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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re Marriage of NAVA and  
SHAHRIAR LAVIAN.

B264615

(Los Angeles County  
Super. Ct. No. BD552329)

NAVA LAVIAN,

Respondent,

v.

SHAHRIAR LAVIAN,

Appellant.

APPEAL from an order after judgment of the Superior  
Court of Los Angeles County, Robert E. Willett, Judge. Affirmed.

Law Office of Edward J. Blum and Edward J. Blum for  
Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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## **INTRODUCTION**

Shahriar Lavian appeals from a domestic violence restraining order (DVRO) issued in favor of his former wife, Nava Lavian.<sup>1</sup> He contends the trial court abused its discretion in denying his request to continue the hearing on the DVRO due to his counsel's unavailability. We affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

Nava filed a petition for dissolution of marriage on September 3, 2011. The court entered a stipulated judgment on June 20, 2013.

On February 24, 2015 Nava filed a request for a DVRO. According to her supporting declaration, Shahriar called her home on a daily basis and sometimes left messages threatening her, her brother, and her sister. He also sent her text messages on a daily basis for no legitimate purpose. The "constant barrage" of calls and texts caused Nava fear and anxiety.

Nava's declaration recounted other actions by Shahriar that caused her to fear for her personal safety. On February 21, 2015, at their son's bar mitzvah, Shahriar walked up to her and spit in her face. He told her, "I'm going to destroy your day. This is going to be a Holocaust. This is going to be a day of mourning." He pulled a flower from a vase, threw it at her face, and told her, "The next time I throw a flower, it's going to be on your grave." He also threatened a friend of hers, saying, "I know where you live."

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<sup>1</sup> Because Shahriar and Nava Lavian share the same last name, we refer to them by their first names to avoid confusion.

On February 24 Shahriar yelled at Nava from across the street, saying, “I wish your sister dead and I can’t wait to go to her funeral. I wish you get cancer again and die.” He then followed her as she drove their son to school. She feared he would harm her.

On two different occasions in February 2015, after Nava dropped their son off at school, Shahriar drove his car up to hers, cut her off, and gave her the finger. Nava was afraid he was going to crash into her car.

On many other occasions, Shahriar followed Nava in his car. He would also show up at her home and sit outside in his car. At their son’s soccer games, Shahriar would pace back and forth behind Nava and curse at her. He said, “You should die. I wish for you to get cancer and I am going to fuck you up.”

On February 24, 2015 the court issued a temporary restraining order (TRO) and set a hearing on the DVRO for March 17. On March 17 Nava appeared at the hearing, but at Shahriar’s request, the court found good cause to continue the hearing to May 4, 2015. Shahriar waived the statutory time for the hearing. The court reissued the TRO to remain in place until the continued hearing.

At the May 4 hearing, attorney Darrick V. Tan appeared on behalf of Shahriar’s attorney, Edward J. Blum. Nava represented herself; Shahriar did not appear. Tan represented that Blum was engaged in a trial in Modesto and that Shahriar was in Israel visiting his sick father, but would return in two weeks. He requested the matter be continued until both Shahriar and Blum were available; he consented to the TRO remaining in effect until that time. The trial court found no good

cause for the continuance and held the hearing.<sup>2</sup> Nava testified, and the court admitted her declaration in support of the DVRO as her direct examination. She was available for cross-examination.

The trial court found Nava met her burden of proof to show that Shahriar committed domestic violence, and it found good cause to issue the DVRO. The court issued a DVRO to remain in place for five years. The trial court ordered Shahriar not to contact Nava except as necessary for child visitation, and to stay away from her, her home, and her car. The order permitted visitation exchanges to take place a block from Nava's home. Shahriar timely appealed.<sup>3</sup>

## DISCUSSION

“Trial courts generally have broad discretion in deciding whether to grant a request for a continuance.” (*Freeman v. Sullivant* (2011) 192 Cal.App.4th 523, 527 (*Freeman*).) A trial court abuses its discretion and commits reversible error “only when the denial of a continuance results in the denial of a fair hearing, or otherwise prejudices a party.” (*Ibid.*; accord, *In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 823 [“Reviewing courts must uphold a trial court’s choice not to grant a continuance unless the court has abused its discretion in so

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<sup>2</sup> The record on appeal does not contain a transcript of the hearing. The settled statement does not set forth the trial court’s reasoning in finding no good cause for the continuance.

<sup>3</sup> Although the trial court’s ruling on Shahriar’s motion for a continuance is not an appealable order, it is reviewable on appeal from the DVRO. (See Code Civ. Proc., § 904.1; *Freeman v. Sullivant* (2011) 192 Cal.App.4th 523, 527.)

doing.”].) The burden to demonstrate prejudice is on appellant. (*Freeman*, at p. 528.)

“Continuances are granted only on an affirmative showing of good cause requiring a continuance.” (*In re Marriage of Falcone & Fyke*, *supra*, 164 Cal.App.4th at p. 823.) California courts have found no abuse of discretion by the trial court where a party delays until the date of a hearing to request a continuance even though the party was aware of the need for a continuance prior to that date. (See *ibid.* [trial court did not abuse its discretion in denying appellant’s request for continuance of contempt hearing where she knew for over a month that she needed to obtain an attorney for the hearing, but requested a continuance on the day of the hearing]; *Roth v. Rhodes* (1994) 25 Cal.App.4th 530, 547-548 [trial court did not abuse its discretion in denying request for continuance of summary judgment hearing made on the day of hearing where “[n]o reason was given for the lateness of the request”]; cf. *Oliveros v. County of Los Angeles* (2004) 120 Cal.App.4th 1389, 1393-1396 [trial court abused its discretion in denying continuance of trial date where trial attorney advised opposing counsel immediately upon learning that he was ordered to a conflicting trial in another case and trial court based its ruling on its own need to manage its calendar].)

Here, Nava appeared at the March 17, 2015 hearing, at which Shahriar requested and was granted a continuance to May 4. Nava then appeared on May 4, only to discover that Shahriar’s attorney was again belatedly requesting another continuance of the hearing. Shahriar failed to request a continuance prior to the May 4 hearing date, nor did he provide a reason for failing to do so. Indeed, given that Shahriar was in Israel and Blum was engaged in trial, there is no reason to

believe that Shahriar and Blum could not have requested a continuance prior to the May 4 hearing date.

In addition, Shahriar has not met his burden to show he was denied a fair hearing. In *Freeman*, the petitioner sought a civil harassment restraining order against Shari Sullivant, who allegedly threatened petitioner and her family. (*Freeman, supra*, 192 Cal.App.4th at p. 525.) At the hearing on the petition, an attorney appeared for Sullivant and requested a continuance because Sullivant's retained attorney was engaged. The appearance attorney did not have the case file and was not familiar with the facts of the case. (*Id.* at p. 526.) The trial court found no good cause for the continuance, then gave the appearance attorney time to prepare, including an opportunity to review the court's file, talk to his client, and call Sullivant's retained attorney. (*Ibid.*) The trial court held the hearing and issued a permanent restraining order. (*Ibid.*) The Court of Appeal affirmed, finding Sullivant was neither denied a fair hearing nor suffered prejudice, explaining, "She was represented by counsel, who was permitted to review the case file, to adduce evidence, and to cross-examine [petitioner]." (*Id.* at p. 528.)

Similar to *Freeman*, Shahriar was represented by an attorney at the hearing, Tan, and had an opportunity to cross-examine Nava. Although Tan was not familiar with the case, the record does not reflect that he was unable to review the case file or could not talk to Blum or Shahriar before cross-examining Nava.<sup>4</sup> Indeed, Shahriar does not assert that the statements made by Nava in her declaration were false, only arguing that

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<sup>4</sup> Although Shahriar may have been difficult to reach in Israel, he only asserts as a basis for appeal the unavailability of his retained attorney.

her “declaration is rife with statements that subject themselves to cross-examination and/or the presentation of contrary evidence.”

The cases relied on by Shahriar are not to the contrary. (See *Cohen v. Herbert* (1960) 186 Cal.App.2d 488, 491, 495-496 [trial court abused its discretion in denying one week continuance of hearing on motion to appoint receiver where attorney received relevant pleadings one court day before the hearing and requested additional time to prepare]; *Crosby v. Martinez* (1958) 159 Cal.App.2d 534, 539, 541-542 [trial court abused its discretion in denying continuance during trial until afternoon session to enable attorney to call witness whose testimony was necessitated by trial court’s erroneous hearsay ruling].)

We conclude on this record that Shahriar has not met his burden to show the trial court abused its discretion in denying his requested continuance. (See *Freeman, supra*, 192 Cal.App.4th at pp. 527-528.)

## DISPOSITION

The order is affirmed.

FEUER, J.

We concur:

PERLUSS, P. J.

SEGAL, J.