NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

HEATHER MILBURN, Plaintiff and Respondent, v. PATRICK COSSEY, Defendant and Appellant.	G056327 (Super. Ct. No. 17V001369) O P I N I O N

Appeal from an order of the Superior Court of Orange County, W. Michael Hayes, Judge. (Retired judge of the Orange Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Law Offices of Susan L. Kowalski and Susan L. Kowalski for Defendant and Appellant.

Law Office of Corey Evan Parker and Corey Evan Parker for Plaintiff and Respondent.

* * *

The court issued a domestic violence restraining order (DVRO) in favor of plaintiff and respondent Heather Milburn[1] against defendant and appellant Patrick Cossey pursuant to the Domestic Violence Prevention Act (DVPA; Fam. Code, § 6200 et seq.; all further statutory references are to the Family Code unless otherwise stated). Defendant argues there was insufficient evidence to support the DVRO and thus its issuance was an abuse of discretion. We disagree and affirm.

FACTS AND PROCEDURAL HISTORY

The parties dated for about three years. During that period the parties often argued and defendant verbally abused plaintiff. They also "broke up a lot." Defendant routinely showed up at plaintiff's home without invitation, even when told not to come over, and sometimes forced his way in.

On May 19, 2017 defendant wanted to visit plaintiff and have drinks to share news of some financial issue he had resolved with his ex-wife. He believed this would heal problems he and plaintiff had been having. When defendant arrived and shared the news, plaintiff told him financial problems were not the issue, it was defendant's "verbally abusive nature" that was the problem.

Defendant became angry with plaintiff, called her "crazy" and a "whore" and accused her of cheating on him. Child, who was in another room, heard defendant's voice and went to the door of the room where the parties were. Defendant "got in [child's] face and screamed at him, 'Your mom's a nut. Now you see what I've been saying all along. She's just crazy. She's just f'ing crazy." This brought plaintiff and child to tears. Plaintiff asked defendant to leave but before he did so he continued to yell at child, calling plaintiff a "cunt" and a "douche bag."

Thereafter plaintiff and defendant reconciled. On June 11 defendant spent the night at plaintiff's home. The next day they began drinking champagne at about

[1] Plaintiff's then nine-year-old child (child) from a prior relationship was named as an additional protected person.

noon. Ultimately they consumed six bottles. At 7:00 p.m., plaintiff and defendant, an experienced martial artist, began "wrestling" and "getting ready to be intimate." The next moment defendant "had [plaintiff] on [her] back" and was choking her. Plaintiff was able to get away and when she asked defendant why he had acted that way, he told her she "should know better than to try to over[]power [him]."

Plaintiff went into her bathroom and began to pray. Although defendant had left the house, he reentered and went into the bathroom, standing behind plaintiff. He called her a "total nut," a "cunt," and a "whore." Defendant then left the room. When plaintiff subsequently left, she noticed all the lights in the house were now on and the front and garage doors were open. She went to close the garage door and saw defendant in the passenger side of her car. When she asked what he was doing he jabbed her in the neck and knocked the wind out of her.

When defendant then asked plaintiff where she had put his gun, she told him it was in the kitchen. When defendant could not find it, plaintiff began searching through defendant's backpack and found a knife.[2] Plaintiff told defendant "[i]t would almost be easier for you to carve my heart out with this knife then [*sic*] the things you have said to me and continued to say to me." Defendant replied, "I would rather cut your head off with it."

Defendant then threw plaintiff six feet across the kitchen, got on top of her, and began to choke her, cutting off her airway. Plaintiff thought defendant was trying to kill her and was "struggling for [her] life." Plaintiff bit defendant's hand twice. Plaintiff apparently blacked out because she testified the next thing that happened was her waking up. She went to a neighbor's house and police were called.

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[2] Plaintiff described it as a machete. Defendant called it a utility knife. The court ruled it was neither and called it a tactical weapon or Ka-Bar knife measuring 15 inches long. It characterized the knife as a deadly weapon.

When the Orange County sheriffs arrived, the officer noted plaintiff was "fearful [and] upset." Plaintiff had a one-inch cut on her lip, a scratch inside her bicep and on her shoulder, an abrasion on her elbow, several abrasions and redness on her knees, and a sore throat. She had also "defecated on [herself]."

Defendant had a different version of the events of June 12. He denied striking her. He also claimed plaintiff approached him holding the knife above her head and he tried to get control of the knife. When he grabbed plaintiff's arm, they both fell down. Plaintiff grabbed his hair and pulled on his head and neck. She refused to let go despite his pleas. He put his hand over her mouth and nose to block her air. When plaintiff let go of him, he left.

The deputy arrested defendant for domestic violence and helped plaintiff obtain an emergency protective order. Plaintiff was treated for her wounds at the hospital.

After a two-day trial the court issued the DVRO for a period of five years protecting plaintiff and child. It found defendant committed domestic violence based on the events of May 19, specifically finding the statements to child in front of mother constituted harassment. As to the incident of June 12, the court found the events "started by mutual agreement and then escalated into self-defense."

DISCUSSION

1. DVPA Principles and Standard of Review

The DVPA was enacted to prevent "prevent acts of domestic violence, abuse, and sexual abuse and to provide for a separation of the persons involved in the domestic violence for a period sufficient to enable these persons to seek a resolution of the causes of the violence." (§ 6220.) A DVRO may issue """to restrain any person for the purpose of preventing a recurrence of domestic violence and ensuring a period of separation of the persons involved" upon "reasonable proof of a past act or acts of abuse."""" (*In re Marriage of Davila & Mejia* (2018) 29 Cal.App.5th 220, 225 (*Davila*);

§ 6300.) "[T]he Legislature intended that the DVPA be broadly construed in order to accomplish the purpose of the DVPA." (*In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1497-1498 (*Nadkarni*).) In issuing the DVRO the court is to consider the totality of the circumstances. (§ 6301.)

Abuse includes "plac[ing] a person in reasonable apprehension of imminent serious bodily injury to that person or to another" and "engag[ing] in any behavior that has been or could be enjoined pursuant to Section 6320." (§ 6203, subd. (a)(3), (4).) Enjoined conduct includes "molesting, attacking, striking, stalking, threatening, . . . harassing, . . . or disturbing the peace of the other party, and . . . other named family or household members." (§ 6320, subd. (a).)

"Generally, a trial court has broad discretion in determining whether to grant a petition for a restraining order under this statutory scheme." (*In re Marriage of Fregoso & Hernandez* (2016) 5 Cal.App.5th 698, 702 (*Fregoso*).) In deciding whether the court properly exercised its discretion we consider """whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court."""" (*Ibid*.)

We review the court's factual findings for substantial evidence, that is, "'whether, on the entire record, there is any substantial evidence, contradicted or uncontradicted,' supporting the court's finding. [Citation.]" (*Sabbah v. Sabbah* (2007) 151 Cal.App.4th 818, 822-823, italics omitted.) "[T]he pertinent inquiry is whether substantial evidence supports the court's finding—not whether a contrary finding might have been made." (*Fregoso, supra*, 5 Cal.App.5th at p. 702.) "'We must accept as true all evidence . . . tending to establish the correctness of the trial court's findings . . . , resolving every conflict in favor of the judgment.'" (*Sabbah,*. at p. 823.) It is not our role to reweigh the evidence, redetermine the credibility of the witnesses, or resolve

conflicts in the testimony, and we will not disturb the order if, as here, there is evidence to support it. (*People v. Xiong* (2013) 215 Cal.App.4th 1259, 1268.)

2. Substantial Evidence Supports Exercise of Court's Discretion

Defendant argues the court abused its discretion when it declined to decide what happened on May 19 was not abuse but just "heat of the moment" events that would not recur, thus abrogating the need for the DVRO. But what defendant is really arguing is the sufficiency of the evidence and asking that we reweigh testimony and reconsider credibility. This we may not do.

Defendant's conduct in screaming obscenities at child about mother in front of mother was sufficient evidence of harassment and disturbing the peace to support issuance of the DVRO.[3] "[T]he plain meaning of the phrase 'disturbing the peace of the other party' in 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; accord, *N.T. v. H.T.* (2019) 34 Cal.App.5th 595, 602-603.) "As a result, abuse under the DVPA includes physical abuse or injury, as well as acts that 'destroy[] the

[3] In setting out the statement of facts in the opening brief, defendant did not summarize the events of May 12 but instead went into great detail about what occurred on June 11 and 12, which was not the basis for the DVRO. California Rules of Court, rule 8.204(a)(2)(C) required defendant to "[p]rovide a summary of the significant facts." Additionally, because defendant's arguments deal with the sufficiency of the evidence, he was required to "'summarize the evidence on that point, favorable and unfavorable, and show how and why it is insufficient.'" (*Huong Que, Inc. v. Luu* (2007) 150 Cal.App.4th 400, 409, italics omitted.) We could consider the claim forfeited based on this violation of the court rules. (*Clark v. Superior Court* (2011) 196 Cal.App.4th 37, 53.)

mental or emotional calm of the other party.'" (*Rodriguez v. Menjivar* (2015) 243 Cal.App.4th 816, 820 (*Rodriguez*).)[4]

Defendant argues his screaming obscenities was merely "surprise and disappointment" at how plaintiff reacted to his news and not "'intentional and reckless' behavior." But nothing in the DVPA requires harassment or disturbing the other's peace be intentional or reckless. Intentional or reckless acts are required only for causing or attempting to cause bodily injury. (§ 6203.) Neither harassment nor disturbing the peace includes those elements. (§ 6320.) Defendant has not cited any authority to support his position. Even assuming defendant went to plaintiff's home "full of excitement and hope" and not with the intent to "disrupt[] her or [child's] evening," those facts are irrelevant. Moreover, as noted, we will not reweigh evidence, and it makes no difference if the evidence could have led to a different result.

Defendant complains the court cut off his testimony when he was explaining plaintiff was not happy with his news. The court said, in part, "I want to know what happened, not how everybody feels about it." Defendant maintains had the court considered feelings, it would have realized there was no intent on his part. Again, intent is not required. Further, this is speculative and irrelevant, and violates the standard of review. In addition, the court has broad discretion to control and admit or reject testimony. (*Schimmel v. Levin* (2011) 195 Cal.App.4th 81, 87.) Defendant has not shown the court abused such discretion.

Defendant asserts the court should view the events of May 19 as a one-time occurrence and maintains the "likelihood of a repeat" of these events "is zero" because the parties have separated. But "[n]o showing of the probability of future abuse is

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[4] As the parties acknowledge, the DVPA does not define harassment. Both analogize to the definition of harassment in Code of Civil Procedure section 527.6, which provides for restraining orders for civil harassment. We do not find the analogy helpful. "[T]he 'abuse' that may be enjoined under [the DVPA] is much broader than that which is defined as civil harassment." (*Nakamura v. Parker* (2007) 156 Cal.App.4th 327, 334.)

required to issue a DVPA restraining order: 'A trial court is vested with discretion to issue a protective order under the DVPA simply on the basis of an affidavit [or testimony] showing past abuse.'" (*Rodriguez, supra*, 243 Cal.App.4th at p. 823.) Further, the court was not required to assume defendant would not repeat his conduct.

Defendant contends the court erred by failing to take into consideration that plaintiff and defendant reconciled after May 19, arguing this shows plaintiff was not fearful. But again, this is a request we reweigh the evidence and redetermine credibility, which we do not do, and violates the standard of review.

Defendant also complains the court failed to consider child did not understand the meaning of the words defendant screamed at him. This argument is flawed for several reasons. First, it is based on defendant's testimony about the contents of the encounter between defendant and child, again in violation of the standard of review.

Second, the evidence shows that at the time defendant was screaming at him, child was in tears. Whether or not he knew the exact meaning of "douche bag" and "cunt" makes no difference. Child knew defendant was screaming in his face and it upset him. In addition, defendant also yelled that plaintiff was "a nut," "crazy," and "f'ing crazy." Defendant wisely did not argue child was ignorant of the meaning of those terms.

We also reject defendant's argument the terms "douche bag" and "cunt" are "an ordinary part of everyday language" and thus insufficient to satisfy the burden of proof to show intent to annoy. As noted, intent is not required. And whether those terms are an ordinary part of everyday language is defendant's opinion, unsupported by any evidence. Further, defendant's distinction between a literal and figurative meaning of the terms is beside the point. Also irrelevant is the fact the court made no finding the terms are obscene. Defendant cites no authority to support the claim harassment and disturbing the peace requires words be obscene.

Third, contrary to defendant's argument, there was no requirement of "conclusive proof" of what defendant said or that it upset child. The burden of proof at trial was "reasonable proof" (§ 6300; *Davila, supra*, 29 Cal.App.5th at p. 225), and on appeal there need only be substantial evidence, which we have found. Contrary to defendant's claim, it makes no difference that child did not testify to show whether "his 'peace' had been disturbed." Plaintiff testified it was. That was sufficient. (Evid. Code, § 411; *Citizens Business Bank v. Gevorgian* (2013) 218 Cal.App.4th 602, 613.) Further, defendant ignores the fact plaintiff's peace was disturbed.

Finally, we reject the comparison defendant makes between the facts of our case and those of two cases, *Nadkarni, supra,* 173 Cal.App.4th 1483 and *In re Marriage of Evilsizor & Sweeney* (2015) 237 Cal.App.4th 1416. That the acts in those cases were more egregious than the conduct of defendant here does not exculpate him or render his conduct insufficient to support the DVRO. Defendant's tortured attempt to show why use of those terms neither harassed nor disturbed the peace of plaintiff and child fails.

DISPOSITION

The order is affirmed. Plaintiff is entitled to costs on appeal.

THOMPSON, J.

WE CONCUR:

O'LEARY, P. J.

IKOLA, J.