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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

DOREEN ZAKI,

Plaintiff and Respondent,

v.

SAMUEL ZAKI,

Defendant and Appellant.

F060945

(Super. Ct. No. 10CEFL03130)

OPINION

APPEAL from a judgment of the Superior Court of Fresno County. Glenda S. Allen-Hill, Judge.

Samuel Zaki, in pro. per., for Defendant and Appellant.

Wild, Carter & Tipton and Russell G. VanRozeboom for Plaintiff and Respondent.

-ooOoo-

Respondent, Doreen Zaki, filed a request for a protective order under the Domestic Violence Prevention Act (Fam. Code, § 6200 et seq.) seeking to restrain appellant,

Samuel Zaki, from having any contact with her. Respondent alleged that appellant had threatened to kill her and have her involuntarily committed. The trial court issued a temporary restraining order against appellant and, following a hearing, issued a restraining order to remain in effect for three years based on a finding that there was an act of domestic violence.

Appellant challenges the issuance of this restraining order. According to appellant, the trial court committed “judicial misconduct,” erred in excluding certain of respondent’s mental health records, and erred in finding an act of domestic violence.

Appellant has not met his burden of demonstrating error. Therefore, the order will be affirmed.

DISCUSSION

1. *There is no evidence of judicial misconduct or bias.*

Appellant argues that, during the hearing on the protective order, the trial court committed “judicial misconduct” by “creating an atmosphere of pervasive unfairness.” According to appellant, who was appearing in propria persona, the trial court: allowed “improper decorum”; did not speak in “plain language”; was biased; treated appellant with disdain; and interfered with appellant’s ability to represent himself. Appellant has not cited any specific judicial standards that were violated. Rather, appellant appears to be arguing that the trial court was biased.

As this court explained in *In re Marriage of Tharp* (2010) 188 Cal.App.4th 1295, “litigants and attorneys sometimes manifest their emotional pique at a decision by blaming the judge for being biased.” (*Id.* at p. 1326.) Nevertheless, “the actions of a judge must not only be impartial, but they must be seen as impartial by a reasonable person.” (*Ibid.*) The trial of a case should not only be fair in fact, but should also appear to be fair. (*Id.* at p. 1328.)

Here, appellant’s claim that he was denied a fair hearing due to impermissible bias has no support in the record. A reading of the entire transcript reveals that the trial judge

conducted herself in an impartial and very respectful manner. The hearing was fair and orderly. Moreover, appellant has not cited any relevant authority. Generally, an appellate court does not consider contentions that are unsupported by authority. (*People v. Crittenden* (1994) 9 Cal.4th 83, 153.) In sum, appellant has not met his burden of demonstrating judicial misconduct or bias.

2. *The trial court did not err in excluding the psychological evaluation prepared by Dr. Hutchison.*

As exhibits to his answer to the temporary restraining order, appellant included reports from two mental health care providers who had interviewed respondent. The report from Howard Garfinkle, Ph.D. was admitted into evidence as a business record. However, the trial court excluded the psychological evaluation that was prepared by Grant Hutchison, Ph.D. on the ground that it had not been certified as a business record and therefore was inadmissible hearsay. We review this evidentiary ruling for an abuse of discretion. (*Gordon v. Nissan Motor Co., Ltd.* (2009) 170 Cal.App.4th 1103, 1111.)

As an out-of-court statement offered to prove the truth of the matter stated, the Hutchison evaluation is hearsay and thus inadmissible unless it falls within an exception to the hearsay rule. (Evid. Code, § 1200.) To be admissible as a business record, such a document must be authenticated. The custodian or other qualified witness must testify as to the document's identity and mode of preparation. (Evid. Code, § 1271, subd. (c).)

Here, appellant did not lay a foundation for the admission of the Hutchison evaluation. Unlike the Garfinkle report, the Hutchison evaluation did not include a declaration of the custodian of records. Accordingly, the trial court properly excluded the evaluation as hearsay. Appellant has failed to demonstrate an abuse of discretion.

3. *Substantial evidence supports the domestic violence finding.*

Under the Domestic Violence Prevention Act the court may issue a restraining order based on reasonable proof of a past act of abuse. (Fam. Code, § 6300.) Under this act, abuse includes placing a person in reasonable apprehension of imminent serious

bodily injury and threatening, harassing, or disturbing the peace of the other party. (Fam. Code, §§ 6203, 6320.)

The grant or denial of such a protective order is reviewed for abuse of discretion. (*Gonzalez v. Munoz* (2007) 156 Cal.App.4th 413, 420.) Accordingly, the trial court's ruling will not be disturbed unless the court exceeded the bounds of reason. Further, when two or more inferences can reasonably be deduced from the facts, the appellate court has no authority to substitute its decision for that of the trial court. (*Ibid.*)

In support of her request for a restraining order, respondent filed a declaration relating the alleged abuse. Respondent recounted numerous angry confrontations by appellant and described how he constantly berated her, called her horrible names and "literally" got "right into [her] face" and screamed at her. According to respondent, appellant accused her of being mentally unstable and needing to be involuntarily committed on multiple occasions. Respondent stated that appellant had threatened to kill her and that she was very frightened for her safety. Respondent also filed declarations from other percipient witnesses who corroborated her claims of abuse.

Appellant filed an answer denying respondent's allegations. He disputed the facts set forth by respondent and her witnesses. Appellant accused respondent of being delusional and questioned the integrity of respondent's witnesses. Appellant also included declarations of character witnesses who described appellant as peaceful, kind and compassionate. At appellant's request, the trial court decided the matter on the pleadings.

Respondent presented evidence of repeated angry confrontations by appellant and at least one direct threat against her life. One other witness corroborated appellant's threat. Based on this evidence, the trial court concluded that an act of domestic violence occurred when appellant threatened to kill respondent. In light of the evidence before it, the trial court did not abuse its discretion when it issued the restraining order. Substantial evidence supports the domestic violence finding.

DISPOSITION

The order is affirmed. Costs on appeal are awarded to respondent.

LEVY, J.

WE CONCUR:

HILL, P.J.

KANE, J.