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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

J.U.,

Plaintiff and Respondent,

v.

B.P.,

Defendant and Appellant.

B278511

(Los Angeles County
Super. Ct. No. MQ013149)

APPEAL from an order of the Superior Court of Los Angeles County. Valerie L. Skeba, Judge. Affirmed.

Law Offices of Charles O. Agege and Charles O. Agege for Defendant and Appellant.

No appearance by Respondent.

Appellant B.P. appeals from the domestic violence restraining order entered in favor of his former girlfriend, J.U. He argues the order is unsupported by substantial evidence, and the trial court abused its discretion in denying his motion for new trial.

1. *Substantial Evidence Supports the Order*

We review an order granting a domestic violence restraining order for abuse of discretion. (*In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1495.) Under this standard, we uphold the trial court's factual findings if they are supported by substantial evidence. (*Burquet v. Brumbaugh* (2014) 223 Cal.App.4th 1140, 1143.) We accept as true all evidence tending to establish the correctness of the trial court's findings, resolving every conflict in favor of the judgment. (*Ibid.*)

Here, J.U. testified that after she ended her dating relationship with B.P., he continued showing up at events she attended, trying to make her dance with him. Things came to a head the night of May 25, 2016, when J.U. was seated with her new boyfriend in his parked car. B.P. came to the window with a flashlight and asked, "Are you the one fucking my whore?" He went on to tell J.U.'s boyfriend, "Watch out for her. She has a fucking disease because she fucks everyone in her dance group." B.P. then ran to J.U.'s car, which was nearby, and slashed two of her tires. Thereafter, on two other occasions when she was out with her boyfriend, someone deflated her car's tires in the middle of the night. J.U. testified she was frightened and needs this to stop. J.U.'s testimony was believed by the trial court, and constitutes sufficient evidence to support entry of the restraining order.

On appeal, B.P. argues that J.U.'s testimony is inadequate because J.U. had no confirming witnesses (her boyfriend did not testify) or documentation, yet B.P. had documentation to back up his testimony that he was elsewhere on May 25 and the dates her tires were deflated. But B.P.'s evidence was a letter from a friend indicating B.P. was with him on those dates, but not stating at what times they were together. Similarly, B.P. relied on his bank statements showing purchases on those dates, but the financial records do not show the time of the purchases, and therefore do not provide evidence that defendant was not harassing J.U. in the middle of the night. In short, B.P.'s evidence does not undermine J.U.'s testimony in any way, the trial court reasonably found J.U. credible and the restraining order was well supported.

2. *The Motion for New Trial was Properly Denied*

"The denial of a new trial motion is reviewed for an abuse of discretion, except that a trial court's factual determinations are reviewed under the substantial evidence test." *Minnegren v. Nozar* (2016) 4 Cal.App.5th 500, 514, fn. 7.)

The restraining order issued on August 11, 2016. B.P. filed a notice of intention to move for new trial on August 18, 2016, and filed his supporting documentation on August 29, 2016. He did not serve his supporting documents on J.U. until August 30, 2016.

The trial court denied the motion as untimely, apparently not realizing that a timely notice of intention had been filed. However, the court's conclusion was correct; the motion was untimely. Supporting documentation is to be filed *and served* within 10 days of filing the notice of intention. (Code Civ. Proc., § 659a.) Ten days from August 18, 2016 was Sunday, August 28,

2016; therefore the filing on the next day, August 29, was proper. The service on August 30, however, was too late. The court did not abuse its discretion in denying the motion as untimely.

In any event, the court also denied the motion on the merits. B.P.'s motion for new trial was based on the supposed new evidence of text messages J.U. sent him in April 2016, reflecting that she was not afraid of him. B.P. possessed this evidence all along, but claimed he did not bring it to the hearing because he had not expected J.U. to lie at the hearing and claim that she was frightened. But B.P. was on notice that J.U. was taking the position that she was frightened. On July 22, 2016, B.P. had been served with notice of the August 11, 2016 hearing, J.U.'s request for the restraining order, and related documents. In J.U.'s request, she stated that she needed the restraining order because her children "need to be protected" and that she was also concerned about her boyfriend's "safety."

Finally, we note that B.P.'s new trial motion is based on a misstatement of J.U.'s testimony at the hearing. B.P.'s motion stated that J.U. "testified that she did not want to dance with [B.P.] in the club on April 2, and that [B.P.] hurt her wrist when he asked her to dance with him. But [J.U.'s] text message[s] of April 4, and April 5 contradict that." This characterization of the testimony is simply untrue. J.U. sought and obtained the restraining order based on B.P. having slashed her tires in May 2016 and deflating them thereafter. She very briefly mentioned that B.P. had previously "showed up in various events that [she] was in, tried to pull [her] by [her] hand to forcefully dance with him, talk to [her], followed [her]." She never attached a date to any of these earlier incidents and did not obtain the restraining order based on any specific incident on April 2. In short, B.P.

sought a new trial by arguing J.U. mischaracterized the events on April 2, but J.U. had obtained the restraining order based on events on and after May 25. The court did not abuse its discretion in denying the motion.

DISPOSITION

The domestic violence restraining order is affirmed.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

ROGAN, J.*

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