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

REBEKAH ANGUIANO,

Plaintiff and Respondent,

v.

AARON ANGUIANO,

Defendant and Appellant.

F071826

(Super. Ct. No. 15CEFL01126)

OPINION

APPEAL from a judgment of the Superior Court of Fresno County. Rosemary T. McGuire, Judge.

Glenn R. Wilson for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

-ooOoo-

Appellant appeals from a domestic violence restraining order entered against him. He challenges the manner in which the parties' competing applications for domestic violence restraining orders were heard and the sufficiency of the showing of abuse to satisfy the statutory requirements for such an order. We find no error has been demonstrated and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Aaron Anguiano and Rebekah Anguiano never married, but they cohabited and had a son together. After Rebekah announced she was in love with someone else and asked Aaron to move out, each party sought a restraining order under the Domestic Violence Prevention Act (DVPA) (Fam. Code, § 6200¹ et seq.) against the other. At the hearing, the trial court first heard testimony concerning Rebekah's application. When both parties had testified, it rendered its decision on Rebekah's request for a restraining order, finding that Rebekah's testimony was credible and granting a restraining order against Aaron with a five-year duration. The trial court then heard testimony relating to Aaron's request. It found there was sufficient proof of past acts of abuse with Rebekah as the primary aggressor, and imposed a restraining order against her with a one-year duration. Aaron appeals from the order entered against him. Rebekah has not filed a response.

DISCUSSION

I. Standard of Review

We review the issuance of a restraining order under the DVPA for abuse of discretion. (*J.J. v. M.F.* (2014) 223 Cal.App.4th 968, 975.) We review the trial court's factual findings for substantial evidence. (*Ibid.*) If statutory construction presenting a pure question of law is required, our review is de novo. (*Isidora M. v. Silvino M.* (2015) 239 Cal.App.4th 11, 16.)

When the respondent fails to file a brief, "the court may decide the appeal on the record, the opening brief, and any oral argument by the appellant." (Cal. Rules of Court, rule 8.220(a)(2).)

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

II. Hearing of Applications

Aaron's first assignment of error is that the trial court failed to hear and consider all the evidence presented in relation to both applications before ruling on either application. At the outset of the hearing, the trial court stated it assumed there would be factual overlap in the two cases. When the trial court learned the paperwork for Aaron's case had not been served on Rebekah, it indicated it could proceed that day on both matters or continue both matters to another date, because "the factual aspect of both cases [is] the same." Rebekah reviewed Aaron's paperwork, and both parties wished to proceed that day.

The trial court had before it Rebekah's application for a domestic violence restraining order and Aaron's written response. Rebekah's application stated Aaron had threatened to file for full custody of the parties' son, was acting erratically because he was off his antipsychotic medication, threatened he would kill her and the other person if he ever saw her with someone else, and told her multiple times he would ruin her entire life. He falsely had her arrested, then called her workplace to tell them she had been arrested and should be fired. Her employer moved her work location out of fear for her safety. Aaron threatened to obtain a restraining order so she could not have custody of their son if she did not cooperate with him through the break up.

In his written response, Aaron stated he was not taking antipsychotic medication and attached a letter from his psychiatrist confirming this. He disputed the accusation that he had Rebekah falsely arrested, asserting she attacked him. He stated he and Rebekah agreed he would move out by February 26, 2015; he would relinquish his keys to the residence to her and she would relinquish a vehicle and its keys to him. However, she refused to return his GMC Yukon; he tried to retrieve it multiple times. He succeeded on March 2, 2015, by using GPS to locate it. When he went to that location, which was Rebekah's new workplace, he found Rebekah had installed a steering column lock on the vehicle. To avoid a confrontation, Aaron sent his uncle to have the vehicle

towed. When his uncle arrived, Rebekah was in the vehicle and refused to allow it to be towed. She claimed the vehicle was registered in her name as well as Aaron's. The police were called. The same night at midnight, Rebekah had the police serve her restraining order on Aaron and take their son from him.

At the hearing, the trial court heard Rebekah's application first. Rebekah repeated her statement that Aaron had threatened to kill both of them if he ever saw her with someone else. She testified he threatened throughout February to ruin her life. She told Aaron she was in love with someone else and asked him to move out, but he did not. He called the district manager at her workplace on February 23 and 26, 2015. Her employer moved her work location out of concern for her safety and welfare. She started at the new location on February 28. On March 2, Aaron "stalked out" her new workplace and created a disturbance there.

Rebekah testified she was the primary breadwinner and paid for most of their things, but put some of them in Aaron's name, including both vehicles. The parties agreed Aaron would leave her vehicle with her and take his with him. When he found her new workplace, he damaged her vehicle so she could not drive it; she had to call a tow truck. Aaron's family member told the tow truck driver he could not tow the vehicle because Rebekah was not the owner. Aaron called her manager and said Rebekah needed to go outside; the manager said she would not. Several of Aaron's family members gathered around the vehicle, causing a disturbance. The police were also there.

Further, Rebekah testified Aaron stalked her house. On February 27, 2015, as she came back from dinner, she saw a car like Aaron's down the street; as she drove past, she saw it was Aaron. She called the police. An officer said she would tell Aaron to leave and to leave the car situation alone.

In his response at the hearing, Aaron testified Rebekah's testimony was not true. He stated he paid for GMC Yukon. Regarding the February 27, 2015 alleged stalking incident, he stated Rebekah made violent gestures as she drove by and he called the

police, but she had already called them. He complied with the officers' instructions; they told him he could not get the vehicle because it was at Rebekah's residence.

On March 2, 2015, Aaron was able to retrieve his vehicle by using the GPS system to locate it, not by learning Rebekah's work location. When he found it, it had a wheel lock on it, and he did not have a key. Aaron disabled the vehicle by taking off the main belt because he did not want a confrontation with Rebekah while he waited for a tow truck. He went home and called the police to apprise them of the situation; they told him to send a third party to pick up the vehicle. He sent his uncle.

When his uncle arrived, Rebekah was in the vehicle, being aggressive. She said she paid for the vehicle, but that was not true. Aaron paid for it and it was registered to him. Aaron's uncle and parents were there when the vehicle was towed. Rebekah still had a key to it; the police refused to frisk her for it. Before the police arrived, Aaron called Rebekah's manager and asked for Rebekah to bring the key so the police would not have to come in and get it.

At this point, having heard the testimony offered in support of and opposition to Rebekah's application for a restraining order, the trial court found Rebekah's testimony credible; it noted Aaron "did concede that he went to her place of employment, the vehicle was disabled, and I do find her other testimony credible." On that basis, it granted Rebekah's request for a restraining order, prohibiting him from harassing, threatening, stalking, or contacting her, among other things, for a period of five years.

The trial court then permitted Aaron to present his case in support of his request for a restraining order against Rebekah. Aaron testified that, on the date of Rebekah's arrest, he asked Rebekah for her cell phone and Rebekah threw it. He picked it up and called her manager, with whom she had been having an affair since November; he wanted to tell the manager how he felt. This was the first time he had called Rebekah's workplace. Rebekah started hitting and scratching him; she scratched his arms, neck,

back and ribs. He contacted Rebekah's work the next day and the day he retrieved his vehicle; those were the only times he contacted her workplace.

In response, Rebekah testified that, after Aaron moved out, she never went to his new residence or his workplace, and never damaged his property. She had started a relationship with someone else and had asked Aaron to move out. On the night of her arrest, Aaron wanted the three of them to sit down and talk. He snatched the phone out of her hands and called the other person. There was a struggle to get her phone back and she could have scratched his arms with her long acrylic nails trying to get her phone back. She believed he inflicted the injuries on himself and filed a fake police report about what happened.

Rebekah testified that, while Aaron was on the phone with the other person, he pulled out his own cell phone and called 911, reporting he was being attacked by his wife. At the time, she was across the room sitting on the couch. Rebekah recounted both ends of the phone conversation Aaron had with the police. She stated she was "shocked at the ridiculousness" of it, because there was no emergency. After Aaron hung up both phones, he told her he would tell the police he didn't call and everything was okay. The police arrived as Rebekah was about to drive away, and they arrested her.

Aaron offered the police report to support his version of the events and expressed disbelief at Rebekah's accusation that he had scratched himself. The trial court reviewed the police report and noted it reflected a determination that Rebekah was the dominant aggressor in the incident. It found there was "reasonable proof of past acts of abuse," with Rebekah as the primary aggressor. The trial court granted Aaron's request for a restraining order, ordering Rebekah not to harass, attack, strike, or contact Aaron, among other things, for a period of one year.

Aaron argues that the trial court should have heard all the testimony in support of and opposition to both applications before ruling on either parties' request for a restraining order. He contends it is logical to hear matters together when they share a

common nucleus of operative facts; doing so serves judicial economy, avoidance of piecemeal litigation, and the overall convenience of the parties. But here the matters *were* heard together—at the same hearing on the same day. Aaron cites no authority supporting his claim that it was error to hear one application first, then the other.

“When jurisdiction is, by the Constitution or this Code, or by any other statute, conferred on a Court or judicial officer, all the means necessary to carry it into effect are also given; and in the exercise of this jurisdiction, if the course of proceeding be not specifically pointed out by this Code or the statute, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of this Code.” (Code Civ. Proc., § 187.) “Courts have inherent power, as well as power under section 187 of the Code of Civil Procedure, to adopt any suitable method of practice, both in ordinary actions and special proceedings, if the procedure is not specified by statute or by rules adopted by the Judicial Council.” (*Tide Water Associated Oil Co. v. Superior Court* (1955) 43 Cal.2d 815, 825, fn. omitted.)

The trial court adopted a procedure that allowed each party to present his or her case, then allowed the other party to respond. It ruled separately on each application. Although it ruled on Rebekah’s case before hearing Aaron’s, there was nothing to prevent the trial court from changing its announced decision in Rebekah’s case if anything presented in Aaron’s case caused it to have doubts about that decision.

“A trial court’s oral ruling on a motion does not become effective until it is filed in writing with the clerk or entered in the minutes. [Citations.] Accordingly, the trial court may properly file a written order differing from its oral rulings when the rulings have not been entered in the minutes of the court. [Citation.] Furthermore, when the trial court’s minute order expressly indicates that a written order will be filed, only the written order is the effective order.” (*In re Marriage of Drake* (1997) 53 Cal.App.4th 1139, 1170.) Although the trial court orally announced its decision on Rebekah’s application before it heard the evidence pertaining to Aaron’s application, the record does not reflect at what

point the minute order on Rebekah's application was entered. Presumably the trial court intended its final order to be issued and filed on the mandatory Judicial Council form. The trial court had the opportunity to change its ruling before it issued its written order or had the order entered in the minutes if the evidence presented in Aaron's case affected its factual findings or its decision in Rebekah's case.

Aaron contends the rulings on the two applications are "hopelessly inconsistent and cannot stand." Essentially he asserts that, if the trial court found Rebekah's testimony about the incident with the cell phone to be credible during her case presentation, then it had to also accept as true her testimony in Aaron's case regarding the same incident. He concludes that would have required the trial court to believe Rebekah's testimony that she sat across the room while Aaron phoned the person with whom she was having an affair and the police, and that he inflicted the scratches on himself. If it had so found, it would not have entered a restraining order against Rebekah in Aaron's case. We find no such inconsistency.

During the presentation of her case, Rebekah testified Aaron threatened to ruin her life and to kill both her and the other person if he ever saw her with someone else. She testified to an incident on February 27, 2015, when she saw him parked down the street from her residence and called the police. She also testified about the March 2, 2015, incident in which Aaron retrieved his car from her workplace. She did not testify about the incident in which she was arrested for attacking and scratching Aaron while he was using her cell phone. The only mention of that incident in her written application was the statement in her declaration that "[h]e falsely had me arrested."

After hearing the testimony of both parties regarding Rebekah's request for a restraining order against Aaron, the trial court stated: "I have considered the testimony of both of the parties and I do find that Rebekah Anguiano's testimony is credible. And Mr. Anguiano did concede that he went to her place of employment, the vehicle was disabled, and I do find her other testimony credible." When Aaron protested that he had conceded

only calling Rebekah's workplace and disabling his vehicle, and he had denied threatening her, the trial court stated: "I understand that you deny that but my finding was that her testimony was credible in the Court's assessment."

Thus, the trial court's finding regarding the credibility of Rebekah's testimony did not extend to her later testimony regarding the cell phone incident and her arrest. It pertained to the evidence that Aaron threatened her, contacted her workplace, parked down the street from her residence after he moved out, disabled the vehicle she had been driving, and sent family members and a tow truck to retrieve the vehicle from her workplace, causing a disturbance.

We find no error in the procedure the trial court followed in hearing the two applications, and no "hopeless inconsistency" in the two rulings.

III. Active Role in Proceedings

Aaron next contends the trial court did not take a sufficiently active role in the proceedings to preclude admission of inadmissible evidence. He contends that, because he was unaware of his right to object to inadmissible testimony, the trial court should have asked more questions to elicit a foundation for Rebekah's testimony and should have admonished the parties that it could not consider evidence that constituted hearsay or lacked foundation. He asserts that, if the trial court had taken a more active role, it would have discovered documentation of his ownership of the GMC Yukon, which he filed with his written response.

In making this argument, Aaron relies on *Ross v. Figueroa* (2006) 139 Cal.App.4th 856 (*Ross*). The *Ross* court observed that, in domestic violence proceedings, where the parties are often unrepresented by counsel, "the judge cannot rely on the propria persona litigants to know each of the procedural steps, to raise objections, to ask all the relevant questions of witnesses, and to otherwise protect their due process rights." (*Id.* at p. 861.) *Ross* had obtained a domestic violence restraining order against Figueroa. (*Id.* at p. 859.) Neither party was represented by counsel. At the time of hearing,

Figueroa had not served his written response on Ross, because he could not figure out how to serve it without violating the temporary restraining order already in effect. (*Id.* at p. 860.) The trial court denied Figueroa’s request for a continuance, even though it was statutorily required. (*Id.* at pp. 860–863.) The trial court took no oral testimony from Ross, and denied Figueroa any opportunity to present testimony or other evidence in opposition to Ross’s application. (*Id.* at p. 860.) It also denied Ross her right to have her support person sit with her at the counsel table. (*Id.* at pp. 859–860.) The appellate court observed:

“In a purely adversarial setting it is reasonable for the judge to sit back and expect a party’s lawyer to know about and either assert or by silence forfeit even the most fundamental of the party’s constitutional and statutory procedural rights. But not so in a judicial forum, such as this domestic violence court, which can expect most of those appearing before the court to be unrepresented. To that end, the code specifically allows a party in such a proceeding to be assisted by a nonlawyer ‘support person’ who is permitted to sit with the litigant at counsel table unless that litigant has a lawyer....

“... But in any event, it is the judge and not the party or the party’s nonlawyer ‘support person’ who can be expected to know and protect the litigant’s procedural rights. Accordingly, here it was incumbent on the referee to apprise Figueroa it was his right to present oral testimony when Figueroa indicated he wanted to put on a defense by asking whether he could tender the written evidence he had prepared but not served.” (*Ross, supra*, 139 Cal.App.4th at p. 867, fn. omitted.)

The court reversed the judgment and remanded to the trial court for a new hearing at which both parties were to be allowed to present oral and written evidence. (*Ross, supra*, 139 Cal.App.4th at p. 869.)

Here, both parties appeared and were permitted to testify and present evidence. The matter was heard by the trial court, which presumably was familiar with the rules of evidence and considered only admissible evidence. (See Evid. Code, § 664, establishing a presumption that official duty has been regularly performed.) On multiple occasions, the trial court advised the party testifying that recitation of what others had said

constituted hearsay, which could not be considered by the court. Twice the trial court admonished Aaron to testify only to matters of which he had personal knowledge. When the testimony was vague or general, the trial court asked questions to ascertain more specific information. On three occasions, the trial court assured Aaron it had read his written response. When Aaron mentioned the police report of the cell phone incident, the trial court reviewed it, indicating it already had a copy (it was attached to Aaron's written response). When the parties discussed ownership of the GMC Yukon, Aaron did not refer the court to the document attached to his written response, which he contended showed his sole ownership; however, if the trial court had read Aaron's response as it repeatedly indicated, it had already reviewed that document.

Aaron also contends the trial court allowed Rebekah to testify in her written application and orally regarding Aaron's mental state, including an assertion he was off his antipsychotic medication, without laying a foundation to show her competence to testify on that subject. He asserts the trial court "wrongfully considered" this evidence, because it ordered Aaron, but not Rebekah, to attend mental health counseling. The counseling order, however, was not part of the domestic violence restraining order against Aaron. Rather, it was part of a separate child custody order entered after the hearing on the domestic violence applications had been completed, and apparently after the parties had engaged in mediation of the custody issue. Aaron has not challenged that order in this appeal.

At the hearing of the applications for domestic violence restraining orders, in responding to evidence of the cell phone incident and the scratches on Aaron's neck and back, Rebekah testified she was aware of the medication Aaron was taking and had gone with him to his psychiatrist appointments. When she attempted to discuss the psychiatrist's concerns, the trial court interrupted, indicating there was no corroboration regarding communications with the psychiatrist; it asked Rebekah to simply relate what happened between Aaron and Rebekah on the night of the incident. The accusation in

Rebekah's written application that Aaron was acting erratically because he was off his antipsychotic medication was countered in Aaron's response by a letter from his psychiatrist indicating he was not on antipsychotic medication and he was compliant with taking his antidepressant medication. We reiterate that the trial court assured Aaron it had reviewed his written response to Rebekah's application.

We find no merit to Aaron's contention the trial court should have taken a more active role in assisting the parties in their presentations and excluding inadmissible evidence. The trial court admonished the parties not to relate hearsay statements others had made to them, steered the parties back to relevant testimony when they began to stray, and interrupted when they attempted to testify to matters of which they had no personal knowledge. No error has been demonstrated.

IV. Retrieval of Vehicle

Aaron's final assignment of error is that the retrieval of his vehicle from Rebekah's workplace by sending third parties and a tow truck to remove it did not constitute "abuse" or "disturbing the peace" for purposes of issuing a domestic violence restraining order.

A restraining order under the DVPA may be issued to prevent domestic violence or abuse if the party seeking the order "shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse." (§§ 6300, 6220.) "Domestic violence" is defined as "abuse perpetrated against" specified persons, including a cohabitant or a "person with whom the respondent has had a child." (§ 6211.) "Abuse" includes intentionally or recklessly causing or attempting to cause bodily injury to, attacking, striking, stalking, threatening, harassing, making annoying telephone calls to, or disturbing the peace of the other party. (§§ 6203, 6320.) Aaron contends lawfully retaking possession of his vehicle, by disabling it then sending third parties and a tow truck to remove it, did not constitute disturbing Rebekah's peace.

In *In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483 (*Nadkarni*), Darshana sought a domestic violence restraining order against her former husband, Datta. She alleged he accessed her private e-mail account, which she used for confidential matters including communications with her family law attorney, and obtained copies of e-mails, which he used against her in child custody proceedings. (*Id.* at pp. 1487–1489.) The trial court dismissed Darshana’s application, finding the allegations were insufficient as a matter of law to satisfy the requirements for a restraining order under the DVPA. (*Id.* at p. 1493.) The appellate court reversed the dismissal. (*Id.* at p. 1501.)

Under the DVPA, “the requisite abuse need not be actual infliction of physical injury or assault.” (*Nadkarni, supra*, 173 Cal.App.4th at p. 1496.) “To the contrary, [Family Code] section 6320 lists several types of nonviolent conduct that may constitute abuse within the meaning of the DVPA.” (*Ibid.*) Under section 6320, contacting the other party, directly or indirectly, may constitute abuse. Thus, Darshana’s allegations that Datta viewed her private e-mail, learned her social schedule, and communicated this information to third persons, who informed Darshana that Datta was aware of her schedule, could constitute abuse by indirect and threatening contact. (*Nadkarni*, at pp. 1496–1497.)

Further, disturbing the peace of the other party may constitute abuse. “[T]he plain meaning of the phrase ‘disturbing the peace of the other party’ in [Family Code] section 6320 may be properly understood as conduct that destroys the mental or emotional calm of the other party.” (*Nadkarni, supra*, 173 Cal.App.4th at p. 1497.) The court concluded: “Accordingly, we believe that the Legislature intended that the DVPA be broadly construed in order to accomplish the purpose of the DVPA. Therefore, the plain meaning of the phrase ‘disturbing the peace’ in section 6320 may include, as abuse within the meaning of the DVPA, a former husband’s alleged conduct in destroying the mental or emotional calm of his former wife by accessing, reading and publicly disclosing her confidential e-mails.” (*Id.* at p. 1498.)

The restraining order against Aaron was based on evidence he threatened to ruin Rebekah's life and to kill both her and the other person if he ever saw her with someone else; he threatened to get her fired and, after she was moved to a new work location without his knowledge, bragged that he had done so. Aaron threatened to "come after [her] for grand theft auto" if she did not return his vehicle. He parked down the street from her residence at night after he moved out, assertedly waiting for an opportunity to retrieve his vehicle. Aaron went to Rebekah's workplace to retrieve his vehicle, called her manager to tell her to come out and bring him the keys so the police would not have to come in and get them, then disabled the vehicle so Rebekah could not drive it. He had his family members, a tow truck, and the police go to the parking lot of her workplace to retrieve his vehicle while she was working, creating "a humongous disturbance." Thus, regardless whether Aaron had a legal right to retake possession of the GMC Yukon from Rebekah, the manner in which he did so, combined with the evidence of threats and other intimidating conduct, was sufficient to support the trial court's imposition of a restraining order against Aaron. Aaron has not demonstrated that the trial court abused its discretion or lacked sufficient supporting evidence in issuing the domestic violence restraining order against him.

DISPOSITION

The order is affirmed. Rebekah made no appearance in this appeal, so there are no costs to award.

HILL, P.J.

WE CONCUR:

GOMES, J.

DETJEN, J.