the house and that he wanted to get back together with Goebelbecker. Mary testified her mother did not say much, but was crying as she does when she does not know what to do. Goebelbecker's petition indicated DeVocht said "he was there to get back together and refused to leave." She also reported that she "didn't feel safe with him there." The police arrived and asked DeVocht to leave. They did not arrest DeVocht and did not place a restraining order on him. DeVocht left and did not return to Goebelbecker's house.

On March 3, 2015, Goebelbecker filed a Request for Domestic Violence Restraining Order, and the court granted a temporary order. On March 18, 2015, the trial court held a hearing. The facts set out above come from Goebelbecker's request and from testimony by Goebelbecker, her daughter Mary, and DeVocht, the only testimony the trial court heard.

The trial court held that "[i]n terms of domestic violence, this is definitely not a violent case, but in terms of harassment and unwanted conduct and especially because the domestic violence statute is so broad that it covers contact that is direct or indirect,

disturbing the peace of, I think that this isn't violence in a conventional sense, but under the domestic violence statute, I think that it qualifies and because it appears that Mr. DeVocht, even sitting here, doesn't seem to think that he is unwelcome, he seems to think that Ms. Goebelbecker still wants him, even though she's sitting here in court that I don't—I don't have any confidence that he's getting the message that she doesn't want to be with him.” The trial court granted a restraining order, but “[b]ecause the conduct is not particularly violent, the restraining order is going to expire in one year.”¹

The court ordered DeVocht not to “[h]arass, attack, strike, threaten, assault (sexually or otherwise), hit, follow, stalk, molest, destroy personal property, disturb the peace, keep under surveillance, or block the movements” of Goebelbecker or her four children and three grandchildren. The court also ordered DeVocht not to “[c]ontact [the protected individuals], either directly or indirectly, by any means, including, but not limited to, by telephone, mail, e-mail or other electronic means.” The court ordered DeVocht to stay at least 100 yards away from Goebelbecker and her family members, their residences, places of work, and vehicles, and to move out of the house at 5532 Sunset Ridge Drive. Finally, the court ordered DeVocht not to “own, possess, have, buy, or try to buy, receive or try to receive, or in any other way get guns, other firearms, or ammunition” and to “sell to a California licensed gun dealer, store with a California licensed gun dealer, or turn in to a law enforcement agency any guns or other firearms within his/her immediate possession or control.”

¹ The restraining order was effective March 18, 2015 to March 17, 2016.

II

DISCUSSION

A. Issuance of Protective Order

DeVocht contends the trial court abused its discretion in issuing a restraining order because there was insufficient evidence of abusive conduct, as that term is defined in the DVPA. We disagree.

The decision whether to issue a protective order under the DVPA rests in the discretion of the trial court after considering all the particular circumstances of the case. (*In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1495.) Accordingly, we review the trial court's decision for abuse of its discretion. (*S.M. v. E.P.* (2010) 184 Cal.App.4th 1249, 1264.) A court abuses its discretion when its decision exceeds the bounds of reason. When multiple inferences reasonably can be deduced from the evidence, the reviewing court may not substitute its decision for that made by the trial court. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.) "To the extent 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.)

Under the DVPA (Fam. Code, § 6200 et seq.), the trial court may issue a restraining order "for the purpose specified in Section 6220, if . . . an affidavit or testimony 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."

(§ 6300.)² Section 6220 specifies, “[t]he purpose of this division is to prevent acts of domestic violence, abuse, 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.” The DVPA defines abuse as “ ‘any of the following: [¶] (1) Intentionally or recklessly to cause or attempt to cause bodily injury[;] [¶] (2) Sexual assault[;] [¶] (3) To place a person in reasonable apprehension of imminent serious bodily injury to that person or to another[;] [¶] (4) To engage in *any behavior* that has been or *could be enjoined pursuant to Section 6320.*’ ” (§ 6203, italics added.)

To constitute abuse under the DVPA, conduct “ ‘need not be actual infliction of physical injury or assault.’ [Citation.] To the contrary, section 6320 lists several types of nonviolent conduct that may constitute abuse within the meaning of the DVPA.” (*In re Marriage of Nadkarni, supra*, 173 Cal.App.4th at p. 1496.) The behaviors that may be enjoined under section 6320 include “ ‘molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, *harassing, telephoning*, including, but not limited to, annoying telephone calls as described in Section 653m of the Penal Code, destroying personal property, *contacting, either directly or indirectly, by mail or otherwise, coming within a specified distance of, or disturbing the peace of the other party*, and, in the discretion of the court, on a showing of good cause, of other named

² Unlabeled statutory citations refer to the Family Code.

family or household members.’ (§ 6320, subd. (a).)” (*S.M. v. E.P.*, *supra*, 184 Cal.App.4th at p. 1264, italics added.)

Here, the trial court found DeVocht’s numerous telephone calls and text messages to Goebelbecker and her family members, taken together with his forcing himself into Goebelbecker’s home, crossed the line into harassment. That finding is supported by the record and justifies the trial court’s decision to issue a protective order. As the trial court found, DeVocht demonstrated his unwillingness to accept Goebelbecker’s decision to terminate their relationship. He repeatedly attempted to contact Goebelbecker by telephone. Goebelbecker reported that DeVocht engaged in “[c]onstant harassment via phone, text and email, making threats to me regarding taking my home from me.” When Goebelbecker stopped responding, DeVocht began trying to get into contact with her by harassing her family members by telephone and text messages. Goebelbecker’s daughter testified DeVocht used different telephones to attempt to disguise who was calling. Goebelbecker reported his conduct made her feel threatened and afraid to leave her house. DeVocht escalated his harassment on March 2, 2015, when he forced his way into Goebelbecker’s home, though he acknowledged Goebelbecker had changed the lock and had made it clear he was not welcome. While there, DeVocht insisted it was his right to be in Goebelbecker’s home and further insisted that the couple would reconcile. DeVocht’s conduct made Goebelbecker feel unsafe in her home. According to her daughter, his conduct left Goebelbecker crying and sent her granddaughter into a panic. Consequently, we conclude the court did not abuse its discretion by finding abusive conduct that warranted issuing a protective order.

B. Condition Limiting Ownership or Possession of Firearms

DeVocht contends the protective order improperly strips him of his Second Amendment right to own and possess firearms.

The protective order mandates DeVocht “cannot own, possess, have, buy, or try to buy, receive or try to receive, or in any other way get guns, other firearms, or ammunition” and within 24 hours to sell or surrender to law enforcement “any guns or other firearms within his/her immediate possession or control.” This provision of the protective order implements section 6389, subdivision (a), which states a person subject to a protective order “shall not own, possess, purchase, or receive a firearm or ammunition while that protective order is in effect,” and subdivision (c)(1), which requires the court to “order the respondent to relinquish any firearm in the respondent’s immediate possession or control or subject to the respondent’s immediate possession or control.” Because this provision of the protective order is expressly required by statute, its inclusion in a protective order is mandatory. (*Ritchie v. Konrad* (2004) 115 Cal.App.4th 1275, 1295-1299.)

We understand DeVocht’s argument to bring an as-applied challenge to section 6389, subdivision (a). However, DeVocht did not object to the imposition of this condition or otherwise raise this issue before the trial court.³ Accordingly, he has

³ In addition, DeVocht indicated in his response to the request for protective order that he did not own or have any guns or firearms.

forfeited the claim on appeal.⁴ (*In re Sheena K.* (2007) 40 Cal.4th 875, 880-881, fn. omitted [“ “[N]o procedural principle is more familiar to this Court than that a constitutional right,” or a right of any other sort, “may be forfeited in criminal as well as civil cases by the failure to make timely assertion of the right before a tribunal having jurisdiction to determine it.” ’ [Citations.] ‘The purpose of this rule is to encourage parties to bring errors to the attention of the trial court, so that they may be corrected. [Citation.]’ [Citations.]”].)

III

DISPOSITION

We affirm the protective order. Appellant to bear his own costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

SLOUGH

J.

We concur:

RAMIREZ

P. J.

McKINSTER

J.

⁴ DeVocht also contends “an interpretation of the DVPA which required that custody be stripped from a parent for conduct which was only annoying to the other parent would be of doubtful validity.” DeVocht has forfeited this claim as well. In any event, there is no evidence the parties have children together or that DeVocht has custodial rights over Goebelbecker’s children or grandchildren.