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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

BARBARA B.,

Respondent,

v.

CHRISTOPHER B.,

Appellant.

B276931

(Los Angeles County
Super. Ct. No. GQ013774)

APPEAL from order of the Superior Court of Los Angeles County, R. Carlton Seaver, Judge (Ret.). Affirmed.

The Law Office of Andrew M. Rosenfeld and Andrew M. Rosenfeld, for Appellant.

The Law Office of Herb Fox and Herb Fox, for Respondent.

Christopher B. appeals from a domestic violence restraining order issued under the Domestic Violence Prevention Act (DVPA) (Fam. Code, § 6200 et seq.),¹ ordering him to stay away from his sister, respondent Barbara B. Christopher contends the order is not supported by substantial evidence. We affirm.

FACTS AND PROCEDURAL HISTORY

Barbara B. is a developmentally disabled adult with special mobility, safety, hygiene, and communication needs. Barbara's disability requires constant supervised care, and she resides at a home for developmentally disabled adults. Barbara uses a wheelchair and is unable to change her own clothes. Barbara is able to exercise her own discretion and make her own decisions, but she has difficulty expressing herself and needs her sisters to interpret for her.

In January 2000, Barbara's younger sister Cathy was appointed Barbara's limited conservator. Cathy worked with Barbara's healthcare providers and home to enact guidelines for visitation and toileting. Per the guidelines, Christopher must give 24 hours notice before visiting Barbara, may only visit Barbara during certain hours of the day, and may only take Barbara out by himself for two hours at a time, absent being permitted a longer time, to allow her

¹ All further statutory references are to the Family Code unless otherwise indicated.

to go to the restroom without his assistance. Christopher is aware of the fact that there are rules that govern his visitation with Barbara. Although Cathy and Barbara's healthcare providers have "given him lots of latitude," Christopher often breaks the guidelines. Barbara's home has had to enact special safety measures in response to Christopher's disregard for the guidelines, including posting a "no trespassing" sign. Barbara's daytime facility has asked Christopher to leave because he enters unannounced and interrupts the classes. The facility has sent Christopher cease and desist letters demanding that he stop sending inappropriate correspondence and showing up at meetings, and insisting that he "[g]o through Cathy as a conservator."

On April 8, 2016, Cathy, as Barbara's conservator, filed a request for a domestic violence restraining order against Christopher. She listed "[s]evere physical and mental distress" to Barbara as a result of abuse by Christopher as grounds for the restraining order. Six individuals testified during a four-day evidentiary hearing. The witnesses, including Cathy, Christopher, and their sister Stephanie, testified regarding three incidents involving Christopher and Barbara.

The first incident took place in April 2015 when Christopher arrived unannounced to pick up Barbara from her home. After Barbara's home released her with Cathy's consent, Christopher took Barbara on a bus tour and then made her sit in a golf cart while he played 18 holes of golf. Barbara was gone for eight hours—six hours over the normal

visitation time, and four hours over the time Cathy permitted visitation that day. Barbara missed her medications and was “completely exhausted when she returned.” Barbara’s diaper had been changed by a female stranger because Christopher refused to go into the women’s restroom earlier in the day, and was again soaking wet when Barbara returned. Barbara’s home was concerned with her “wellbeing.”

The next incident occurred in August 2015 when Christopher drove Barbara approximately 35 minutes to Cathy’s house during a heat wave. Cathy did not think the car’s air conditioning was functioning at the time. Barbara was sweaty, red in the face, had her knees pushed against the glove box, and could not see through her “filthy” glasses.

The final incident, as referenced in the request for restraining order, occurred on March 12, 2016, when Christopher took Barbara to a pool for an aqua bounce course. Christopher again arrived unannounced. He had no reason to think that Barbara had experience swimming. Christopher set up the appointment with the swim instructor on only 30 minutes notice, and he did not tell Barbara they were going to a pool for exercise, so she did not have an opportunity to refuse. Nor did Christopher inform Barbara’s conservator, Cathy, or any of her other caretakers, that he planned to take Barbara to a pool that day. In the past, when Christopher had suggested that Barbara participate in an aqua bounce class, he never received permission to do so. Given Barbara’s limited mobility,

medical conditions, and fear of pools and water, Barbara's healthcare providers previously advised against aqua therapy or the use of pools. Barbara did not want to go into the pool, but Christopher and the teacher he hired placed Barbara in the pool while she was in her wheelchair and dressed in her street clothes. She was uncomfortable and uneasy, and after she was taken out of her wheelchair, she was whimpering because her wheelchair was not with her. The teacher took Barbara out of her wheelchair and held her while she moved around in the pool for 20 or 25 minutes. After Barbara was lifted out of the pool, Christopher changed her out of her wet street clothing, leaving her in a wet bra, into some clothes he purchased at Target. The guidelines prohibit Christopher from changing her clothes and underwear because he is male and should not be changing a female's clothing. When she returned home, Barbara was wet, shivering, and had urinated herself. Staff members at her home were surprised when they saw her in different clothing. The clothes that Barbara was initially wearing were in a bag soaking wet. Barbara was crying and stated that she was "starving." A nurse overheard Christopher tell someone over the phone that "she was kicking and screaming while going into the pool."² Taking

² Christopher testified on his own behalf, stating that Barbara did not "have any bad experiences, no kicking and screaming." He concedes, however, that he was overheard after the aqua class talking to someone on the phone about

Barbara to an independent teacher without consent was against the guidelines and placed Barbara's safety at risk. After being contacted by the caretakers, Cathy had to talk with Barbara on the phone to calm her down. Christopher knew that his actions would result in the staff at Barbara's healthcare facility filing an incident report involving him.

When Barbara's psychologist met with her the following morning, he could tell Barbara was "extremely upset," had not eaten dinner, and missed her medications.³ Around the time the request for restraining order was filed, staff at Barbara's home noticed she was losing sleep and "get[s] upset when [Christopher] is here and will start hitting herself." Stephanie testified that Barbara would hit herself on her head, face, and chest, saying "just leave me alone, my brother." Barbara's psychologist believed that breaking the guidelines interfered with Barbara's "basic needs" such as medication and emotional safety.

the lesson and using the words "kicking and screaming." Christopher explained he was referring to his sister Cathy, the conservator, whom he has to get, "kicking and screaming," for her to allow Barbara to exercise in a pool.

³ The psychologist drafted a letter urging Cathy to get a restraining order in part because Christopher's prior conduct was "extremely belligerent" and "intrud[ed] on five other residents in the house." He caused "trauma" to Barbara. The police also recommended that Cathy get a restraining order for Barbara.

At the close of the hearing and after reviewing the documentary evidence, the trial court found Cathy “met her burden of proof” and issued a two-year domestic violence restraining order on Barbara’s behalf. On June 20, 2016, Christopher filed a motion for reconsideration. The court denied the motion on the ground that no new or different facts or law existed which were not known or could not have been known before. Christopher filed a timely notice of appeal.

DISCUSSION

Christopher contends the trial court abused its discretion in issuing the domestic violence restraining order because there is no substantial evidence to support a finding of domestic violence. We affirm the order.

“We review an order granting a protective order under the DVPA for abuse of discretion.” (*In re Marriage of Evilsizor & Sweeney* (2015) 237 Cal.App.4th 1416, 1424.) “A trial court abuses its discretion when its decision exceeds the bounds of reason by being arbitrary, capricious or patently absurd. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318–319 [*Stephanie M.*].) In determining whether there has been such an abuse, we cannot reweigh evidence or pass upon witness credibility. The trial court is the sole arbiter of such conflicts. Our role is to interpret the facts and to make all reasonable inferences in support of the order issued. [Citation.]’ [Citations.]” (*People ex rel. Harris v. Black*

Hawk Tobacco, Inc. (2011) 197 Cal.App.4th 1561, 1567.)

““When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.”

[Citation.]” (*Stephanie M., supra*, at p. 319.)

In conducting our review, we presume that a judgment or order of a lower court is correct. ““We must accept as true all evidence . . . tending to establish the correctness of the trial court’s findings . . . , resolving every conflict in favor of the judgment.” [Citation.]” (*Burquet v. Brumbaugh* (2014) 223 Cal.App.4th 1140, 1143 (*Burquet*).) “All intendments and presumptions are indulged to support [the judgment] on matters as to which the record is silent, and error must be affirmatively shown.” (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.)

The DVPA authorizes a trial court to issue a restraining order “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, 6300.) “Abuse is not limited to the actual infliction of physical injury or assault.” (§ 6203, subd. (b).) “Abuse” includes any behavior that could be enjoined under section 6320, such as “harassing” conduct or “disturbing the peace of the other party.” (§ 6320, subd. (a); see *In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1498.)

“The ordinary meaning of “disturb” is “[t]o agitate and destroy (quiet, peace, rest); to break up the quiet, tranquility, or rest (of a person . . . , etc.); to stir up, trouble, disquiet.” [Citation.] “Peace,” as a condition of the individual, is ordinarily defined as “freedom from anxiety, disturbance (emotional, mental or spiritual), or inner conflict; calm, tranquility.” [Citation.] Thus, the plain meaning of the phrase “disturbing the peace of the other party” in section 6320 may be properly understood as conduct that destroys the mental or emotional calm of the other party.” (*Burquet, supra*, 223 Cal.App.4th at p. 1146.)

Although a lack of past physical abuse may be considered, the definition of abuse “is not confined to physical abuse but specifies a multitude of behaviors which does not involve any physical injury or assaultive acts.” (*Eneaji v. Ubboe* (2014) 229 Cal.App.4th 1457, 1464; see *Burquet*[, *supra*,] 223 Cal.App.4th at pp. 1142–1143, 1146–1147 [substantial evidence supporting DVPA restraining order where there was no evidence of physical abuse, but restrained party disturbed peace of ex-girlfriend by e-mailing her, sending her text messages, and showing up unannounced at her home]; *Conness v. Satram* (2004) 122 Cal.App.4th 197, 201–202 [no evidence of physical injury needed under DVPA].)” (*In re Marriage of Evilsizor & Sweeney, supra*, 237 Cal.App.4th at p. 1425, fn. omitted; see *Rodriguez v. Menjivar* (2015) 243 Cal.App.4th 816, 822 [“acts of isolation, control, and threats [are] sufficient to

demonstrate the destruction of [] mental and emotional calm”].)

In this case, Christopher contends “[t]he only reasonable findings to be made based upon [the] evidence are either that [Christopher’s] conduct had no impact on Barbara’s mental or emotional calm, or that any impact was insubstantial” because it reflects a “minor apprehension towards the unfamiliar.” We disagree. The record supports the court’s finding that Christopher’s actions destroyed his developmentally disabled sister’s mental and emotional calm by placing her in exceedingly fearful situations. The March 12, 2016 pool incident is reflective. No one (including Barbara who is known to be fearful of pools and water) was able to prevent Christopher from taking Barbara to a pool who, in so doing, violated a number of rules that were put in place to ensure Barbara’s safety and emotional wellbeing. Christopher arrived unannounced, did not disclose his plans, and did not seek permission from Barbara, her conservator, or her caretakers, despite having been fully aware that his past suggestions to take Barbara to aqua bounce had not been approved. Despite clear signs of Barbara’s distress, Christopher continued with his plan and placed Barbara fully clothed in the pool, taking away her wheelchair for an extended period of time, and then changing her clothes, but leaving her in a wet bra and apparently without undergarments.

Witnesses who interacted with Barbara following this and other incidents, including her psychologist, testified that

Barbara was “extremely upset” such that she lost sleep and exhibited behaviors of self-harm. They also identified symptoms of Barbara’s compromised basic needs, such as missed medications, meals, and diapering. Interpreting the evidence before us and making all reasonable inferences in support of the order, we cannot say these symptoms only support the inference that Barbara suffered “minor apprehensions.” The record evidence supports an inference that Christopher’s actions destroyed Barbara’s mental and emotional calm. The trial court did not act arbitrarily or capriciously when it issued the two-year domestic violence restraining order. (See *Stephanie M.*, *supra*, 7 Cal.4th at p. 319; *In re Marriage of Evilsizor & Sweeney*, *supra*, 237 Cal.App.4th at pp. 1426–1427 [“the trial court was in the best position to evaluate credibility and to resolve factual disputes, and our review of the record reveals sufficient evidence to conclude that the court’s order was not an abuse of discretion”].)

DISPOSITION

The June 10, 2016 order restraining Appellant Christopher B.'s conduct pursuant to the provisions of the DVPA is affirmed. Respondent Barbara B. is awarded her costs on appeal.

MOOR, J.

We concur:

BAKER, Acting P.J.

KIN, J.*

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