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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

KATHARINE CHRISTIAN, Plaintiff and Respondent, v. SER'DARIUS W. BLAIN, Defendant and Appellant.	B272096 (Los Angeles County Super. Ct. No. BQ052527)

APPEAL from an order of the Superior Court of Los Angeles County, Michael Rolf Treu, Judge. Affirmed.

Katharine Christian, in pro. per., for Plaintiff and Respondent.

Lieber and Galperin, Yury Galperin, for Defendant and Appellant.

Katharine Christian obtained a three-year Domestic Violence Prevention Act (DVPA) protective order against her former boyfriend, defendant Ser'Darius Blain. Blain asserts the trial court abused its discretion in issuing the protective order, contending there were no threats of violence and he was entitled to attempt to win her back even though she repeatedly told him not to contact her. We disagree.

"Abuse" under the DVPA does not require violence or threats of violence. Where the parties were formerly in a dating relationship, harassing contact by one party that disturbs the peace of the other party is sufficient. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Both parties testified at the hearing on Christian's request for a DVPA protective order. We recite facts from their testimony.

According to Christian, she and Blain "had been dating off and on for three and a half years," but not living together, when Christian ended the relationship on November 22, 2015. She told him not to contact her anymore. They had broken up a handful of times before, but always resumed the relationship. Despite Christian telling Blain not to contact her, over the next several months, he emailed, texted, instagrammed, and left voicemails. He invited her on trips. The communications increased in frequency over time "[a]nd the nature and tone got more and more desperate and more concerning. He would say things like 'you turn me into a crazy person. I don't know why I can't leave you alone.'" Blain wrote in one email, "You said you'd never leave me . . . . You owe me three sons. I need you to breathe. You're my inspiration. Art is dead without you."

Christian lived in a secured building with a gated and guarded vehicle driveway and a locked main door. Visitors at the building's front door phoned the apartment or the resident directly to be "buzzed" in. Either late in the evening on February 27, 2016, or very early in the morning of February 28, 2016, Blain left Christian an email inviting her to a party. Shortly before 3:00 a.m. on February 28, 2016, Blain called her cell phone and said he was outside the building's front door. She did not respond. Minutes later, Blain was banging loudly on the door of her apartment. Christian was fearful and contacted building security. A security guard arrived and peacefully escorted Blain off the property. Christian's boyfriend was with her in the apartment and he wanted her to contact the police, but she demurred.

Five hours later, Christian was inundated with more than 70 Instagrams from Blain. She then went to the police, who suggested she seek a restraining order. She obtained an ex parte temporary restraining order (TRO) the same day.

Sheriff's personnel served Blain with the TRO early in the morning on March 9, 2016, and then contacted Christian to let her know service had been effected. Blain emailed Christian within 20 minutes, "encouraging [her] to cancel it, to avoid further legal trouble." Blain left her a voicemail the day before as well. He knew sheriff's personnel came to his friend Britney's house and his message said, "'[Why ever] you are sending the Sheriffs to Britney's house . . . you need to stop it . . . .'" He did not contact Christian again pending the hearing date on the permanent protective order.

On cross-examination, Christian testified Blain "keeps emailing. He keeps calling me. He's showing up at my place.

That is intimidation. That is harassment. It's impacting my emotional and mental well being." She added, "[t]he majority of the responses [to his continued contacts] were 'please leave me alone. Please stop contacting me. We are over. Please respect that.'" She acknowledged she did agree to have a meal with Blain on New Year's Eve, although that did not occur. She also sent him a poem in January 2016.

Blain testified Christian sent him a supportive poem on his murdered brother's birthday. Among email communications between the two on December 29, 2015, were a brief sexually explicit email to Christian and her response that Blain was "the worse [*sic*] decision she's ever made. Do not contact me again."

Blain and Christian had broken up before and said they did not want to hear from each other, but always reconciled. He thought this breakup was no different. When she persisted in saying she did not want him to contact her, he thought she did not mean it. His intention was to win her back and resume a relationship with her. Blain contacted Christian after being served with the TRO because he thought it was not in effect until after the court hearing.

The trial court issued the DVPA protective order for a period of three years. (Fam. Code, § 6200 et seq.[1]) Blain timely appealed.

DISCUSSION

We review the trial court's decision to issue the DVPA protective order for abuse of discretion. (*Burquet v. Brumbaugh* (2014) 223 Cal.App.4th 1140, 1143 (*Burquet*).)

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1 All statutory references are to the Family Code.

Section 6203, subdivision (a)(4) provides that "abuse" for the purposes of the DVPA means "[t]o engage in any behavior that has been or could be enjoined pursuant to Section 6320." Section 6320, subdivision (a) authorizes protective orders to enjoin an individual from physically or sexually assaulting another as well as "stalking, threatening . . . harassing, telephoning . . . contacting, either directly or indirectly, by mail or otherwise, coming within a specified distance of, or disturbing the peace of the other party . . . ." "Domestic violence" is defined in section 6211, subdivision (c) as abuse against "[a] person with whom the respondent is having or has had a dating . . . relationship."

Blain admitted he repeatedly telephoned and contacted Christian by text and Instagram after she told him their relationship was over. His actions, including his uninvited presence at her apartment in the middle of the night, disturbed her peace and harassed her. This conduct falls within the parameters of the DVPA and may be enjoined.

Burquet, supra, 223 Cal.App.4th 1140 is on point. There, this court affirmed the issuance of a DVPA protective order under facts very similar to these. The parties in *Burquet* also had been in an intimate dating relationship. The former boyfriend did not accept the demise of the relationship and continued to contact his former girlfriend. As in this case, the former boyfriend in *Burquet* argued on appeal his conduct did not amount to abuse. We disagreed: "There were, as set forth above, substantial facts presented at the hearing to support the trial court's decision that defendant, because of his inability to accept that his romantic relationship with plaintiff was over, and despite plaintiff's numerous requests that he not contact her, was engaging in a

course of conduct of contacting plaintiff by phone, e-mail, and text, which messages contained inappropriate sexual innuendos, and arriving at her residence unannounced and uninvited, and then refusing to leave and making a scene when she refused to see him for the purpose of causing her to renew their romantic relationship. The result of which actions by defendant 'disturb[ed] the peace of the other party.' Such a disturbance of plaintiff's 'peace' in the present case constitutes an act of 'abuse' under the DVPA." (*Burquet, supra,* 223 Cal.App.4th at p. 1144.)

It is of no consequence to our analysis that the former boyfriend in *Burquet* sent a series of sexually suggestive emails, as opposed to the one crude, sexually explicit email here, or that his anger in the past had turned physical. Continued, unwanted electronic contact and showing up in the middle of the night at a former girlfriend's home fall within the definition of abuse under the DVPA.

On one level, Blain seemed to acknowledge this. His attorney asked, "If you had known that she no longer wanted to be in a relationship with you, would you continue to send her messages or contact her in any way?" Blain responded, "Absolutely not." Yet he also testified he saw no reason to stop contacting her until he was served with the TRO.[2] In other

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[2] "Q [by Blain's counsel]: "Was your only purpose [in continuing to pursue Christian] to get back with her?

"A: Yes, sir.

"Q: So you wanted to continue the relationship with her?

"A: Yes, sir.

"Q: . . . [¶] Did it ever come a point in time where you came to believe that the relationship was over?

"A: Yes. Yes.

"Q: And when was that?

words, he was free to ignore what she said until she obtained a court order. That is not the law. (*Sabato v. Brooks* (2015) 242 Cal.App.4th 715, 725 ["defendant acknowledged that he continued to contact plaintiff until he . . . 'got a call from an El Dorado sheriff.' This was one week prior to the date on which plaintiff requested a restraining order. . . . [Before that, he] frequently contact[ed] plaintiff by mail, e-mail, text message, telephone, and other means after plaintiff told him not to contact her, although he characterized his messages as 'non-threatening.' Even [without threats or violence,] these unilateral, unwanted and harassing contacts supported the issuance of the domestic violence restraining order"].)

Blain also attacks the sufficiency of the evidence to support the trial court's exercise of discretion by citing trial testimony the judge did not rely on, e.g., that the parties had broken up and reconciled in the past, and highlighting minor inconsistencies in Christian's testimony. But the law is well settled that appellate courts presume the evidence is sufficient to support the trial court's judgment and do not reweigh evidentiary conflicts. (See, e.g., *Pannu v. Land Rover North America, Inc.* (2011) 191 Cal.App.4th 1298, 1322, fn. 18.)

Blain next argues the trial court's "[i]nterpretation of Section 6203 . . . appears to be that any contact whatsoever, even a single instan[ce] of contact any time, could disturb someone's peace and cause a Domestic Violence Restraining order to issue." This contention is belied by Blain's admissions of multiple

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"A: . . . Well, I knew we broke up, but I thought the relationship was like, like [over] like two weeks ago when I got [the TRO]."

contacts over a three-month period, culminating in his middle-of-the-night appearance at Christian's door.

Finally, Blain asserts, "If the allegations in a Request for Domestic Violence Restraining order do not contain claims of threats or actual violence, and instead are based on the Section 6203[, subdivision (a)](4) definition of abuse as disturbing one's peace, it is completely illogical, and an abuse of discretion for a trial court to find that Section 6203[, subdivision (a)](4) is satisfied simply by any contact, without regard for the content or context of said contact. Otherwise, all a litigant seeking [a] Domestic Violence Restraining Order would have to prove would be a single instan[ce] of conduct that subjectively disturbs their peace." Again, the record provides no factual basis for this contention. Moreover, as the Court of Appeal noted in *Phillips v. Campbell* (2016) 2 Cal.App.5th 844, "there is no DVPA requirement of a physical threat. Thus, there is no basis for appellant's claim at oral argument, 'This isn't domestic violence.' Nor is there any basis for the claim in his opening brief, 'The DVPA was created to protect people . . . who have legitimate fears of physical harm from a domestic partner.' 'Violence,' as that word is commonly defined, is not a prerequisite for obtaining a restraining order under the DVPA. . . . 'Abuse [under the DVPA] is not limited to the actual infliction of physical injury or assault.' (§ 6203, subd. (b).) For purposes of the DVPA, 'abuse' means, inter alia, '[t]o engage in any behavior that has been or could be enjoined pursuant to Section 6320.' (§ 6203, subd. (a)(4).) Section 6320, subdivision (a) permits the court to enjoin a party from 'harassing . . . or disturbing the peace of the other party. . . .'" (*Id.* at p. 852.)

DISPOSITION

The order is affirmed. Respondent is awarded her costs on appeal.

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DUNNING, J.*

We concur:

KRIEGLER, Acting P. J.

BAKER, J.

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* Judge of the Orange Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.