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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

NILOOFAR FARBOODI, Appellant, v. AMIR SALAR TAVANGAR, Respondent.	B279875 (Los Angeles County Super. Ct. No. GQ013900)

APPEAL from an order of the Superior Court of Los Angeles County, R. Carlton Seaver, Judge. Affirmed in part and reversed in part.

Lieber & Galperin and Yury Galperin for Appellant.

Maven Law Firm and Yan Goldshteyn for Respondent.

Appellant Niloofar Farboodi sought a domestic violence restraining order against a former romantic partner, respondent Amir Salar Tavangar. She withdrew her request for a restraining order after the trial court refused to seal its file in the matter. The trial court then deemed Tavangar the prevailing party and awarded him attorney fees and costs. Farboodi appealed.

We conclude the appellate record is insufficient to permit substantive review of Farboodi's request to seal, and thus we affirm that portion of the trial court's order. We reverse the award of costs and fees, however, because we conclude Tavangar was not the prevailing party.

FACTUAL AND PROCEDURAL BACKGROUND

A. Farboodi's Request for a Domestic Violence Restraining Order

Farboodi is an Iranian national who is in the United States on a student visa. In May 2016, Farboodi filed an ex parte request for a domestic violence restraining order against Tavangar, with whom she had been in a romantic relationship.[1] In a declaration attached to her request, Farboodi stated that Tavangar had threatened to kill her after she did not agree with him about a "family related matter."

The trial court issued a temporary restraining order (TRO) on May 31 and set the matter for hearing. On June 20, following a proceeding at which Tavangar did not appear, the trial court issued a three-year domestic violence restraining order. The trial

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1 All further dates refer to 2016 unless otherwise specified.

court ordered the transcript of the June 20 hearing sealed at Farboodi's request "pending further order of the court."[2]

B. Tavangar's Motion to Set Aside the Restraining Order

On July 13, Tavangar moved to set aside the restraining order on the ground that he had not been served with notice of the June 20 hearing. The trial court noted it was "concerned" about inconsistencies in the process server's declaration and set aside the restraining order. It then set the matter for a contested hearing and, in the meantime, reimposed the TRO.

Tavangar's counsel asked that the court unseal the June 20 hearing transcript "so we can prepare for trial." The court declined to unseal the transcript, but suggested the parties "have some sort of deal . . . that [Tavangar] gets to look at it; so if you [Farboodi's counsel] want to get yourself a transcript on your own dime and let him see it, I think that would be fine." The parties agreed to do so.

C. Farboodi's Motion to Seal the Case File

On September 16, Farboodi made a motion "that the entire record of this matter, including, but not limited to, pleadings, transcripts, and the court file, be permanently sealed." In support, she asserted that Iran's Penal Code criminalizes sexual conduct between unmarried men and women, which it punishes by flogging or death. Thus, "[t]he testimony she has provided and which she will provide the Court includes conduct that is addressed by the Iranian Penal Code. [Tavangar] can disclose court records to Iranian government officials and such a disclosure may jeopardize [Farboodi's] health, safety or liberty

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[2] The transcript of the June 20 hearing is not a part of our appellate record.

when she returns to Iran." Farboodi urged that "[s]ealing the record of this case, including the transcript of proceedings, is the least restrictive means to achieve the interest of protecting [her] safety and physical security."[3] In the alterative, Farboodi asked that information "such as names, case number, and information about the Court be permanently redacted."

On October 3, the court ruled that pending a hearing on the merits of Farboodi's request for a restraining order, Tavangar's counsel could obtain copies of the record, including the hearing transcripts, and could show the record to Tavangar, but that Tavangar should not be permitted to make copies of it. The court indicated that its order was interlocutory, and that it would make a final order on Farboodi's request to seal when it ruled on her request for a restraining order.

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[3] Farboodi asserted: "Disclosure of copies of any part of the record to [Tavangar] may undermine any protection that [Farboodi] obtains from a Domestic Violence Restraining Order. [Farboodi] believes that [Tavangar] has the intention of showing copies of documents from these proceedings to Iranian officials with the purpose of endangering [Farboodi] and possibly her family members who currently reside in Iran. [Farboodi's] testimony [on] June 20, 2016 revealed facts regarding her and [Tavangar's] relationship that, if known to Iranian authorities, may be a basis for criminal penalties against [Farboodi] in Iran. To avoid expressly stating in this motion the facts which [Farboodi] wants to keep [Tavangar] from disseminating, [Farboodi] would refer the Court to the transcript from the June 20, 2016 hearing, beginning page 9, line 23, and ending page 10, line 3; also on page 5, lines 19–21; and page 7, line 25."

D. Farboodi's Renewed Motion to Seal the Case File and Withdrawal of Request for a Restraining Order

At a November 8 hearing, Farboodi's counsel asked to "deal with the matter of sealing the record before we proceed on the restraining order." The court indicated that a temporary sealing order was in place, and that it intended to issue a final order when it disposed of the request for restraining order. The court explained: "I start from the position that this is a court of public record, that is, anything that we do here is a matter of public record. And the circumstances under which [records are sealed] are going to be limited and we have to have [a] fairly specific . . . legal showing to do something else." Farboodi's counsel stated that Farboodi was unwilling to testify without an assurance that her testimony would remain sealed, and she therefore withdrew her request for a restraining order.

On December 2, the court denied Farboodi's motion to seal the record, concluding that Farboodi had not made a sufficient showing under California Rules of Court, rules 2.550 and 2.551, of a substantial probability that her interest would be prejudiced if the record were not sealed. The court further found Tavangar to be the prevailing party, and it ordered Farboodi to pay him attorney fees of $5,623 and costs of $488.

Farboodi timely appealed from the December 2 order.

DISCUSSION

Farboodi raises two issues on appeal.[4] First, she contends substantial evidence supported her motion to seal the court

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[4] An order sealing or unsealing documents "is appealable as a final order on a collateral matter." (*In re Marriage of Nicholas* (2010) 186 Cal.App.4th 1566, 1573 & fn. 3; see *Smith v. Smith* (2012) 208 Cal.App.4th 1074, 1084 ["[o]rders allowing or

record, and thus the trial court should have granted it. Second, she urges the trial court erred in granting Tavangar's request for attorney fees because Tavangar was not the prevailing party and Farboodi lacks the ability to pay Tavangar's fees.

I.

Order Denying Motion to Seal Records

A. Legal Standards

The procedures for sealing trial court records are set out in California Rules of Court, rules 2.550–2.551.[5] These rules provide that unless confidentiality is required by law, court records are presumed to be open. (Rule 2.550(c).) A party requesting that a record be filed under seal must file a motion or an application for an order sealing the record, accompanied by a memorandum and a declaration containing facts sufficient to justify the sealing. (Rule 2.551(b)(1).) A party who already has access to the records to be placed under seal must be served with a complete, unredacted version of all papers as well as a redacted version; other parties must be served with only the public redacted version. (*Id.*, (b)(2).)

A court may order that a record be filed under seal only if the court expressly finds facts that establish the following:

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disallowing access to confidential court records have regularly been held appealable"]; *Mercury Interactive Corp. v. Klein* (2007) 158 Cal.App.4th 60, 76 ["[t]he collateral order exception has been applied in . . . cases involving appellate review of orders concerning the sealing of court records"].)

[5] All subsequent rule references are to the California Rules of Court.

"(1) There exists an overriding interest that overcomes the right of public access to the record;

"(2) The overriding interest supports sealing the record;

"(3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed;

"(4) The proposed sealing is narrowly tailored; *and*

"(5) No less restrictive means exist to achieve the overriding interest." (Rule 2.550(d), italics added.)

An order sealing the record must direct the sealing of only those documents and pages that contain the material that needs to be placed under seal. All other portions of each document or page must be included in the public file. (Rule 2.550(e)(1).)

We review the trial court's sealing order for an abuse of discretion. Under this standard, we consider whether "substantial evidence supports the trial court's express or implied findings that the requirements for sealing are not met." (*Overstock.com, Inc. v. Goldman Sachs Group, Inc.* (2014) 231 Cal.App.4th 471, 492.) We will affirm if substantial evidence supports the court's implied findings (*ibid.*), and reverse only if "the evidence compels a finding in favor of the appellant as a matter of law" (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1527–1528).

B. The Order Must Be Affirmed Because the Appellate Record Provided Is Inadequate to Support Reversal

We assume without deciding that Farboodi established the first three elements of rule 2.550(d)—i.e., that there is an overriding interest that overcomes the right of public access, the overriding interest supports sealing the record, and a substantial probability exists that the overriding interest will be prejudiced if the record is not sealed. To reverse, however, we would also have

to conclude as a matter of law that the proposed sealing "is narrowly tailored" and "[n]o less restrictive means exist to" protect Farboodi's interests. (Rule 2.550(d) & (e).) Plainly, we cannot make this determination without reviewing all of the documents Farboodi wishes to seal—in this case, the entire superior court file. Farboodi has provided us with only portions of that file, however. Among the trial court documents omitted from our appellate record are most of the trial court's minute orders and, significantly, the transcript of the June 20, 2016 hearing that Farboodi alleges contains testimony that will put her in danger when she returns to Iran.

Although we are sympathetic to Farboodi's safety concerns, we cannot find the trial court erred by denying a request to seal records we cannot review. As the party challenging the trial court's order, it was Farboodi's obligation to provide us with an adequate record to permit us to review her appellate claims. Because she has not done so, we must affirm the trial court's sealing order. (E.g., *Vo v. Las Virgenes Municipal Water Dist.* (2000) 79 Cal.App.4th 440, 447 [affirming judgment because "the record provided by defendant was inadequate to conclude the trial court abused its discretion": "We cannot presume the trial court has erred. The Court of Appeal has held: ' "A judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent. . . ." ' "].)

II.

Order Granting Attorney Fees

Farboodi challenges the trial court award of attorney fees and costs, urging that Tavangar was not the prevailing party,

and Farboodi lacks the ability to pay his fees. For the reasons that follow, we reverse the fee order.

It is undisputed that a trial court has discretion to award attorney fees and costs to the prevailing party in a proceeding for a domestic violence restraining order. (Fam. Code, § 6344, subd. (a); *Faton v. Ahmedo* (2015) 236 Cal.App.4th 1160, 1168.) We review the trial court's determination of whether a party prevailed in the litigation for an abuse of discretion. (*Loeffler v. Medina* (2009) 174 Cal.App.4th 1495, 1509.)

Where a petitioner voluntarily dismisses her claim against a respondent, there may be no prevailing party for purposes of an attorney fee award. (E.g., *Galan v. Wolfriver Holding Corp.* (2000) 80 Cal.App.4th 1124, 1129 [no prevailing party where plaintiffs dismissed claims against defendant because they "made a practical determination that it was not worth pursuing [defendant] through what would have been a costly trial"]; *Castro v. Superior Court* (2004) 116 Cal.App.4th 1010, 1022 [withdrawal of lis pendens did not necessarily entitle other party to prevailing party attorney fees because "[t]here may be reasons for the withdrawal . . . that are unrelated to the merits of the motion [to expunge lis pendens]."].) That is the case here. As we have said, Farboodi initially obtained a temporary restraining order and a temporary sealing order, but then withdrew her request for a permanent restraining order not for any reason related to the merits of her request, but because the trial court declined to seal the court records and she feared serious consequences in her home country of Iran. In these unique circumstances, therefore, we conclude that Tavangar was not the prevailing party and we reverse the award of attorney fees and costs.

DISPOSITION

The December 2, 2016 order is reversed with respect to the award of attorney fees and costs, and is otherwise affirmed. Each party shall bear his or her own costs on appeal.

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EDMON, P. J.

We concur:

LAVIN, J.

EGERTON, J.