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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re Marriage of AYMAN and EMAN  
SAADALLA.

AYMAN SAADALLA,

Appellant,

v.

EMAN SAADALLA,

Respondent.

G045027

(Super. Ct. No. 10D011596)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Michael J. Naughton, Judge. Affirmed.

Mathews Funk & Associates and Ronald B. Funk for Appellant.

Eman Saadalla, in pro. per., for Respondent.

\* \* \*

Ayman and Eman Saadalla married on January 22, 2001. Approximately nine years later, on December 22, 2010, Eman Saadalla (hereafter Wife) filed an ex parte

application for a temporary restraining order. The next day, Ayman Saadalla (hereafter Husband) filed a petition for marital dissolution. The court consolidated the cases and issued a temporary restraining order. In February 2011, the trial court issued a domestic violence restraining order, lasting five years. On appeal, Husband maintains the court erred in refusing to permit him to impeach Wife with the contents of a police report, and there was insufficient evidence to support a finding of domestic violence. We conclude his contentions lack merit, and we affirm the domestic violence order.

## II

Wife's ex parte request for a temporary restraining order stated she was 35 years old and she no longer lived with Husband. She stated they had two daughters and a son, ranging in age from two years old to six years old. Wife declared she was requesting the order because Husband was verbally and physically abusive. She explained a few days prior, on December 17, 2011, she had stayed up late to make cookies for her daughter. Husband blocked the door to their bedroom. When she managed to get inside, Husband kept her up all night, calling her names and he threatened to kill her. He also told her that he was determined to get her fired from her job. On Friday morning, Husband tried to block her way, and when she tried to avoid him, he flicked her left ear and slapped her head near her left eye. She said this caused her ear to hurt and she had a headache for a few days. Wife stated Husband owned a black automatic gun.

Wife also described an abusive incident occurring in November 2008. She stated Husband threatened to kill her and bury her in the backyard. She stated that after this incident, they separated for a time, but they attempted to reunite after their priest asked them to reconcile. Wife stated she agreed to go to church with Husband on January 7, 2009. Husband picked her and the kids up and refused to go to church and insisted they go to his uncle's house. Wife attempted to get out of the car and Husband grabbed the back of her neck and her hair. He held her and squeezed her neck, forcing

her to go to his uncle's house. Wife said that since this violent incident she has been scared of the verbal abuse, the threats, and the cheating. Wife stated she was also concerned that Husband has her citizenship papers, the children's birth certificates, their social security numbers, and the marriage certificate. Wife was worried Husband would pick the children up from school and she would never see them again.

Wife also described stalking behavior. She declared Husband had a tracking device installed on her cellular phone. He always called her when she was at work to confirm she was there. When she went out to lunch or was running errands, Husband constantly texted and called her. Wife stated then when she fails to bring the cellular phone with her, Husband would accuse her of lying to him.

The court granted the temporary restraining order that included personal conduct orders and stay away orders. Wife was given custody of the children and use of the family's Chrysler van. Husband was required to turn his gun over to a law enforcement agency or sell it. He was not permitted to visit or travel with the children.

The following day, Husband filed a petition for marital dissolution. He requested joint legal custody and that Wife have physical custody of the three children. He requested visits every weekend from Saturday 8:00 p.m. to Sunday 8:00 p.m., and on Thursday nights from 4:00 p.m. to 8:00 p.m. He suggested the exchanges take place at a local McDonalds. Wife filed a response.

On January 21, 2011, the court consolidated the domestic violence case with the marital dissolution case, and designated the divorce as the lead case and active file. The parties were ordered to attend mediation. The court reissued the temporary restraining order until the next hearing date scheduled for February 1, 2011. The case was reassigned to Judge Michael J. Naughton after Husband filed a motion seeking to disqualify Judge Cheri Pham. (Code Civ. Proc., § 170.6.)

Before the hearing, Husband filed an ex parte order to show cause (OSC) seeking the release of an unredacted police report.<sup>1</sup> A few weeks later, he filed an OSC asking the court to order Wife to pay him child support, spousal support (\$250), and attorney fees (\$3,000).

The hearing on Wife's request for a restraining order was held on February 1, 2011. Both parties were represented by counsel. At the beginning of the hearing, the court noted there was an OSC to order release of the police report. The court stated it was moot. Husband's counsel stated, "Yes, your honor." Husband's counsel had obtained a copy of the report.

At the hearing, Wife testified more about the events leading up to her filing a request for a restraining order. Husband's counsel, Stephen O'Lear, asked Wife if she told the police Husband had threatened to kill her because it was not in the police report. Wife's counsel objected on the grounds the question lacked foundation as it assumed facts not in evidence.

The court then told O'Lear, "You're reading off something that's apparently not in evidence and asking to cross-examine on something [Wife] hasn't seen and isn't in evidence, so the objection is sustained. [¶] Presumably you have a cop waiting in the wings in case you want to impeach her, right?" O'Lear replied, "No." When the court asked how counsel intended to deal with the police report, O'Lear stated, "I can impeach her with anything your honor. I don't need a live witness." The court responded, "Not here you can't. The answer is no, you can't impeach her with anything. You can refresh her recollection with anything. But impeachment [with] a police report without a cop, no, thank you." O'Lear then gave a copy of the police report to Wife and

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<sup>1</sup> This order is discussed in the briefing but not included in our record. On our own motion, we took judicial notice of the entire trial court file, and viewed it electronically, to have a more complete picture of the status of the case. (Evid. Code, § 452, subd. (d).)

asked her to read a paragraph containing her alleged statement to the police “to refresh her memory.” The court then sustained Wife’s counsel’s objection and told Wife to give the report back to O’Lear. Wife refuted O’Lear’s statement she never told the policeman that Husband threatened to kill her. Wife said she believed she did tell the police.

On direct examination, Wife gave additional details about the argument she and Husband had over the course of several days in December 2010. They argued about Husband overdrawing money from their bank account. She had complained he was not very helpful. On December 15, 2010, they had an argument in the garage that escalated to a point where he placed a lit cigarette in her left nostril. On December 17, 2010, Wife stated Husband kept her up all night. She said this regularly occurred during the marriage. She also stated that at times he forced her to have sexual intercourse. She called the police on December 18, 2101, and then filed the petition for a restraining order. Wife said she learned that Husband recently tried to get his gun back from the police and that frightened her.

Wife explained that in December 2010, she lived with 10 people in a three bedroom house, and she shared a bedroom with Husband and their three children. She did not call for help that night because she was trying to calm down and not frighten her parents who also lived there.

Wife requested Husband’s visits with the children be monitored. She wanted to protect her children from verbal abuse. She requested a travel restriction, stating, “I’m scared for my children. I don’t know what he would do with them.”

Wife also reiterated that Husband followed her and was tracking her cellular phone. After December 17, 2010, she had the tracking device on her cell phone turned off. Wife again described the incident in the car when they reconciled and she thought they were going to church. She stated Husband refused to drive to church or take her home. She said the car was moving when she opened the door to try to get away, but Husband grabbed her by the neck.

Husband denied all allegations of past and recent abuse. He denied purposefully blocking the bedroom door on December 17, 2010. He explained they always kept a small blanket at the bottom of the door because there was a gap and they wanted to keep the draft out. Husband stated he became a United States citizen in 2002, and he once owned a home in Ladera Ranch and had seven cars. At that time, Wife was not employed. By the end of 2006, he had lost his million dollar home in foreclosure, and he lost his job in the mortgage and real estate industry.

Husband stated that during the altercation in the garage he was smoking a cigarette when Wife came back from work. She began arguing with him about not working. Husband stated Wife hit him hard on his neck. He denied burning her with the cigarette.

After considering argument from counsel, the court issued a five-year restraining order. The court stated Wife was a believable witness and “if there was a discrepancy between what she told the police officer and what she testified to or what was in the declaration, then the police officer should have been called to impeach her.” The court stated it signed the ex parte order authorizing release of the police report because it believed the police officer would have been called to testify but “no such luck.” The court reasoned that Wife’s failure to tell anyone about the abuse could mean to some people Wife was not a credible witness, but “that’s not the situation in domestic violence cases. There’s a whole lot of guilt and shame that’s involved in these things. A lot of embarrassment, fear to tell somebody else, and it crosses socioeconomic lines.” The court stated it found it interesting that Husband “did not deny the stalking behavior” that Wife described in her application. The court noted Husband said “nothing happened” but if that was true then why were they all in court litigating. The court concluded there was domestic violence within the meaning of the Domestic Violence Prevention Act (Fam. Code, § 6200 et seq.). The court stated it believed Wife’s

testimony and that Husband violated the emergency protective order by contacting Wife and by attempting to get his gun back.

The court ordered that Husband not contact Wife directly or indirectly for any purpose. He was to stay 100 yards away from her, the children, and the family she was living with. He was to stay away from her vehicle and the children's school or daycare. He was not to possess any guns. Wife was now entitled to record any unlawful communications from Husband. Husband was ordered to enroll and complete a 52-week batterer's treatment program. The court ordered Husband to return to court on February 25, 2011, with proof of enrollment, and until then Husband would have no visitation with the children. The court awarded Wife sole legal and physical custody of the children. The court also ordered Husband to give Wife's attorney the birth certificates, passports, and other important personal papers.

## II

### *A. Evidentiary Error?*

Husband argues the court erred in refusing to allow the introduction of prior inconsistent statements or party admissions pursuant to the well established exceptions to the hearsay rule. (Evid. Code, §§ 1220 and 1235.)<sup>2</sup> We review the trial court's rulings on the admission of evidence for abuse of discretion. (*People v. Waidla* (2000) 22 Cal.4th 690, 724.) We find no abuse of discretion here.

Because Husband's arguments on appeal are devoted to discussing exceptions to the hearsay rule, we can infer Husband now acknowledges police reports are considered hearsay (and is inadmissible "[e]xcept as provided by law . . . ." (§ 1200, subd. (b)). This inference is further supported by Husband's failure on appeal to discuss (or even mention) the contention advanced at trial that a written police report by itself is

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<sup>2</sup> All further statutory references are to the Evidence Code, unless otherwise indicated.

admissible evidence to impeach a witness's testimony. As stated above, Husband's trial counsel, O'Lear, argued in the trial court, "I can impeach her with anything your honor. I don't need a live witness." The trial court ruled Husband could not impeach Wife's testimony based on statements written in a police report without calling the officer who wrote the report, and had personal knowledge of Wife making the statements.

In any event, what Husband fails to understand is that because he did not seek to introduce the prior statements as an exception to the hearsay rule at trial, these contentions were not properly preserved and are thereby waived on appeal. "Depending upon the nature of the hearsay exception, the 'law' interposes certain foundational requirements. [Husband] never attempted to establish the [police report] came within any particular exception." (*People v. Ramos* (1997) 15 Cal.4th 1133, 1177 (*Ramos*)). The point was not properly preserved for appeal. (*Ramos, supra*, 15 Cal.4th at pp. 1177-1178 ["Nowhere in the record did defendant attempt to meet (the foundational requirements for hearsay exceptions)"]; after prosecutor posed hearsay objections, "[i]n response, defendant did not make an offer of proof as to the substance of the anticipated testimony, cite a hearsay exception, or argue a nonhearsay purpose"]; *People v. Livaditis* (1992) 2 Cal.4th 759, 778-780 ["The proponent of hearsay has to alert the court to the exception relied upon and has the burden of laying the proper foundation"].) Because the court was never asked to exercise this discretion, the issue is not properly before us. (§ 354; *People v. Rodriguez* (1969) 274 Cal.App.2d 770, 777.)

#### *B. Insufficient Evidence?*

Alternatively, Husband argues the court erred in ordering the restraining order because there was no evidence of domestic violence or threat of physical harm. He asserts Wife's statements she was scared for her children and that she believed he would flee with them is not evidence to support the restraining order. Husband's claim there is no evidentiary support for the orders is nothing more than a request for us to reweigh the evidence, and that we will not do. (See, *In re Spencer W.* (1996) 48 Cal.App.4th 1647,

1650 [When considering a claim of insufficient evidence on appeal, we do not reweigh the evidence, but rather draw all reasonable inferences and resolve all conflicts in favor of the order].) Credibility calls are made by the trial court, not us. (See *Johnson v. Pratt & Whitney Canada, Inc.* (1994) 28 Cal.App.4th 613, 622-623; *In re Marriage of Martin* (1991) 229 Cal.App.3d 1196, 1200.)

The trial court determined Wife's testimony was credible, and when her entire testimony is considered, we conclude it constitutes substantial evidence and reasonable proof of past acts of violence and, therefore, supports the restraining order. (Fam. Code, §§ 6300-6301; see *Quintana v. Guijosa* (2003) 107 Cal.App.4th 1077, 1079.) The trial court did not abuse its discretion.

### III

The order is affirmed. Wife shall recover her costs on appeal.

O'LEARY, P. J.

WE CONCUR:

RYLAARSDAM, J.

ARONSON, J.