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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

DIANE P.,

Plaintiff and Respondent,

v.

EDDIE CLOSE,

Defendant and Appellant.

2d Civil No. B282359
(Super. Ct. No. 17FL0011)
(San Luis Obispo County)

Eddie Close appeals a domestic violence restraining order (DVRO), directing appellant to not harass or contact his sister-in-law, respondent Diane P., and to move out of respondent's house located in Greenville, California. (Fam. Code, § 6200 et seq.) Appellant contends that the judgment is not supported by the evidence. We affirm.

Facts and Procedural History

On January 6, 2017, respondent filed a DVRO petition alleging that appellant sexually assaulted her and engaged in threatening behavior from 1986 through June 12, 2016. The petition stated that appellant was staying at a

Greenville residence gifted to respondent and her husband (G.P.), and that appellant destroyed the home and had to be evicted. After respondent and her husband moved to San Luis Obispo County, appellant moved back into the Greenville residence and threatened to throw away respondent's belongings and to harm respondent.

On January 6, 2017, the trial court granted a temporary restraining order, but declined to order appellant to move out of the Greenville residence, noting that "more proof" was required. The trial court calendared the matter for a January 25, 2017 hearing and granted a request to continue the hearing to February 15, 2017 because appellant had not been served yet.

Appellant filed a response to the DVRO petition on February 14, 2017 alleging, among other things, that the Greenville property was the subject of a pending lawsuit to impose a constructive trust. (*Eddie H. Close v. G.P.*, Plumas County Sup. Ct., case no. CV16-00157.) When appellant failed to appear at the February 15, 2017 hearing, the trial court granted a DVRO directing appellant to stay away from respondent and to move out of the Greenville residence.

On March 2, 2017, appellant filed a 30 page amended response and requested that the DVRO be vacated. At a contested hearing on March 29, 2017, the trial court vacated the DVRO, received testimony, and reinstated the DVRO.

Sufficiency of the Evidence

Appellant claims that the judgment is not supported by the evidence. Appellant, however, has not provided a reporter's transcript or a settled statement of the trial proceedings. (*Estate of Fain* (1999) 75 Cal.App.4th 973, 992;

Ehrler v. Ehrler (1981) 126 Cal.App.3d 147, 153-154.)¹ This is fatal to the appeal. We are required to treat the matter as a judgment roll appeal. Where the appeal is based on the clerk's transcript or judgment roll and no error is apparent on the face of the appellate record, the judgment is conclusively presumed correct as to all evidentiary matters. (*Estate of Fain, supra*, at p. 992.) "To put it another way, it is presumed that the unreported trial testimony would demonstrate the absence of error. [Citation.]" (*Ibid.*)

Appellant contends that respondent's testimony was not credible and that his responsive pleadings controvert respondent's claims. On review, we are precluded from reweighing the evidence or determining witness credibility. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53.) If the record on appeal does not contain all the documents or evidence admitted at trial, a reviewing court will decline to find error on a silent record. (See Cal. Rules of Ct., rule 8.163; *Haywood v. Superior Court* (2000) 77 Cal.App.4th 949, 955.) We presume that the judgment is correct and that no abuse of discretion occurred. (*Stasz v. Eisenberg* (2010) 190 Cal.App.4th 1032, 1039.)

Continuance

Appellant argues that the trial court erred in not continuing the March 29, 2017 trial. Family Code section 245, subdivision (a) provides that where a temporary restraining order

¹Appellant's Notice Designating Record on Appeal states: "I elect to proceed: [¶] . . . WITHOUT a record of the oral proceedings in the superior court. I understand that without a record of the oral proceedings in the superior court, the Court of Appeal will not be able to consider what was said during those proceedings in determining whether an error was made in the superior court proceedings."

issues ex parte, “[t]he respondent shall be entitled, as a matter of course, to one continuance for a reasonable period, to respond to the petition.”

Appellant filed a responsive pleading on February 14, 2017 and a 30 page amended response on March 2, 2017. On March 29, 2017, the trial court vacated the DVRO and reheard the evidence. There is nothing in the record to indicate that appellant was not ready to proceed with the hearing or was denied a fair trial.

The judgment is affirmed. Respondent is awarded costs on appeal.

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YEGAN, J.

We concur:

GILBERT, P. J.

PERREN, J.

Erin M. Childs, Commissioner

Superior Court County of San Luis Obispo

Eddie Close, in propria persona, for Defendant and
Appellant.

Diane P., in propria persona, for Plaintiff and
Respondent.