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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re Marriage of DENNIS and BETH
ANN HANDLER.

B231730

(Los Angeles County
Super. Ct. No. LD029014)

DENNIS HANDLER,

Appellant,

v.

BETH ANN HANDLER,

Respondent.

APPEAL from an order of the Superior Court of Los Angeles County. Michael Convey, Judge. Affirmed.

Law Offices of Herb Fox, Herb Fox for Appellant.

Beth Ann Handler, in pro. per., for Respondent.

Appellant Dennis Handler appeals from the renewal of a domestic violence restraining order, and the related modification of child custody. Finding no abuse of discretion, we affirm the extension. The order, however, is inconsistent with respect to legal custody; we remand for clarification of the order.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant Dennis Handler and Respondent Beth Ann Handler¹ were married on May 8, 1993, and have one child, born in March 1996. On October 19, 2001, the court entered a judgment of dissolution and established joint legal custody.

The court issued a three year restraining order under the Domestic Violence Protection Act (DVPA) (Fam. Code, § 6200 et seq.)² against Dennis on Beth Ann's motion on November 8, 2007. Beth Ann filed a request to renew that order on October 12, 2010, asserting that Dennis had continued to harass her, and that she feared his aggression would escalate if the order were permitted to expire. Dennis objected to the extension, asserted that Beth Ann should not receive relief because she had filed a false police report, and indicated that he would continue to comply voluntarily with the terms of the order if it were allowed to expire without renewal. After several continuances, the court heard the matter on January 20, 2011.

Prior to the hearing, the parties reached a stipulation, continuing joint legal custody over their son, which the court approved and signed. Beth Ann and Dennis, each representing themselves, both testified and were cross-examined. Beth Ann testified that she continued to be in fear of Dennis, and described the communications that formed the basis of her fear. Specifically, she described emailed threats to sue, demands for money, indications of a desire to kill her predating the prior order, multiple emails attempting to persuade her to drop the restraining order, and violations of the existing order by

¹ Because the parties share the same last name, we will refer to them using their first names for clarity, intending no disrespect.

² Unless otherwise noted, all further statutory citations are to the Family Code.

unwanted emails, all of which placed her in fear for her safety and of abusive conduct on the future. Dennis put on evidence of his physical limitations, stressed that there had been no physical violence or intimidation, and indicated two concerns if the restraining order was renewed: first, that the lack of communication would adversely affect their son; and second that he would continue to fear the disruption caused by the filing of a false police report.

The court renewed the protective order for five years, finding that the parties were engaged in a contentious relationship, and that the communications by Dennis had been “disrespectful, voluminous and until Mr. Handler testified they stopped pertaining to matters not related to the child, they are and were offensive. They are and were upsetting, disturbing and they are borderline harassing.” The court specifically found that Dennis’s repeated attempts to end the protective order had been improper, annoying, and in violation of the protective order. The court did not believe that Dennis had moved on from his disagreement with the prior protective order and found that, while the evidence was close, Beth Ann had met her burden of proof by a preponderance of the evidence, and that the safety of the parties depended on such an order.

With respect to custody, the order, signed by the court, was internally inconsistent. On the date of the hearing, the court had modified an order entered on April 27, 2009 which had provided for joint legal custody. The modifications pertained only to certain visitation and communications provisions of that order. The restraining order, entered the same day, indicated that that custody order would apply. However, the DV-140 Custody Order form that was attached to the restraining order was inconsistent, awarding sole legal custody to Beth Ann.

Dennis timely appealed.

DISCUSSION

1. The Standard of Review

We review the grant or denial of a DVPA protective order for abuse of discretion. “The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. 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.” (*Gonzalez v. Munoz* (2007) 156 Cal.App.4th 413,420, quoting *Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478-479; *Nakamura v. Parker* (2007) 156 Cal.App.4th 327, 333.)

2. The Trial Court Did Not Abuse Its Discretion

The DVPA allows the court to issue a protective order to prevent on-going acts of abuse against former spouses and other listed individuals. Such abuse need not be physical in nature, but includes stalking, threatening, harassing, and making annoying telephone calls. (§ 6320.) The discretion given to the courts under the DVPA is broader than the discretion afforded in cases of general civil harassment. (*Nakamura, supra*, 156 Cal.App.4th at p. 334.)

Once an order has been issued, it may be renewed without a showing of further abuse. (§ 6345.) However, the party seeking to renew the order must show a “reasonable apprehension” that future abuse will occur in the absence of an extension of the protective order. (*Ritchie v. Konrad* (2004) 115 Cal.App.4th 1275, 1288 [court may not extend protective order, if there is an objection, without an adequate showing that the fear of future abuse is objectively reasonable.]) The court may not renew the order unless “it finds by a preponderance of the evidence that the protected party entertains a ‘reasonable apprehension’ of future abuse.” (*Id.* at 1290.) While the existence of the prior order is not conclusive evidence, it does provide support for the extension; the court should also consider whether the parties have “moved on with their lives” to weigh whether the evidence is sufficient. (*Id.* at 1291.) Where, as here, there is an assertion of a burden placed on the restrained party in the absence of a reasonable apprehension of future

physical abuse, the court must weigh the degree of risk against the significance of those burdens. (*Id.* at 1292.)

Here, the court had evidence before it of the existence of the prior order, the actions taken by Dennis during the term of that order, and the basis for Beth Ann's fears that continued harassment was likely. It also heard Dennis's concerns about the burden of continuing the order in effect. The court concluded that Dennis had not yet moved on with his life, and that improper communications would continue unless restrained. We find no abuse of discretion in the court's consideration and weighing of the evidence before it.

3. The Court's Order With Respect To Custody Is Uncertain

As described above, the parties agreed, prior to the hearing, to joint legal custody of the child, and the court signed an order to that effect. The restraining order, however, ordered sole custody to Beth Ann. Dennis contends that this effected a change in custody.

We conclude that the inconsistency in the restraining order, read with the separate custody order, could result in the conclusion that the court had ordered sole custody despite the stipulation of the parties. We cannot determine from the record whether the court in fact intended to award sole custody, and remand for the court to clarify its order.

DISPOSITION

The restraining order entered by the court is affirmed with respect to the extension of the prior restraining order. The matter is remanded for necessary clarification of the legal custody provisions. Respondent is to recover her costs on appeal.

ZELON, J.

We concur:

PERLUSS, P. J.

WOODS, J.