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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

JOY BALDOZ,

Respondent,

v.

RICHARD GAJARDO,

Appellant.

2d Civil No. B275862
(Super. Ct. No. D355784)
(Ventura County)

Richard Gajardo appeals from an order extending for five years an existing domestic violence protective order. He contends that the order is not supported by substantial evidence. We affirm.

BACKGROUND

Appellant assaulted his sister, Joy Baldoz, at a public restaurant during a memorial service for their deceased father in March of 2013. She sought and obtained a restraining order. In a court hearing, she said that in a conversation the night before the service, appellant made a reference to sabotaging her father's funeral service the next day. On the day of the service, the

family gathered at a local restaurant. She said appellant approached her at the restaurant and, without provocation, struck her in the chin with his forearm in an undercut swing motion. She complained of pain for which she began taking pain medications and saw a chiropractor. She also complained of headaches after she was hit.

At the same hearing, Joy's husband, Edgar Baldoz,¹ said that he saw appellant swing his arm and hit his wife in the restaurant, causing her head to "snap[] back." He asked to be included in the order as a protected person because the incident caused him "a lot of apprehension." He also said his sister-in-law told him that appellant had hired a private investigator and that "when this is over, it's not going to be over." He said that he "was scared from that day on."

The court issued its original restraining order against appellant for a period of 18 months, protecting Joy and Edgar Baldoz and their two daughters. When it was about to expire, Joy petitioned for an extension of the order.

In February and March of 2015, Joy's daughters, Hannah and Vanessa, signed declarations describing their continued fear of appellant (their uncle). They described prior assaults by appellant on their mother and grandfather and "eerie" text messages from appellant to their mother making sarcastic comments about their mother and each of them.

During a hearing in June of 2015, Joy said that she was still in fear for her personal safety because of the time appellant hit her at the memorial service and because of "several texts that he has sent me." In those text messages, appellant

¹ We refer to members of the Baldoz family by their first names to avoid confusion. No disrespect is intended.

sarcastically told her “[not] to lose any sleep” because he hit her, and referred to her daughters in a way that made her feel very uncomfortable.

In another hearing in September of 2015, Joy said that she was afraid of her brother “knowing his history, knowing what he’s capable of, knowing that he has uncontrolled rage, knowing that he has made that threat that this won’t be the last.” She described a prior incident at which appellant appeared unannounced at their elderly father’s house and “knocked him over as an elderly man who was recovering from hip surgery” and reiterated that appellant hit her in a public restaurant at a memorial service.

In another hearing in September, Joy said that she remained apprehensive of future harm because of appellant’s comment in a text message shortly before her father’s funeral in which he said, “This won’t be the last.” She remained afraid of appellant because “of things he’s done in the past to hurt someone,” including his assault on their father and the incident in the restaurant. She also said that her sister, Grace, had informed her that Grace is afraid of appellant because he is not “a safe person to be around.”

At a hearing in December of 2015, Joy described a conversation in which her sister told her in June of 2014 that appellant was “still so mad at me” because of the issuance of the restraining order against him. This caused her to be afraid for her safety.

In another December hearing, Leonor Gajardo (appellant’s mother) confirmed that her declaration filed with the trial court accurately reflected what she said. In that declaration, she said that appellant (her son) “has a history of

sudden, uncontrolled rages of anger. These rages often result in verbal abuse against our family. Twice, however, [appellant's] anger has resulted in him physically attacking a family member." She described the incident in which appellant assaulted his father. She declared that appellant "quickly entered my home looking for his dad" and after throwing a Kleenex box at his father, he "ran quickly to a room nearby . . . and grabbed keys that opened a locked cabinet containing a gun. [Appellant] took the gun from the cabinet, then grabbed an electric blanket and threw it over his dad. [Appellant] then violently pushed his dad hard while he was still covered with [the] blanket, knocking him over."

At yet another December hearing, Edgar testified that he remained in fear of appellant because of appellant's violent assaults on appellant's own sister and father, because appellant regularly drives through the area where he and his wife work, and because appellant had hired a private investigator. He said that he has seen appellant display anger with family members on many occasions, and that their family was a big family with many anticipated graduations, weddings, birthdays and other opportunities for family get-togethers in the future.

After several hearings conducted over many months, the court ordered that the domestic violence protective order be continued for an additional five years.

DISCUSSION

Standard of Review

We review for abuse of discretion an order granting a domestic violence protective order. (*In re Marriage of Evilsizor & Sweeney* (2015) 237 Cal.App.4th 1416, 1424.) We must apply the

substantial evidence standard to determine whether there is any substantial evidence supporting the order. (*Ibid.*) In deciding the sufficiency of the evidence, “we view the evidence in the light most favorable to the judgment, drawing every reasonable inference and resolving every conflict to support the judgment.” (*Toste v. CalPortland Construction* (2016) 245 Cal.App.4th 362, 366.) We do not weigh the evidence or decide the credibility of the witnesses. (*Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 630, 633.)

Requirements for Renewal of Order

A court should grant a request to renew a domestic violence protective order when the request is contested and the court determines that the protected party has a “reasonable apprehension” of future abusive conduct. (*Ritchie v. Konrad* (2004) 115 Cal.App.4th 1275, 1279 (*Ritchie*).) There is no requirement that the protected party introduce evidence of acts of abuse that the restrained party committed after the original protective order was issued. (*Id.* at p. 1284.)

The court need only find by a preponderance of the evidence that the protected party has a “reasonable apprehension” of future harm. This “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.” (*Ritchie, supra*, 115 Cal.App.4th at p. 1290.) The existence of an existing protective order “is relevant and the underlying findings and facts supporting that order often will be enough in themselves to provide the necessary proof.” (*Id.* at p. 1291.)

Substantial Evidence Supports the Order

Here, the trial court could and did rely upon the findings and facts underlying the original protective order. That evidence established that appellant violently assaulted two family members without provocation on two separate occasions. The evidence supported the court's finding that appellant was unable to control his anger and violently struck his sister during a family gathering in a public setting during a funeral service. The evidence also established that appellant remained angry at his sister because she sought a protective order, even after the passage of almost one year. The evidence supported a finding that each of the protected parties continued to have a genuine and reasonable apprehension of future abuse based on appellant's text messages, threats that "this won't be over when it's over," and the likelihood of future family gatherings for graduations, birthdays, and weddings, among other things.

Appellant argues that the evidence shows only two isolated incidents of violence, and that appellant's texts and comments are either innocuous or protected speech. But "activity that has been determined after a hearing to constitute abuse is not the type of 'speech' afforded constitutional protection." (*In re Marriage of Evilsizor & Sweeney, supra*, 237 Cal.App.4th at p. 1427.) He argues that the evidence supports a finding that the protected parties did not harbor a reasonable apprehension of future abuse. But the issue is not whether substantial evidence supports appellant; it is only whether substantial evidence supports the judgment. Here there is ample evidence in the record to support the trial court's findings and order.

DISPOSITION

The order renewing the domestic violence protective order is affirmed. Respondent shall recover her costs on appeal.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Michele M. Castillo, Judge
Superior Court County of Ventura

Law Offices of James B. Devine and James B.
Devine, for Appellant.

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Respondent.