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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

JOANNE SATHOKVORASAT, Appellant, v. DAVID SNYDER, Respondent.	B265998 (Los Angeles County Super. Ct. No. BD582116)

APPEAL from a judgment of the Superior Court of Los Angeles County, Christine Byrd, Judge. Reversed and remanded with directions.

Los Angeles Center for Law & Justice, Sarah Reisman, for Appellant.

David Snyder, in pro. per.; Law Offices of Guy A. Leemhuis and Guy A. Leemhuis, for Respondent.

Joanne Sathokvorasat (Sathokvorasat) appeals the trial court's denial of her request for a domestic violence restraining order against David Snyder (Snyder), the father of her child. The Domestic Violence Prevention Act (DVPA) (Fam. Code, § 6200 et. seq.)[1] defines "abuse" that authorizes issuance of such an order to include, among other things, any of the following: causing reasonable apprehension of imminent serious bodily injury, stalking, harassment, or disturbing the peace of the party seeking the order. We consider whether the trial court applied the correct legal standard when it found Snyder's conduct, as described by Sathokvorasat, did not rise to the level of abuse as defined by the DVPA.

I. BACKGROUND

Sathokvorasat filed her request for a domestic violence restraining order against Snyder in May 2015. At the hearing held by the trial court to decide whether to issue the requested restraining order, Sathokvorasat was the only witness to testify.[2] Viewed in the light most favorable to the trial court's order, the evidence established the following facts.

Sathokvorasat and Snyder began dating in early 2010, and they eventually had a son together (Minor). In September 2010, Sathokvorasat wanted to end her relationship with Snyder and tried to move out of their shared apartment. She had packed her things in her car, and when Snyder realized that she wanted to

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[1] Statutory references that follow are to the Family Code.

[2] Both sides agreed the declarations previously filed in support of and opposition to the restraining order request would be admitted, subject to cross-examination and supplementation.

leave, he held her to prevent her from leaving the apartment and began to strangle her. When Sathokvorasat tried to scream, he placed some sort of cloth in her mouth which caused her to choke. She eventually lost consciousness and then went in and out of consciousness for some period after that. At one point, Sathokvorasat threw up, and Snyder grabbed her hair and dragged her face through the vomit. The incident left bruises on her face and neck.

Less than six months later, and still in the relationship with Snyder, Snyder assaulted a female neighbor in front of Sathokvorasat. Snyder and Sathokvorasat were having dinner at the neighbor's home, and the neighbor asked Snyder to leave when he became drunk and rude. He complied, but returned five minutes later and re-entered the apartment without permission. Snyder then grabbed the neighbor by her throat and began to strangle her. The police were called, and Snyder was ultimately convicted of an assault crime as a result of the incident.

Four months after that, in April 2011, the Department of Children and Family Services (DCFS) opened a dependency case looking into the well-being of Minor. Sathokvorasat and Snyder ended their relationship in 2012, and the dependency case concluded in March 2013, with joint legal custody being awarded to both parents. The juvenile court awarded sole physical custody to Sathokvorasat, with visitation every week ordered for Snyder. The juvenile court entered an order designating a police station as the location at which Sathokvorasat and Snyder would exchange Minor for visitations.

During the visitation exchanges, Sathokvorasat would generally wait 10 or 15 minutes for Snyder to leave the police station before she left, to avoid walking out with him at the same

time. In December 2014, however, Snyder began a practice of following Sathokvorasat after these exchanges by waiting for her to leave the police station first and then following her out. On three occasions while Snyder waited for Sathokvorasat to leave (she was waiting for him to leave first), police asked Snyder to leave the station. After these three occasions, Snyder changed tactics and began waiting in his car outside the station. When Sathokvorasat would leave, he would follow her as she walked from the police station to her car or the bus stop, and he would film her doing so. According to Sathokvorasat, Snyder's practice of following and filming her left her afraid to leave the police station. To prevent him from following her when she travelled to the visitation exchanges by car, Sathokvorasat would try to park in a different spot each time, out of sight of the police station entrance.

On May 10, 2015, Sathokvorasat went to the police station to pick up Minor at the conclusion of one of his visits with Snyder. She parked her car about two and a half blocks away on a side street. After the parents exchanged custody of Minor, Sathokvorasat waited in the police station with Minor for about 10 to 15 minutes before she began to walk back to her car with him. As she approached her car, she saw Snyder sitting in a car at a stop sign behind where she had parked.

Sathokvorasat put Minor in his car seat, and as she got into the driver's seat, Snyder drove onto the street where she was parked. Sathokvorasat tried to pull out of her parking spot, but Snyder had pulled his car up next to hers so that there was not enough room for her to leave. Snyder got out of his car and began

circling her car while filming her.[3] Sathokvorasat ducked down in her car and called 911. She did not want to get out of the car, because she feared what Snyder might do. Sathokvorasat was crying and shaking as she was talking to the 911 dispatcher, and Minor was also crying and asking questions about what was happening and what Snyder was doing. Sathokvorasat stayed in her car and continued to shake until the police arrived. Following this incident, Sathokvorasat filed a request for a restraining order against Snyder.

When Sathokvorasat finished testifying at the restraining order hearing, the trial court stated it would render a ruling based "simply on the insufficiency of the evidence presented by [Sathokvorasat]," and without need to hear testimony from Snyder. The trial court stated it was inclined to find Sathokvorasat had not shown she was in reasonable apprehension of serious bodily injury during the May 10, 2015, incident, nor had she established she suffered abuse within the meaning of the DVPA.

In response, Sathokvorasat's attorney argued the DVPA's definition of abuse was broader than mere reasonable apprehension of serious bodily injury and also included stalking, harassing, or disturbing the peace of the party seeking the restraining order. Sathokvorasat's attorney argued Snyder's conduct qualified as stalking, harassment, and disturbing her peace given Snyder's history of physical violence and his history

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[3] The video recorded by Snyder (which was played during the restraining order hearing), showed him circling Sathokvorasat's car and filming her for about one minute and fourteen seconds before he got back into his car and drove away. Sathokvorasat testified the video did not capture the entire incident, which by her recollection lasted closer to five minutes.

of following Sathokvorasat, including the latest incident in which he effectively trapped her in her car.

The trial court was not persuaded and instead found as follows: "[T]here is no reasonable apprehension of imminent or serious bodily injury at the time of the videotaped incident. [¶] And when I say 'reasonable apprehension,' it means that a reasonable person would not have an apprehension of imminent or serious bodily injury even a person who had a prior history of—of the incidents that this petitioner and this respondent had. [¶] With respect to the question of stalking, harassing, and disturbing the peace, the court finds that the evidence is insufficient to establish stalking and harassing—it's insufficient to establish a pattern which would support a claim of harassment. [¶] And as far as disturbing the peace, disturbing the peace of mind of [Sathokvorasat,] the court finds that the incident involved in the car again is insufficient because it's not a reasonable apprehension."

Sathokvorasat's lawyer objected to the trial court's findings, arguing there was no requirement of reasonable apprehension under the DVPA. The trial court responded by observing that one of the definitions of abuse under the DVPA was reasonable apprehension of imminent or serious bodily injury, and there was no reasonable apprehension in this case. Sathokvorasat's lawyer again sought clarification, asking if the trial court was finding, in addition to finding that there was no reasonable risk of imminent fear, that Snyder's conduct did not rise to the level of disturbing the peace "as [the trial court] defined and underst[ood] the statutes to be." The trial court stated it was ruling against Sathokvorasat "separately and independently on each of the four grounds," namely, reasonable

apprehension of imminent or serious bodily injury, stalking, harassing, and disturbing the peace.

II. DISCUSSION

Sathokvorasat contends the evidence considered by the trial court was sufficient to establish each of the four argued bases for issuing a restraining order: causing reasonable apprehension of imminent serious bodily injury, stalking, harassing, or disturbing the peace. On the issue of disturbing the peace in particular, Sathokvorasat argues the trial court only concluded the evidence was insufficient because it applied the wrong legal standard, i.e., it believed a showing of reasonable apprehension of bodily injury was required.

While we presume a trial court is aware of and follows applicable law, we do so only absent indications to the contrary. (*Peake v. Underwood* (2014) 227 Cal.App.4th 428, 447.) We are persuaded there is such an indication in the record before us, and we therefore cannot presume the trial court followed applicable law when deciding Sathokvorasat's peace had not been disturbed. Specifically, the trial court's statement that Sathokvorasat's peace had not been disturbed "because it's not a reasonable apprehension" indicates the court did not apply case law that holds a party seeking a restraining order need only show her mental or emotional calm has been disturbed. We therefore remand the matter to the trial court for a redetermination under the correct legal standard.

A. Standard of Review

We review for abuse of discretion a trial court's order on a request for a domestic violence restraining order under the

DVPA. (*In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1495 (*Nadkarni*).) "This standard of review affords considerable deference to the trial court provided that the court acted in accordance with the governing rules of law." (*Mejia v. City of Los Angeles* (2007) 156 Cal.App.4th 151, 158.) "'All exercises of discretion must be guided by applicable legal principles . . . which are derived from the statute under which discretion is conferred. [Citations.] If the court's decision is influenced by an erroneous understanding of applicable law or reflects an unawareness of the full scope of its discretion, the court has not properly exercised its discretion under the law. [Citation.] Therefore, a discretionary order based on an application of improper criteria or incorrect legal assumptions is not an exercise of informed discretion and is subject to reversal. [Citation.]'" (*Rodriguez v. Menjivar* (2015) 243 Cal.App.4th 816, 819, quoting *Farmers Ins. Exchange v. Superior Court* (2013) 218 Cal.App.4th 96, 106.)

B. Analysis

The DVPA permits trial courts to issue a protective order to restrain any person for the purpose of preventing acts of domestic violence, abuse, and sexual abuse, and to provide a period of separation for persons involved in domestic violence. (§§ 6300, 6220.) Under the DVPA, "abuse" is defined to include: (1) intentionally or recklessly causing or attempting to cause bodily injury, (2) sexual assault, (3) placing a person in reasonable apprehension of imminent serious bodily injury to that person or to another, or (4) engaging in any behavior that has been or could be enjoined pursuant to Section 6320. (§ 6203, subd. (a).) Section 6320 provides that "[t]he court may issue an ex parte order

enjoining a party from[,]" among other things, "stalking, . . . harassing, . . . or disturbing the peace of the other party . . . ." (§ 6320, subd. (a).)

The DVPA itself does not further define what it means to disturb the peace of another party, as set forth in section 6320. However, in a decision we issued prior to the evidentiary hearing below, *Burquet v. Brumbaugh* (2014) 223 Cal.App.4th 1140 (*Burquet*), we found the interpretation of "disturbing the peace" in *Nadkarni*, *supra*, 173 Cal.App.4th 1483 "well reasoned," and we adopted *Nadkarni*'s reasoning in resolving the question presented in that case. (*Burquet*, *supra*, at pp. 1146-1147.) We do so again here, quoting from the *Nadkarni* court's discussion at some length.

"'In statutory construction cases, our fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. [Citation.]' (*Estate of Griswold* (2001) 25 Cal.4th 904, 910-911 [108 Cal.Rptr.2d 165, 24 P.3d 1191].) '"We begin by examining the statutory language, giving the words their usual and ordinary meaning." [Citation.] If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs. [Citations.] If there is ambiguity, however, we may then look to extrinsic sources, including the ostensible objects to be achieved and the legislative history. [Citation.] In such cases, we """select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences."""' [Citation.]' (*Id.* at p. 911 [108 Cal.Rprtr.2d 165, 24 P.3d 1191].)

"To determine the plain meaning of statutory language, we may resort to the dictionary. 'When attempting to ascertain the ordinary, usual meaning of a word [in a statute], courts appropriately refer to the dictionary definition of that word.' (*Wasatch Property Management v. Degrate* (2005) 35 Cal.4th 1111, 1121–1122 [29 Cal.Rptr.3d 262, 112 P.3d 647].) 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, a country, etc.); to stir up, trouble, disquiet.' (Oxford English Dictionary Online (2d ed.1989) <http:// www.oed.com> [as of Apr. 24, 2009].) 'Peace,' as a condition of the individual, is ordinarily defined as 'freedom from anxiety, disturbance (emotional, mental or spiritual), or inner conflict; calm, tranquillity.' (*Ibid.*) 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.

"Our interpretation of the phrase 'disturbing the peace of the other party' in section 6320 also comports with the legislative history of the DVPA. As enacted in 1993 (Stats.1993, ch. 219, § 154), the DVPA collected earlier provisions for the issuance of domestic violence restraining orders from the former Family Law Act (former Civ.Code, § 4359), the former Domestic Violence Prevention Act (former Code Civ. Proc., § 540 et seq.) and the Uniform Parentage Act (former Civ.Code, § 7020). (See Cal. Law Revision Com. com., 29F West Ann. Fam.Code (2004 ed.) foll. § 6200, p. 675.) These provisions all expressly authorized a domestic violence restraining order that enjoined 'disturbing the peace' of the other party. (See Mills & McNamar, California's Response to Domestic Violence (1981) 21 Santa Clara L.Rev. 1, 8;

In re Marriage of Van Hook (1983) 147 Cal.App.3d 970, 979, 195 Cal.Rptr. 541; *Review of Selected 1979 Cal. Legislation* (1979) 11 Pacific L.J. 465.)

"The 1979 Domestic Violence Restraining Act (former Code Civ. Proc., § 540 et seq.), like the current DVPA (§ 6200), had a 'protective purpose' that was 'broad both in its stated intent and its breadth of persons protected.' (*Caldwell v. Coppola* (1990) 219 Cal.App.3d 859, 863 [268 Cal.Rptr. 453].) The 1979 Act was intended to 'provide more protective orders to a broader class of victims of domestic violence,' and 'specifically sets forth the orders which may be issued by the court. These orders will enable the court to provide greater relief to victims in more areas of need.' (First Rep. of the Advisory Com. on Family Law to the Sen. Subcommittee on the Admin. of Justice, Domestic Violence (1978), p. 19.) Thus, as originally enacted, the DVPA reflected the Legislature's goal of reducing domestic violence and its recognition that '[i]t is virtually impossible for a statute to anticipate every circumstance or need of the persons whom it may be intended to protect. Therefore, the courts must be entrusted with authority to issue necessary orders suited to individual circumstances, with adequate assurances that both sides of the dispute will have an opportunity to be heard before the court.' (*Id.* at p. 18–19.)

"Accordingly, we believe that the Legislature intended that the DVPA be broadly construed in order to accomplish the purpose of the DVPA. Therefore, the plain meaning of the phrase 'disturbing the peace' in section 6320 may include, as abuse within the meaning of the DVPA, a former husband's alleged conduct in destroying the mental or emotional calm of his former wife . . . ." (*Nadkarni*, *supra*, 173 Cal.App.4th at pp. 1497-1498.)

Nothing in the record demonstrates the trial court applied this legal standard in ruling on Sathokvorasat's request for a restraining order. Rather, when finding Sathokvorasat had not met the statutory "disturbing the peace" standard, the trial court stated: "And as far as disturbing the peace, disturbing the peace of mind of the petitioner, the court finds that the incident involved in the car again is insufficient because it's not a reasonable apprehension." As the trial court defined it, "reasonable apprehension" means "a reasonable person would not have an apprehension of imminent or serious bodily injury even a person who had a prior history of—of the incidents that this petitioner and this respondent had." The trial court's comments on the record therefore demonstrate it incorrectly found Sathokvorasat's peace had not been disturbed because she did not show she was in apprehension of imminent or serious bodily injury. By applying an incorrect legal standard when deciding whether a domestic violence restraining order should issue to protect Sathokvorasat, the trial court abused its discretion. (*Rodriguez v. Menjivar*, *supra*, 243 Cal.App.4th at p. 820 ["If the court's decision is influenced by an erroneous understanding of applicable law or reflects an unawareness of the full scope of its discretion, the court has not properly exercised its discretion under the law"].)

Had the trial court applied the correct legal standard it may well have ruled differently, particularly because it considered only Sathokvorasat's testimony with no contrary evidence. As Sathokvorasat testified at the hearing, Snyder had been following Sathokvorasat on occasions over the course of six months prior to the May 10, 2015, incident. She knew he had a history of physical violence, and she took measures to avoid

unnecessary interactions with him, including waiting in the relative safety of a police station for him to leave before she did. Then things escalated on May 10th. Whereas Snyder had followed and filmed Sathokvorasat from a distance in the past, he physically restricted her movement by pulling his car up right next to hers, thereby preventing her from leaving her parking spot. Sathokvorasat was sufficiently concerned that she ducked down in her car and called 911 when Snyder approached. As she was speaking with the 911 dispatcher, she was shaking and crying. Minor was also crying and asking what Snyder was doing. Then after Snyder left, Sathokvorasat continued to shake in her car until the police arrived. Thus, on the record as it reaches us on appeal, we hold reversal is required. (§ 6203, subd. (b); *In re Marraige of Evilsizor & Sweeney* (2015) 237 Cal.App.4th 1416, 1425; *Nadkarni*, *supra*, 173 Cal.App.4th at p. 1499 [actual infliction of physical injury is not required, and non-violent conduct can support a finding of abuse]; see also *Sabato v. Brooks* (2015) 242 Cal.App.4th 715, 724-725 ["Reversal is justified only when the court, after an examination of the entire cause, including the evidence, is of the opinion that it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error"], internal quotation marks and citations omitted.)

Because we reverse the trial court's order, we need not address Sathokvorasat's remaining contentions regarding the sufficiency of the evidence to demonstrate abuse in the form of reasonable apprehension of serious bodily injury, stalking, or harassment.

DISPOSITION

The order denying Sathokvorasat's request for a restraining order under the DVPA is reversed. The matter is remanded to the trial court for further proceedings consistent with the views expressed in this opinion, including, in the trial court's discretion, the further taking of evidence. Sathokvorasat is to recover her costs on appeal.

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BAKER, J.

We concur:

TURNER, P.J.

KRIEGLER, J.