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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

J.S.,

Appellant,

v.

D.S.,

Respondent.

B289855

(Los Angeles County  
Super. Ct. No. LD062535)

APPEAL from an order of the Superior Court of Los Angeles County, Shirley K. Watkins, Judge. Affirmed.  
Law Offices of John K. Fu and John Fu for Appellant.  
D.S., self-represented litigant, for Respondent.

## I. INTRODUCTION

J.S. (father) appeals from an order renewing a domestic violence protective order pursuant to Family Code<sup>1</sup> section 6345 of the Domestic Violence Prevention Act (DVPA), which had been requested by D.S. (mother) for herself and their child A.S. (the child). Father contends the trial court abused its discretion in finding that mother had demonstrated a reasonable apprehension of future abuse by father. We affirm.

## II. BACKGROUND

### A. *Initial Protective Order*

Mother and father were married in 2009 and the child was born in 2010. On June 22, 2012, mother filed a petition for a domestic violence protective order that would protect her against father.<sup>2</sup> On July 19, 2012, the trial court conducted a hearing during which mother testified about father's abuse of her and the child, and father denied the abuse. At the conclusion of the hearing, the court made certain findings. It stated that although there were some problems with mother's credibility, "there was also evidence that she's been the victim of a long-standing pattern of sexual abuse by [father] in which he forced sexual contact upon her even after she said no. [¶] . . . [Mother] does have mental anguish and emotional anguish as a result of the

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<sup>1</sup> Further undesignated statutory references are to the Family Code.

<sup>2</sup> The June 22, 2012, petition is not included in the record.

conduct of [father] in engaging enforced unconsented sexual encounters with her for a long period of time throughout their relationship, particularly when she was undergoing cancer treatment and after her hospitalization for cancer.” In making its credibility determination, the court noted father’s “flat affect” and “matter of fact denial of these events.” The court also found that father had emotionally abused and yelled at mother in front of the child and also directly yelled at the child, causing the child to react by banging his head on the wall.

Based on its findings, the trial court issued a restraining order after hearing on Judicial Council Form DV-130 which listed: mother as the protected person in paragraph 1; father as the restrained person in paragraph 2; and the child as an additional protected person in paragraph 3, which permitted the person seeking the protective order to list “(*family or household members*)” (the initial protective order). The initial protective order required that father stay 100 yards away from mother and the child and refrain from communicating with mother and the child, but allowed for brief and peaceful contact with mother and peaceful contact with the child as required for court-ordered visitation. The order also provided for supervised visitation between father and the child, three times a week for three hours.<sup>3</sup> The order stated that it would terminate at noon on July 18, 2017.

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<sup>3</sup> The visitation order was subsequently modified on August 10, 2016. The modified visitation order is not included in the record.

B. *Renewal of Protective Order*

On June 19, 2017, mother filed a request to renew the initial protective order permanently. Mother supported her request with a declaration that stated, among other things, that she remained afraid of father because he continued to maintain that he never abused her and had not sought any counseling to address his prior conduct.<sup>4</sup>

Father opposed the request for renewal and submitted his own declaration in which he stated that he had not been ordered to attend batterers' treatment counseling but had attended parenting classes of his own volition.

Mother and father both testified at the contested hearing on the petition. Mother testified that although father had not physically abused her since the issuance of the initial protective order, he continued to be mentally and emotionally abusive toward her. According to mother, as a result of father's past abuse, mother suffered from migraines and received treatment for depression, stress, and anxiety. Mother also explained that on or about January 14, 2017, she asked father by message on OFW whether he had completed any therapy related to his domestic violence. Father responded that he undertook only the classes that were court-ordered and parenting classes.

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<sup>4</sup> Mother also cited to email messages from father via OurFamilyWizard (OFW), a Web site for divorced and separated parents to communicate regarding co-parenting matters (*Jane J. v. Superior Court* (2015) 237 Cal.App.4th 894, 899), which she considered harassing. The trial court disagreed with mother's assertion.

Father testified that he had never committed any acts of domestic violence upon mother. Father also testified that he wanted to modify the visitation and custody orders so that he could spend more time with the child.<sup>5</sup> He stated, however, that he did not believe he and the child would benefit from family therapy because what they needed was more time together, not therapy.

Following testimony and argument, the trial court found that mother had demonstrated by a preponderance of the evidence that she had a reasonable apprehension of future abuse. The court cited evidence that father had failed to accept responsibility for his prior conduct: “[C]oming [into] this hearing, you continue to deny that you did anything wrong. And it is just not going to get you anywhere when the court has already made findings that you did.” The court also described father’s affect as flat, which was consistent with the description of the prior trial court. Finally, the court expressed disappointment with father’s refusal to seek counseling to address his problems: “[I]t is very disappointing to me that you [father] . . . were not in agreement of going to counseling and that you thought you could solve the problem. It shows to me that you have really almost an unreasonable belief in your ability to overcome your child’s problems on your own without [the] assistance of [mother], without assistance from mental health professionals.”

The trial court also credited mother’s testimony about her reasonable apprehension of future abuse: “[W]ithout the restraining order there would be no restriction on [father’s] ability to come to the home, to be around her, to be near the

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<sup>5</sup> On October 31, 2017, father separately requested modification of the visitation and custody orders.

school, to be where she would not want him to be, and to actually communicate in a different manner. Because I do believe that the restraining order does adequately restrict the way in which he talks with you and I would be concerned that without the restraining order, that given that he doesn't think he's ever done anything wrong, that some of that verbal abuse or written abuse might occur." The court renewed the protective order for five years, rather than permanently, to give father the opportunity to undergo therapy with the child.

### III. DISCUSSION

#### A. *Applicable Law and Standard of Review*

"The [DVPA] ([§ 6200 et seq.]) exists 'to 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.) As provided in section 6345, subdivision (a), a domestic violence prevention restraining order 'may be renewed upon the request of a party, either for five years or permanently, without a showing of any further abuse since the issuance of the original order, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party. The request for renewal may be brought at any time within the three months before the expiration of the orders.'" (*In re Marriage of Martindale & Ochoa* (2018) 30 Cal.App.5th 54, 58–59, fn. omitted.)

When contested, “[a] trial court should renew the protective order, if, and only if, it finds by a preponderance of the evidence that the protected party entertains a ‘reasonable apprehension’ of future abuse.” (*Ritchie v. Konrad* (2004) 115 Cal.App.4th 1275, 1290 (*Ritchie*)). In considering a request for renewal, “the trial court should not permit the restrained party to challenge the truth of the evidence and findings underlying the initial order . . . .” (*Id.* at p. 1290.)

We review the trial court’s renewal of the protective order for an abuse of discretion. (*Lister v. Bowen* (2013) 215 Cal.App.4th 319, 333.) A trial court abuses its discretion when the “ruling in question ‘falls outside the bounds of reason’ under the applicable law and the relevant facts.” (*People v. Williams* (1998) 17 Cal.4th 148, 162.)

## B. *Analysis*

Father first argues that the trial court failed to properly apply *Ritchie, supra*, 115 Cal.App.4th 1275, by failing to consider that father had moved to Washington state since the issuance of the protective order, and that as a result, father and mother lived farther apart than did the parties in *Ritchie*. According to father, “the *Ritchie* court ruled that the renewal should be reversed primarily because of the distance [of] separation which made the occurrence of the future abuse improbable if not impossible.”

We reject father’s argument because there was no such holding in *Ritchie, supra*, 115 Cal.App.4th 1275. The court did not rule in the appellant’s favor on the merits, but instead reversed for a future hearing so that the trial court could apply “the proper test and determine whether [the petitioner’s]

expressed fear of significant future abuse is reasonable and thus sufficient to warrant a permanent (or lengthy) extension of the original protective order.” (*Id.* at p. 1293.) Here, by contrast, the record reflects that the trial court considered the applicable legal principles when renewing the protective order as it expressly cited to *Ritchie* and also concluded that “[mother] has shown by a preponderance of the evidence that she continues to have reasonable apprehension of future abuse based upon the testimony and evidence presented.”

As to father’s complaint that the trial court did not specifically refer to his moving to Washington state, there is no requirement that the trial court specifically identify all factual findings. On appeal, absent evidence to the contrary, we presume the trial court knew and properly applied the law. (*McDermott Will & Emery LLP v. Superior Court* (2017) 10 Cal.App.5th 1083, 1122.) In any event, there is no indication that the court did not consider father’s move since the parties both testified about father’s move, counsel discussed the need for the child to travel to Seattle to visit father, and the court agreed to issue a modified order that, among other things, addressed father’s travel to Los Angeles for visits.

Father next argues that the trial court erred when it stated that father lacked remorse, as remorse is not a criteria for renewing a protective order. But the court here did not renew the protective order solely on the grounds that father had not shown remorse.<sup>6</sup> Instead, the court concluded that mother’s fear

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<sup>6</sup> Thus, we need not decide whether the trial court would have erred had it done so. We note that at least in the context of parole hearings, a “prisoner may refuse to discuss the facts of the crime in which instance a decision shall be made based on the



that father would inflict future abuse on her was reasonable based on father's refusal to take classes or therapy to address his past sexual abuse of mother and denial that he had done anything wrong. Based on father's conduct, the trial court was entitled to make this reasonable inference. (See *In re Gabriel K.* (2012) 203 Cal.App.4th 188, 197 ["One cannot correct a problem one fails to acknowledge"].) Given the evidence and the court's credibility determinations, we conclude the court did not abuse its discretion in renewing the protective order as to mother.<sup>7</sup>

Finally, father argues that the trial court abused its discretion in renewing the protective order as to the child. But father did not seek to modify the initial protective order, which listed the child as an "additional protected person." Rather, father argued only that the renewal of the protective order should be denied. Father has thus forfeited any argument on appeal that the initial protective order should have been modified to exclude the child as an additional protected person. (*Keener v. Jeld-Wen, Inc.* (2009) 46 Cal.4th 247, 264.)

Even if we were to consider the merits of father's argument, that the trial court erred in granting the renewal because there was no testimony or evidence that the child feared any further abuse by father, we would reject it. The DVPA "is broad both in its stated intent and its breadth of persons protected. . . . [¶] The wide nature of relief for protection and separation is . . .

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other information available and the refusal shall not be held against the prisoner." (Cal. Code Regs., tit. 15, § 2236.)

<sup>7</sup> Father also argues that mother's testimony was "incredible on its face." We do not reassess the trial court's express credibility findings. (*Phillips v. Campbell* (2016) 2 Cal.App.5th 844, 849–850.)

evidenced by the forms promoted by the Judicial Council under the DVPA,” which include Judicial Council forms that permit a person seeking to obtain a protective order to add “family and household members.” (*Caldwell v. Coppola* (1990) 219 Cal.App.3d 859, 863–864.) Further, sections 6320, subdivision (a) and 6340, subdivision (a), permit the trial court, in its discretion, and on a showing of good cause, to add “other named family or household members” to a protective order. Here, the child was included in the initial protective order as a family and household member. The court could thus include the child on the renewed protective order upon a showing of good cause; mother did not need to additionally demonstrate that the child had his own reasonable apprehension of future abuse.

#### **IV. DISPOSITION**

The order is affirmed. D.S. is entitled to recover costs on appeal.

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KIM, J.

We concur:

BAKER, Acting P. J.

MOOR, J.