Filed 10/15/19 Bray v. Jackson CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

LAURACK D. BRAY, Defendant and Appellant, v. DIANNE JACKSON, Petitioner and Respondent.	B292049 (Los Angeles County Super. Ct. No. TS019800)

APPEAL from an order of the Superior Court of Los Angeles County, A. Veronica Saucedo, Temporary Judge. Affirmed.

Laurack D. Bray, in pro. per., for Appellant.

Heather Shook and Mallory Sepler-King for Respondent Dianne Jackson.

Appellant Laurack Bray appeals from the extension of the restraining order issued to protect respondent Dianne Jackson. Because the record supports the trial court's decision to extend the order, we affirm.

FACTUAL AND PROCEDURAL HISTORY

Laurack Bray (Bray) and Dianne Jackson (Jackson) are brother and sister. They have been involved in a series of disputes over a period of years, resulting in litigation.

In 2016, Jackson sought and obtained a restraining order, on behalf of herself as a protected elder, as well as her mother. (Welf. & Inst. Code, § 15657.03.) Bray did not oppose the entry of the order as to Jackson, but did oppose the order as to their mother. Bray did not appeal the order.

The 2016 order expired by its terms in June 2018. In May 2018, Jackson filed a request to renew the order. Although the initial order had limited the stay-away provisions to two yards, as the parties were then living in the same house, the renewal requested that the stay-away be extended to 200 yards. In support of the extension request, Jackson supplied information outlining events she believed to be violations of the prior order, as well as the circumstances supporting her belief that the behavior she described would continue to cause her distress and harm.

Bray opposed the renewal. He asserted that both the prior order and the renewal request were predicated on lies. He also requested that the trial court conduct a factual investigation with respect to one of Jackson's allegations, but did not provide any evidence, other than his denial, that the allegation was incorrect.

The matter came before the trial court for a hearing on July 2, 2018. Both parties testified and the court renewed the

order, increasing the stay-away to 100 yards, and extending its effective date until July 2, 2023. Bray appealed.

DISCUSSION

1. We Review the Extension for Abuse of Discretion

Protective orders for elder adults are governed by Welfare and Institutions Code section 15657.03, which provides, in subdivision (b)(4)(A), that the court may enjoin a party "from abusing, intimidating, molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, including, but not limited to, making annoying telephone calls as described in Section 653m of the Penal Code, destroying personal property, contacting, either directly or indirectly, by mail or otherwise, or coming within a specified distance of, or disturbing the peace of, the petitioner, and, in the discretion of the court, on a showing of good cause, of other named family or household members or a conservator, if any, of the petitioner."[1]

"[T]he issuance of a protective order under the Elder Abuse Act is reviewed for abuse of discretion, and the factual findings necessary to support such a protective order are reviewed under the substantial evidence test. [¶] We resolve all conflicts in the evidence in favor of respondent, the prevailing party, and indulge all legitimate and reasonable inferences in favor of upholding the trial court's findings. [Citation] Declarations favoring the prevailing party's contentions are deemed to establish the facts stated in the declarations, as well as all facts which may

---

[1] All further statutory references, unless otherwise noted, are to the Welfare and Institutions Code.

reasonably be inferred from the declarations; if there is a substantial conflict in the facts included in the competing declarations, the trial court's determination of the controverted facts will not be disturbed on appeal. [Citation.]" (*Bookout v. Nielsen* (2007) 155 Cal.App.4th 1131, 1137-1138 [because language of 15657.03 is identical to language in the Domestic Violence Protection Act (Fam. Code, § 6200 et seq.), the same standard of review applies].) The challenging party must show that the trial court abused its discretion in issuing the order. (*Bookout, supra,* 155 Cal.App.4th at p. 1140.)

A protective order under this statute "may issue on the basis of evidence of past abuse, without any particularized showing that the wrongful acts will be continued or repeated." (*Gdowski v. Gd*ow*ski* (2009) 175 Cal.App.4th 128, 137; *Rodriguez v. Menjivar* (2015) 243 Cal.App.4th 816, 823.) The trial court's findings are to be made by a preponderance of the evidence. (*Gdowski, supra,* 175 Cal.App.4th at p. 137, see also *Bookout, supra,* 155 Cal.App.4th at p. 1138.)

Here, the trial court heard the testimony of both parties, and found Jackson to be credible, and her apprehension of continued harassment reasonable. We defer to the trial court's findings on credibility. We analyze whether "there is any substantial evidence, contradicted or uncontradicted, which supports the finding." (*Kimble v. Board of Education* (1987) 192 Cal.App.3d 1423, 1427.) An appellate court is "without power to judge the effect or value of the evidence, weigh the evidence, consider the credibility of witnesses, or resolve conflicts in the evidence or in the reasonable inferences that may be drawn therefrom." (*Ibid.*) Here Jackson's testimony, despite Bray's

assertion that she was untruthful, provides substantial evidence that supports the trial court's decision.

2. Jackson Was Not Required to Prove New Facts to Obtain an Extension of the Order

Renewal of a previous order does not require a showing of further abuse after the initial order was issued. (§ 15657.03, subd. (i)(1).) In *Gordon B. v. Gomez* (2018) 22 Cal.App.5th 92, the trial court refused to renew a section 15657.03 protective order because the behavior of the restrained person had improved, and there had been no incidents since the service of the order. The Court of Appeal reversed, relying on cases interpreting the "virtually identical" language of the domestic violence law, and holding that no showing of additional abuse since the issuance of the original order was required to obtain a renewal. (*Gomez, supra,* 22 Cal.App.5th at pp. 207-208.)

To make the required finding that the protected party's fear is reasonable, the trial court must determine that the risk of future abuse is more probable than not. To do so, the court looks to the findings underlying the original order, and "whether there have been 'any significant changes in circumstances' by asking, for example, 'have the restrained and protected parties moved on with their lives so far that the opportunity and likelihood of future abuse has diminished to the degree they no longer support a renewal of the order?" (*Gomez, supra,* 22 Cal.App.5th at p. 208, quoting *Ritchie v. Konrad* (2004) 115 Cal.App.4th 1275, 1291.) (See also *Lister v. Bowen* (2013) 215 Cal.App.4th 319, 333; *Cueto v. Dozier* (2015) 241 Cal.App.4th 550, 559-560.)

Jackson's testimony, found credible by the trial court, provided substantial evidence that the parties have not moved on with their lives. Jackson demonstrated that Bray violated the

prior order, and that he continued to spend time near the house in which Jackson was working, at the facility where their mother lived when Jackson was present, and even in line at the courthouse.[2] Based on that evidence, a reasonable person would conclude, as did the trial court and Jackson, that the opportunity and likelihood of future abuse had not diminished.

This case stands in contrast to *In re Marriage of Martindale & Ochoa* (2018) 30 Cal.App.5th 54, on which Bray relied. There, the evidence at the hearing showed that the restrained person not only had not violated the prior order, but had intentionally avoided contact with the protected person, even leaving promptly when he became aware that he was inadvertently near the protected person. (*Id*. at p. 61.) The facts here show that the opposite is true; Bray has not shown any abuse of discretion.

3. Bray Cannot Challenge the Prior Order in This Proceeding

Both in the trial court, and in his briefing to this Court, Bray argues that the order should not have been renewed, as the prior order was based on lies. He cannot do so. As a matter of law, a party to renewal proceedings cannot challenge the evidence or findings on which the prior order was based. (*Lister, supra*, 215 Cal.App.4th at p. 333.)[3]

---

[2] The Court grants Jackson's motion to lodge exhibits presented to the trial court, consisting of photographs presented to the trial court and the subject of testimony.

[3] We note that Bray did not object to the entry of the original order as to Jackson, and thus provided no evidence or argument

4. Bray Was Not Denied Due Process Because of a Biased Adjudicator

Bray argues that he was denied due process because the trial court was biased against him. He cites as evidence that the trial court failed to challenge Jackson on what Bray characterizes as her lies, and failed to do the investigation he requested concerning one of Jackson's allegations. In addition, he claims the extension of the stay-away zone from two yards to one hundred yards was without any evidentiary support and therefore demonstrated bias.

The record does not support these arguments. The trial court questioned both parties during their presentations, in an apparent attempt to clarify and understand that testimony. The trial court also explained to Bray that the trial court did not conduct independent investigations of matters challenged by a party.

Moreover, the arguments, even if supported by the record, do not establish bias. "Potential bias and prejudice must clearly be established [citation] and statutes authorizing disqualification of a judge on grounds of bias must be applied with restraint. [Citation.] 'Bias or prejudice consists of a "mental attitude or disposition of the judge towards [or against] a party to the litigation. . . ."' [Citations.] Neither strained relations between a judge and an attorney for a party nor '[e]xpressions of opinion uttered by a judge, in what he conceived to be a discharge of his official duties, are . . . evidence of bias or prejudice.'" (*Roitz v. Coldwell Banker Residential Brokerage Co.* (1998) 62 Cal.App.4th

---

that her request was insufficient. In addition, Bray failed to appeal the prior order.

716, 724.) Thus, a party cannot premise a claim of bias on a judge's statements made in his or her official capacity (*Jack Farenbaugh & Son v. Belmont Construction, Inc.* (1987) 194 Cal.App.3d 1023, 1031); a judge's substantive opinion on the evidence (*Kreling v. Superior Court* (1944) 25 Cal.2d 305, 312); or the judge's ruling—even erroneously—against him. (*McEwen v. Occidental Life Ins. Co.* (1916) 172 Cal. 6, 11.)

DISPOSITION

The order is affirmed. Respondent is to recover her costs on appeal.

ZELON, J.

We concur:

PERLUSS, P. J.

SEGAL, J.