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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

LYNDSEY CABRAL,

Petitioner and Respondent,

v.

RYAN CABRAL,

Respondent and Appellant.

H039388

(Santa Clara County

Super. Ct. No. 112DV016212)

Lyndsey Cabral sought and obtained a domestic violence restraining order against her husband, Ryan Cabral, pursuant to Family Code section 6200 et seq..¹ Ryan challenges that February 2013 order.² On appeal, he argues, among other things, that the judge hearing the matter should have been disqualified; an ex parte order was improperly made without notice to him; and Lyndsey violated an oral contract by instituting the proceedings.

We conclude there was no error. Accordingly, we will affirm the order.

¹ Further statutory references are to the Family Code unless otherwise stated.

² Because the litigants have the same surname, we refer to them by their first names for the sake of clarity, meaning no disrespect in so doing.

FACTS AND PROCEDURAL HISTORY

I. *Lyndsey's Application*

On August 28, 2012, Lyndsey filed an application for a domestic violence restraining order. In it, she sought an order of protection from her husband, Ryan. The couple was no longer living together. Lyndsey sought a stay-away order as well as an order preventing Ryan from harassing, striking, threatening, or contacting her or their son, N.C.

Lyndsey alleged that after the birth of their son in March 2012, Ryan “develop[ed] serious mental health problems” and began abusing drugs.³ Beginning in April, Ryan began having unexplained absences from his job as a tow truck driver. On April 26, he indicated to Lyndsey and his father that “he felt like he was losing his mind, and that he needed to get help.” The next day, after renegeing on his agreement to see a psychiatrist, he began yelling at Lyndsey constantly and was throwing objects. She tried to leave the home with N.C., but her car was blocked by Ryan’s car. Lyndsey called Ryan’s father for help. Ryan’s father called the police; Ryan was ultimately taken to Valley Medical Center and held overnight.

On April 30, Lyndsey took Ryan to see a psychiatrist. The psychiatrist, who assessed Ryan as being depressed and suffering from anxieties, gave him a prescription. But Lyndsey believed that Ryan was not compliant in taking his medication. His behavior became more erratic, and he talked about driving his car off of a cliff or jumping from a high-rise building. He also sent insulting and

³ In this paragraph and the succeeding three paragraphs where we describe the information contained in Lyndsey’s application, to avoid redundancy, we will not use the phrase “Lyndsey alleged.”

vulgar texts to Lyndsey on June 24 and July 30.⁴ On August 18, Ryan “apparently spent the entire day in bed. He was in bed when [Lyndsey] left for work, and he was still in bed when [she] came home from work at approximately 8 p.m. Ryan appeared disoriented[; he] did not even know what time of day it was.”

On August 21, after refusing to get up in the morning, Ryan repeatedly called Lyndsey at work and was abusive to her supervisor and coworkers. As Lyndsey was leaving the garage from work, she observed Ryan pulling into the garage. He then followed her to his parents’ house, and began screaming at her. His father intervened and ultimately told Ryan to leave. After Lyndsey and Ryan’s mother spoke to a health professional about the situation, they went to Ryan’s and Lyndsey’s home to try to convince Ryan to get professional help. Ryan screamed at them. Lyndsey packed some belongings and left with N.C. and has been staying with her parents since that time.

On August 22, the couple had a dispute over visitation. Ryan’s mother brokered an agreement under which N.C. could visit Ryan from 5:30 p.m. to 7:30 p.m. with Ryan’s mother present. Shortly after the visit began, Ryan called Lyndsey to say that N.C. was spending the night with him. Santa Clara police ultimately became involved, convincing Ryan to let N.C. go home to Lyndsey. The next day, Ryan telephoned Lyndsey repeatedly—approximately 30 times. Ryan sat outside Lyndsey’s parents’ house that entire evening while Lyndsey was at work.

II. *Ryan’s Response*

⁴ Ryan also sent abusive text messages and made harassing telephone calls to Lyndsey in early August.

Ryan filed a response to Lyndsey's application for the restraining order, indicating he opposed the requested relief. He indicated in his response that he was requesting a visitation order so that he could see his son. He disputed many of the factual allegations made in the application. He explained that he had been under "a tremendous amount of stress in the past several months" for which he had been prescribed medications. He stated that as a result of taking the medications, he had had "a 'dirty test' for Methamphetamines . . . [and] was fired from [his] employment." He denied that he took illegal drugs.

Ryan also explained that he and Lyndsey had been having marital difficulties. He claimed that Lyndsey had selectively excerpted text messages of hurtful things he had said, and there were many other text messages and conversations that would place in better context the nature of their problems. He explained that the reason he waited outside the home of Lyndsey's parents on the evening of August 23 was that he "was waiting for a police stand-by so that [he could] visit with [his] son."

III. *Court Order*

On February 21, 2013, the court, after hearing, granted Lyndsey's application for a restraining order.⁵ The court ordered that Ryan (1) not harass, attack, strike, threaten, assault, disturb the peace, conduct surveillance upon, or hinder Lyndsey and N.C.; (2) not contact Lyndsey and N.C., except for brief and peaceful contact by e-mail only; and (3) stay away from Lyndsey and N.C., and stay away from Lyndsey's workplace and vehicle. The court also entered a child custody and visitation order in which it ordered physical and legal custody of N.C. to Lyndsey and granted Ryan specified weekend supervised visitation rights. The

⁵ Ryan elected not to have a reporter's transcript of the hearing prepared.

court issued a further order requiring Ryan to attend three AA/NA meetings per week; submit to random drug testing for a period of 60 days; continue meeting with his psychiatrist and continue taking prescribed medications; and register for a 16-week conflict accountability class. The expiration date of the order was specified as three years from its issuance. (See § 6345, subd. (a) [personal conduct, stay-away, and residence exclusion orders issued after notice may be for a duration of no more than five years].)

Ryan filed a timely notice of appeal. The order is appealable. (See Code Civ. Proc, § 904.1, subd. (a)(6); see *In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1495.)

DISCUSSION

I. *Applicable Law*

The Domestic Violence Prevention Act (§ 6200 et seq.; DVPA) gives the trial court the authority to issue a restraining order “for the purpose of preventing a recurrence of domestic violence and ensuring a period of separation of the persons involved, if an affidavit . . . shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse.” (§ 6300; *Gonzalez v. Munoz* (2007) 156 Cal.App.4th 413, 421 (*Gonzalez*).) A restraining order may issue under the DVPA to enjoin, among other things, “specific acts of abuse.” (§ 6218.) The order may issue “ex parte, after notice and a hearing, or in a judgment.” (§ 6218.) Persons for whom such a protective order may be granted include the respondent’s spouse or former spouse, respondent’s cohabitant or former cohabitant, a person with whom the respondent has had a child, and the respondent’s child. (§§ 6301, subd. (a), 6218.)

Section 6320 provides in part that “[t]he court may issue an ex parte order enjoining a party from 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, disturbing the peace of the other party, and, in the discretion of the court, on a showing of good cause, of other named family or household members.” (*Nakamura v. Parker* (2007) 156 Cal.App.4th 327, 334 (*Nakamura*)).) The court may issue such a restraining order after a notice and hearing. (§ 6340, subd. (a).)

The DVPA also specifies the duration of “the personal conduct, stay-away, and residence exclusion orders” that may issue after notice and a hearing. (§ 6345, subd. (a).) In the discretion of the court, such restraining orders “may have a duration of no more than five years” and “may be renewed, upon the request of a party, either for five years or permanently, without a showing of any further abuse” (§ 6345, subd. (a).)

The standard of review for an order granting or denying injunctive relief is abuse of discretion. (*Salazar v. Eastin* (1995) 9 Cal.4th 836, 849-850.) “This standard applies to a grant or denial of a protective order under the DVPA. [Citations.]” (*Gonzalez, supra*, 156 Cal.App.4th at p. 420.)

II. *The Court Did Not Abuse Its Discretion in Granting the Order*

Ryan makes six contentions on appeal. They are separately addressed below.

A. *Court Recusal*

Ryan contends initially that the judge hearing the case should have recused herself from the matter. He contends, without elaboration, that “the judges should have removed themselves from the case after finding out that there was an accusation of drug abuse due to the fact that the judges were judges for the Santa Clara County Family Law Drug Treatment Court.” He cites Code of Civil Procedure section 170.1 in support of his position.

There is nothing in the record indicating that Ryan objected to Lyndsey’s application for a restraining order being heard by Judge Susan Bernardini, the judge assigned to the matter. There is no evidence that Ryan at any time requested that she recuse herself, or that he in any other manner suggested that she should recuse herself from hearing the case.⁶ As one appellate court has explained, in rejecting the appellant’s argument made for the first time on appeal that a court commissioner should have recused himself under Code of Civil Procedure sections 170.1 and 170.3, “It is axiomatic that arguments not raised in the trial court are forfeited on appeal. [Citations.] Moreover, objections on such grounds must be made at the ‘earliest practicable opportunity after discovery of the facts constituting the ground for disqualification.’ (Code Civ. Proc., § 170.3, subd. (c)(1).) We conclude that appellant’s disqualification arguments are forfeited by his failure to raise them below.” (*Kern County Dept. of Child Support Services v. Camacho* (2012) 209 Cal.App.4th 1028, 1038.) We too conclude that Ryan’s argument is forfeited.⁷

B. *Alleged Denial of Due Process*

Ryan argues that Lyndsey violated a local rule of court by failing to give him notice of the ex parte application and that he was therefore deprived of due

⁶ As noted (see fn. 5, *ante*), Ryan elected not to order a reporter’s transcript of the hearing.

⁷ Ryan’s claim is in any event not cognizable on appeal. The exclusive method of challenging a ruling regarding judicial disqualification is by a timely petition for writ of mandate. “ ‘[A] timely writ petition is the exclusive avenue for appellate court review whether the judge’s disqualification is sought for cause (per CCP § 170.1) or by peremptory challenge (per CCP § 170.6); the ruling is neither directly appealable nor reviewable on appeal from the subsequent final judgment.’ [Citation.]” (*D.C. v. Harvard-Westlake School* (2009) 176 Cal.App.4th 836, 849-850, fn. omitted.)

process. He cites Santa Clara County Superior Court Local Family Rule 5 (A)(3)⁸ in support of his position. But that rule specifically exempts requests for DVPA restraining orders from the notice requirements when such a request is documented in detail in the application. Lyndsey’s counsel complied with Local Family Rule 5 (A)(3) by indicating in the declaration in support of the ex parte application that he had not given notice to Ryan because the proceeding involved an application for a DVPA restraining order. (See Super. Ct. Santa Clara County, Local Rules, Local Family Rule 5 (A)(3)(a).) Moreover, counsel further indicated that “[r]espondent’s behavior is erratic and abusive & he was recently fired for testing positive for methamphetamines,” which statement indicates a concern that immediate and irreparable harm could occur to Lyndsey or N.C. Ryan has done nothing to rebut Lyndsey’s showing that she complied with local rules in her ex parte application.

⁸ Local Family Rule 5(A)(3) provides: “The moving attorney or self-represented party must submit a Declaration In Support of Ex Parte Application for Orders (attached form FM-1013) and must give notice of all ex parte applications to the opposing attorney or self-represented party before submitting the request, except under the following circumstances, which must be documented in detail in the application: [¶] a. The application requests Domestic Violence Prevention Act (DVPA) restraining orders; [¶] b. Giving notice would frustrate the purpose of the order; [¶] c. Giving notice would result in immediate and irreparable harm to the applicant or the children who may be affected by the order sought; [¶] d. Giving notice would result in immediate and irreparable damage to or loss of property subject to disposition in the case; [¶] e. The parties agreed in advance that notice will not be necessary with respect to the matter that is the subject of the request for emergency orders, and the applicant provides evidence of that agreement; [¶] f. The party made reasonable and good faith efforts to give notice to the other party, and further efforts to give notice would probably be futile or unduly burdensome; or [¶] g. Notice is not required for the request at issue under Cal. Rules, Rule 5.170.” (Super. Ct. Santa Clara County, Local Rules, Local Family Rule 5 (A)(3).)

Even assuming that Ryan was in fact deprived of notice of an ex parte application made by Lyndsey, there is nothing in the record indicating that Ryan objected below to such lack of notice. The failure to preserve a claim of lack of notice by objecting below results in forfeiture of any claim on appeal. (See *People v. Valdez* (2012) 55 Cal.4th 82, 123 [failure to object to lack of notice either at or after ex parte hearing resulted in claim being forfeited].)⁹

C. *Alleged Violation of Oral Agreement*

Ryan states as a third claim of error that Lyndsey's application for a restraining order violated an oral agreement between the two of them that she would not accuse him of drug abuse. He asserts that "following the negative drug test that she . . . administered to Mr. Cabral, [Lyndsey agreed] that she would make no mention nor accuse Mr. Cabral of drug use or abuse again." We reject this claim for two reasons.

First, Ryan gives no citation to the record in support of his argument that Lyndsey's application violated an oral agreement between the parties. This is in violation of rule 8.204(a)(1)(C) of the California Rules of Court, and because of this omission, we may deem the argument forfeited. (See *Dietz, supra*, 177 Cal.App.4th at pp. 800-801.)

⁹ Furthermore, as is the case with other arguments he makes (see discussion, *post*), Ryan gives no citation to the record in support of his argument that he was deprived of notice on Lyndsey's ex parte application. This is in violation of rule 8.204(a)(1)(C) of the California Rules of Court, which requires that every brief "[s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears." Because of this omission, we may deem the argument forfeited. (See *Dietz v. Meisenheimer & Herron* (2009) 177 Cal.App.4th 771, 800-801 (*Dietz*) [failure to include citations to appellate record in brief may result in forfeiture of claim].)

Second, nothing in the record shows that Ryan presented this objection to the trial court. Specifically, Ryan’s response to the application makes no mention of the position he now takes on appeal that Lyndsey was barred from submitting the application because of an alleged oral agreement. “As a general rule, an appellate court will not review an issue that was not raised by some proper method by a party in the trial court. [Citation.]” (*Woodward Park Homeowners Ass’n, Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 712.) Because Ryan did not object below that Lyndsey’s application was in violation of an alleged oral contract she entered into with him, it is forfeited on appeal. (See, e.g., *Children’s Hosp. and Medical Center v. Bonta* (2002) 97 Cal.App.4th 740, 776-777 [objection that court lacked jurisdiction to issue attorney fee award forfeited due to party’s failure to raise objection at trial level].)

D. *Alleged Use of Illegally Obtained Evidence*

Ryan argues that “[t]he petitioner and her lawyer were allowed to admit illegally obtained medical records.” We reject this claim for three reasons.

First, Ryan gives no citation to the record in support of his argument regarding the admission of illegally obtained evidence. This omission violates rule 8.204(a)(1)(C) of the California Rules of Court, and we may deem the argument forfeited. (See *Dietz, supra*, 177 Cal.App.4th at pp. 800-801.)

Second, there is nothing in the record indicating—assuming medical records were offered on behalf of Lyndsey and were admitted by the court—that Ryan objected to their admission. The failure to object to evidence in the trial court generally results in the forfeiture of any appellate claim that the evidence was erroneously admitted. (Evid. Code, § 353; see *SCI Cal. Funeral Services, Inc. v. Five Bridges* (2012) 203 Cal.App.4th 549, 563-565.) Ryan therefore forfeited his claim to the improper admission of evidence by failing to object below.

Third, Ryan fails to explain his argument beyond the very conclusory statement that the court permitted the admission of “illegally obtained medical records.” “Conclusory assertions of error are ineffective in raising issues on appeal. [Citation.]” (*Howard v. American National Fire Ins. Co.* (2010) 187 Cal.App.4th 498, 524 (*Howard*), citing rule 8.204(a)(1)(B).) As we have explained: “We are not bound to develop appellants’ argument for them. [Citation.] The absence of cogent legal argument or citation to authority allows this court to treat the contention as waived.” (*In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 830; see also *Associated Builders & Contractors, Inc. v. San Francisco Airports Com.* (1999) 21 Cal.4th 352, 366, fn. 2.) Thus, any claim that the court erred in admitting evidence offered by Lyndsey is waived as a result of Ryan’s failure to develop the argument in any way.¹⁰

E. *No Evidence of Domestic Violence*

Ryan contends that “[t]here was no substantial evidence in the prior 90 days to the filling [*sic*] of the application for domestic violence restraining orders” that there were any acts of domestic violence. We reject this claim for two reasons.

¹⁰ Ryan argues in passing in his opening and reply briefs that the court erred in admitting hearsay evidence to which he objected. He does not elaborate on this claim. Nor does he identify the specific evidence he claims was erroneously admitted. He therefore has failed to comply with California Rules of Court, rule 8.204(a)(1)(C), and has failed to present anything other than a conclusory argument that we cannot consider. (See *Howard, supra*, 187 Cal.App.4th at p. 533.) Moreover, to the extent Ryan may have, in fact, objected at the hearing to the introduction of evidence on Lyndsey’s behalf, it was his burden to produce an appellate record demonstrating any claimed error; his failure to present such a record mandates that his claim be resolved against him. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295-1296 [appellants’ failure to procure adequate record of attorney fee proceedings mandated that their challenge be resolved against them]; see also *Wagner v. Wagner* (2008) 162 Cal.App.4th 249, 259 [failure of appellant to include transcript of hearing foreclosed court’s review of claim of error].)

First, Ryan fails to explain his argument beyond the conclusory statement quoted above. This conclusory statement is inadequate to present the issue for consideration by this court. (*Howard, supra*, 187 Cal.App.4th at p. 533.) We may therefore treat the contention as waived. (*In re Marriage of Falcone & Fyke, supra*, 164 Cal.App.4th at p. 830.)

Second, even assuming Ryan did not forfeit the claim, it is not meritorious. Implicit in Ryan’s argument is an unwarranted, narrow reading of “domestic violence,” as that term is used in the DVPA, as including only threatened or actual physical violence. “ ‘Domestic violence’ is abuse perpetrated against” a spouse or former spouse (among others). (§ 6211, subd. (a).) The DVPA defines “abuse” as including (in addition to threatened or actual bodily injury or sexual assault), “any behavior that has been or could be enjoined pursuant to Section 6320.” (§ 6203, subd. (d).) Under section 6320, subdivision (a), the court may “enjoin[] a party from . . . stalking, threatening, . . . harassing, telephoning, including, but not limited to, making annoying telephone calls as described in Section 653m of the Penal Code, . . . disturbing the peace of the other party.” Based upon Lyndsey’s verified application, there was substantial evidence supporting her position that she had been the subject of “abuse” as that term is defined in the DVPA—i.e., stalking, threatening, harassing, telephoning, and disturbing the peace.

F. *Alleged Noncompliance with Procedure*

Lastly, Ryan contends that “[p]rocedure [was] not followed” and that “[i]f all the procedures were followed to the letter of the law th[e]n there is a possibility that the family of Mr. and Mrs. Cabral would have been saved from the anguish and stress that the relationship has endured. Thus causing the breakdown of the marriage. [*Sic.*]” (Original emphasis omitted.) We reject this claim for two reasons.

First, Ryan fails to provide any citations to the record in support of this position. It is thus forfeited. (Cal. Rules of Court, rule 8.204(a)(1)(C); see *Dietz, supra*, 177 Cal.App.4th at pp. 800-801.)

Second, Ryan provides no argument—beyond the conclusory one quoted above—in support of his contention. We have no way to determine in what way Lyndsey failed to follow procedure as alleged in Ryan’s brief. We are not obligated to search the record to find support for his undeveloped argument. (*In re Marriage of Falcone & Fyke, supra*, 164 Cal.App.4th at p. 830.)¹¹

¹¹ We note that after briefing was complete in July 2013, Ryan filed a four-page document captioned “Appellant’s Supplemental Authorities in support of dismissal of judgment.” This document contains citations to five additional cases, discussion and argument relative to each case, and discussion concerning the fruit of the poisonous tree doctrine (without citation to authority). This document does not comply with California Rules of Court, rule 8.254, because it does not present “significant *new* authority” as required by subdivision (a) of the rule (*italics added*); the cases cited should have been presented in Ryan’s opening and/or reply briefs. The document is further noncompliant because California Rules of Court, rule 8.254 (b) permits the citation of new authority to be by letter in which only the citation of authority is presented, without “argument or other discussion of authority.” Although Ryan’s noncompliant filing could have been ordered stricken, we have nonetheless considered it here.

DISPOSITION

The February 21, 2013 restraining order issued pursuant to the DVPA is affirmed.

Márquez, J.

WE CONCUR:

Rushing, P.J.

Premo, J.