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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re the Marriage of MARTHA SANCHEZ BARRERA and JOSE CARLOS ANAYA.	
MARTHA SANCHEZ BARRERA, Appellant, v. JOSE CARLOS ANAYA, Respondent.	F076796 (Super. Ct. No. 14CEFL04319) **OPINION**

THE COURT*

APPEAL from an order of the Superior Court of Fresno County. Francine Zepeda, Judge.

Zepure Attashian for Appellant.

Jose Anaya, in pro. per., for Respondent.

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Appellant, Martha Sanchez Barrera (mother), obtained a domestic violence restraining order against respondent, Jose Carlos Anaya (father), which protected mother and the parties' three children. Shortly before the order was to expire, mother sought renewal of the order. The evidence indicated further acts of abuse by father during the

* Before Hill, P.J., Smith, J. and Meehan, J.

term of the original restraining order. The trial court renewed the restraining order, but named mother as the only person protected by the renewed order. Mother appeals, contending the children should have been included as additional protected persons. We agree. Accordingly, we reverse and direct the trial court to modify the order.

FACTUAL AND PROCEDURAL BACKGROUND

Mother and father had a 13-year relationship and had three children together. In August 2014, mother obtained a temporary restraining order against father under the Domestic Violence Prevention Act (DVPA; Fam. Code,[1] § 6200 et seq.) the order protected mother and the three children. Both parties appeared for the hearing of mother's request for a long-term restraining order. The evidence showed father had a drug problem and experienced hallucinations. In July 2014, during an argument in their home, father grabbed a knife, punched mother in the back, then put the knife in her hands and tried to make her stab him. Mother's chest began to hurt, she could not breathe, and she fell to the floor. Father had their 12-year-old son (son) call an ambulance. Their daughters were scared and crying. After hearing the matter, the trial court entered a three-year restraining order, barring father from, among other things, harassing, threatening, and contacting mother and the children.

In July 2017, shortly before the restraining order was to expire, mother filed a request to renew the restraining order. She declared that, in March 2016, father drove the children to a party after their visitation with him.[2] He remained at the party; mother was also there. Father began drinking and insulted mother in front of the children. He told mother he was going to kill himself. He began stabbing himself in the stomach with a

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[1] All further references to statutes are to the Family Code, unless otherwise indicated.

[2] Initially, in 2014, father was granted only limited, supervised visitation. In January 2016, the trial court allowed him unsupervised visitation on Saturdays, between 10:00 a.m. and 2:00 p.m. After the party incident, visitation was again limited to brief, supervised visits. The trial court also ordered counseling for the children.

knife and slit his throat. Son was standing close enough to be spattered with blood. The daughters screamed and cried hysterically.

At the hearing of the renewal request, both parties appeared and presented evidence. Mother's evidence included documents showing father had been convicted in 2014 of violating the restraining order. She testified the conviction occurred after father followed son when he was walking to school, and repeatedly told son to get in father's car; son could not concentrate at school, worrying father would go to mother's home and hurt her.

Mother admitted renewing her relationship with father at the end of 2015, when he seemed to be doing better after participating in drug rehabilitation and parenting classes. But he became manipulative and controlling, and mother terminated the relationship again before the party incident. Mother testified father was still hurting the children psychologically, by reminding them of the 2016 party incident when he telephoned them, even when they asked him to stop. Father admitted stabbing himself in front of the children; he blamed untreated depression.

The trial court issued a five-year restraining order against father, which identified mother as the protected party. It did not include the children as additional protected persons. The order did not explain that omission. The court also issued a child custody order that granted mother sole legal and sole physical custody, with supervised visitation for father, limited to one hour per month, if the children were willing. Mother appeals from the five-year restraining order, challenging the failure to include the children as protected persons.

DISCUSSION

I. Standard of Review

"A domestic violence restraining order is a type of injunction …." (*Loeffler v. Medina* (2009) 174 Cal.App.4th 1495, 1503.) "A grant or denial of injunctive relief is generally reviewed for abuse of discretion. [Citation.] This standard applies to a grant or

denial of a protective order under the DVPA." (*Gonzalez v. Munoz* (2007) 156 Cal.App.4th 413, 420.) " 'Discretion is abused when a court exceeds the bounds of reason or contravenes uncontradicted evidence.' " (*14859 Moorpark Homeowner's Assn. v. VRT Corp.* (1998) 63 Cal.App.4th 1396, 1402.) Discretion is abused when the trial court could not reasonably have reached the decision it did under applicable law. (*Cahill v. San Diego Gas & Electric Co*. (2011) 194 Cal.App.4th 939, 957.) "When applying the deferential abuse of discretion standard, 'the trial court's findings of fact are reviewed for substantial evidence, its conclusions of law are reviewed de novo, and its application of the law to the facts is reversible only if arbitrary and capricious.' " (*In re C.B.* (2010) 190 Cal.App.4th 102, 123.)

II. Renewal of Domestic Violence Restraining Order

A domestic violence restraining order "may be renewed, upon the request of a party, either for five years or permanently, without a showing of any further abuse since the issuance of the original order, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party." (§ 6345, subd. (a).) If the protected party's request for renewal is uncontested, that party is entitled to renewal of the protective order upon request. (*Ritchie v. Konrad* (2004) 115 Cal.App.4th 1275, 1284 (*Ritchie*).) When the restrained party appears and challenges the requested renewal of the domestic violence restraining order, however, the "trial court should renew the protective order, if, and only if, it finds by a preponderance of the evidence that the protected party entertains a 'reasonable apprehension' of future abuse." (*Id*. at p. 1290.) "[T]his does not mean the court must find it is more likely than not future abuse will occur if the protective order is not renewed. It only means the evidence demonstrates it is more probable than not there is a sufficient risk of future abuse to find the protected party's apprehension is genuine and reasonable." (*Ibid*.)

Section 6345 does not require the protected party to introduce evidence of acts of abuse by the restrained party that occurred after the original order took effect. If the

protected party were required to do so, that party "would have to demonstrate the initial order had proved ineffectual in halting the restrained party's abusive conduct just to obtain an extension of that ineffectual order. Indeed the fact a protective order has proved effective is a good reason for seeking its renewal." (*Ritchie*, *supra*, 115 Cal.App.4th at p. 1284.)

Because evidence of new abusive conduct is not required, and the original protective order itself is unlikely to disclose the conduct on which it was based, the trial court ordinarily should consider the evidence and findings on which the original order was based, in order to assess the risk that future abuse will occur if the existing order expires. (*Ritchie*, *supra*, 115 Cal.App.4th at pp. 1290–1291.) Additionally, it should consider any significant changes in the parties' circumstances, such as whether the parties have "moved on with their lives so far that the opportunity and likelihood of future abuse has diminished to the degree they no longer support a renewal of the order." (*Id*. at p. 1291.)

At the hearing of mother's request for renewal of the restraining order, the trial court had before it evidence of the main occurrence on which the original 2014 restraining order was based: when father put a knife in mother's hand and tried to make her stab him. Additionally, there was evidence that father was convicted in 2014 of violating the restraining order and that, in 2016, he stabbed himself and slit his throat in front of mother and the children. There was evidence father said disturbing things to son during their telephone conversations. Mother declared son was terrified he would come home from school and find mother in a pool of blood, like father was when he stabbed himself. The children were terrified because father mentioned the restraining order would expire soon, and he would be able to see them when he wanted to. The younger daughter has nightmares and hides when there is a knock on the door. The older daughter bites her fingernails, cries, has difficulty breathing, and does breathing exercises her therapist taught her.

The trial court stated it had a report of interviews with the children after the 2016 stabbing incident, which indicated the children really were scared of father, and of what he might do to himself in front of them. It noted the children were traumatized by that event, were still suffering from it, and it was "a big deal for them." The trial court stated the children were "finding it incredibly difficult to get over it," and father and the children would need some therapy in order to move past it. Speaking to father, the trial court added: "I know you can't take it back. And I know you are sorry for it. But it still happened and it still happened in front of them. So I can't just ignore that." Although the trial court entered a custody order which granted sole legal and sole physical custody to mother, with very limited supervised visitation for father, it failed to continue the restraining order that protected the children from other contact with father.

Father opposed renewal of the restraining order. Accordingly, applying the *Ritchie* standard, the question for the trial court was whether it found, by a preponderance of the evidence, that the children "entertain[ed] a 'reasonable apprehension' of future abuse." (*Ritchie*, *supra*, 115 Cal.App.4th at p. 1290.) "Abuse," under the DVPA, includes intentionally or recklessly causing or attempting to cause bodily injury; placing a person in reasonable apprehension of imminent serious bodily injury to that person or another; and harassing, threatening, stalking, or disturbing the peace of a family or household member. (§§ 6203, subd. (a)(1), (3) & (4), 6320, subd. (a).)

The trial court had before it the same evidence on which the existing restraining order, which protected both mother and the children, was based. It also had the new evidence that father had stabbed himself in front of the children. There was evidence of the traumatic effect that event had on the children. Beginning shortly after the stabbing incident, the trial court's custody orders required counseling for the children and the parents. Nonetheless, mother's uncontradicted testimony indicated the children remained fearful of what father would do in their presence. Mother expressed her own fear father would get drunk and kill her, the children, and himself; she believed he was angry and

unstable enough to be capable of anything. Father testified he loved his children and would not hurt them. However, he acknowledged he stabbed himself in front of them, suggesting he did not understand the children could be hurt by extreme trauma or psychological injury.

There was no evidence of any significant change in circumstances that would have reduced the likelihood of future abuse of the children. There was no evidence the parties had moved on with their lives, to the extent that the children were no longer placed in the middle of the parties' dysfunctional relationship.

The trial court found sufficient likelihood of future abuse to renew the restraining order protecting mother. It found enough need to protect the children that it entered a custody order that allowed father a maximum of only one hour of supervised visitation per month, taking the children's wishes into account. We conclude that, where, as here, there was no evidence of any change of circumstances that would reduce the likelihood of further abuse that would affect the children, and there was undisputed evidence of incidents that occurred after entry of the original restraining order that indicated the likelihood of such abuse remained, it was an abuse of discretion to terminate the restraining order protecting the children.[3]

DISPOSITION

The November 1, 2017 restraining order after hearing, is reversed. The trial court is directed to enter a modified order, containing the same provisions, but including the parties' three children as additional protected persons. The parties will bear their own costs on appeal.

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[3] Because the trial court, at the hearing, expressed concern about the effect of father's actions on the children, and did not express any intent to exclude the children as protected parties under the renewed restraining order, we suspect the omission of the children may have been an oversight. However, whether the omission of the children from the renewed order was intentional, or whether it resulted from a failure to exercise discretion through oversight, it meets the standard for abuse of discretion.