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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

BROOKE M.,

Plaintiff and Respondent,

v.

FRANCESCA INDIGO JACOBS,

Defendant and Appellant.

B279447

(Los Angeles County
Super. Ct. No. SS026431)

APPEAL from an order of the Superior Court of Los Angeles County, Gerald Rosenberg, Judge. Affirmed.

Francesca Jacobs, in pro. per., for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Appellant Francesca Indigo Jacobs (Jacobs), in propria persona, appeals from the trial court's issuance on September 29, 2016 of a civil harassment restraining order after hearing (the restraining order) in favor of Brooke M. Brooke M. has not filed a brief or otherwise appeared on appeal. We affirm because of the inadequacy of the record and resulting failure to demonstrate error by the trial court.

FACTUAL AND PROCEDURAL SUMMARY

A. Background

On August 12, 2016, Brooke M. filed a petition pursuant to Code of Civil Procedure section 527.6, seeking a civil harassment restraining order against Jacobs. The record on appeal does not include a copy of that petition or a description of Brooke M.'s allegations in the petition.

On September 29, 2016, the trial court denied Jacobs's request for a "continuance to obtain counsel" and conducted a hearing at which Brooke M., Jacobs, and witness Dina Black were sworn and testified. Jacobs does not provide a transcript of the hearing, a settled statement, or any other description of the testimony. The only information we have about that hearing is the trial court's minute order and the restraining order itself. At the conclusion of the hearing, the court found clear and convincing evidence supporting Brooke M.'s request for a restraining order. The restraining order was signed and filed the same day.

The restraining order sets forth that Brooke M. was represented at the hearing by attorney Niki Ghazian, and Jacobs represented herself. It requires Jacobs to stay at least 100 yards away from Brooke M.'s home, car and workplace, and prohibits

Jacobs from contacting and harassing Brooke M. The restraining order expires on September 29, 2019.

Jacobs filed a notice of appeal on October 11, 2016. On December 23, 2016, she requested calendar preference and expedited review, which we denied on February 8, 2017.

B. Record on Appeal

Jacobs did not request that Brooke M.'s petition be included in the record in her initial designation of the record. She also elected to proceed without a record of the oral proceedings and testimony from the hearing, and acknowledged that she “understand[s] that without a record of the oral proceedings in the superior court, the Court of Appeal will not be able to consider what was said during those proceedings in determining whether an error was made in the superior court proceedings.”

In her notice designating record on appeal (designation), Jacobs requested the clerk include three documents dated September 29, 2016: “Continuance—Evidence of [Penal Code section] 148.5—Perjury Workplace Violence,” “Witness Statements—Submitted in Continuance (C.Ht. [Certified Licensed Hypnotherapist] Tommy Lee Raye),” and “Witness Statements—Addition on [Detective] Black Misconduct (Fred Garcia, [Licensed Investigator]).” Jacobs also requested that the clerk include two exhibits, exhibit I and exhibit II, which she described as “[p]laintiff ([Pen. Code, §] 324) presented false evidence.”

In the designation, Jacobs indicated on appeal she would address the issue of a missing continuance request and the trial court's failure to review that continuance request or return it to Jacobs, as well as witness statements and “other evidence of daily whereabouts of [b]usiness and other professional witnesses.” She also listed the trial court's failure to release “evidence of

Dep[artment] K audio of court hearing” and asserted that Detective Black “lied under oath—audio record needed as evidence.”
(Capitalization omitted.)

On June 22, 2017, the clerk of the superior court notified Jacobs that the five documents requested in her designation were missing from the court file, the clerk had conducted a search for those documents, and “the document(s) have not been located nor copies thereof supplied by parties and/or counsel as requested.”

On September 5, 2017, Jacobs filed a motion to augment the record, which we granted on September 25, 2017. The record was augmented with the following documents attached to Jacobs’s motion to augment:

(1) photographs of an automobile labeled as “[c]ar [s]cratched while parked in driveway evening” and “[n]ail got hammered into my tire in the evening . . . false claim—evidence” (capitalization omitted);

(2) copies of Jacobs’s letters to Brooke M. asking Brooke M. to cease and desist defaming Jacobs with statements including: (a) that Jacobs appeared daily at Brooke M.’s home and peeked into windows; (b) Jacobs is “a mentally unstable homeless transient;” (c) Jacobs keyed and broke the bumper off Brooke M.’s car; (d) Jacobs disrupted city council meetings; (e) Jacobs “is a serious criminal and a stalker;” and (f) Jacobs “is a threat to the City of West Hollywood and our relations;”

(3) letters from Fred Garcia, a licensed investigator, and a declaration from Tommy Lee Raye, a hypnotherapist, describing Jacobs’s work as a community and victim advocate and attesting to her good character;

(4) an Internal Revenue Service notice assigning an employer identification number to an LLC in which Jacobs is the sole member;

(5) a letter from Jacobs to the City of West Hollywood Planning Commission inquiring about a hotel project;

(6) an application filed in a different case on August 30, 2016, by Jacobs for a workplace violence restraining order (WV-100) with the original respondent's name crossed out and Brooke M.'s name handwritten on the line identifying the "Person From Whom Protection is Sought;" and

(7) records relating to the timing of Jacobs's access to a 24 Hour Fitness gym.

In her motion to augment, Jacobs represented that these documents would "exhibit[] support to [p]laintiff's photo evidence submitted that was false and destroying the very evidence of both the [d]efendant's witnesses and even electronic verification of [. . .] Jacob[s]'s whereabouts and community and business credibility."¹

¹ In her declaration accompanying her preference motion, Jacobs asserted that at the time of "being alleged 'viewed at Brooke [M.'s] home,'" she was "assisting a [h]uman [t]rafficking victim and family and in courts assisting [. . .] client and two other cases." Jacobs further attested that fingerprint evidence from her gym would show her whereabouts at 1:00 a.m. She further referenced lost documents and "falsified" photographs showing "damages to auto and home."

DISCUSSION

A civil harassment restraining order is “appealable as an appeal from an order granting an injunction.” (*R.D. v. P.M.* (2011) 202 Cal.App.4th 181, 187; Code Civ. Proc., § 904.1, subd. (a)(6).)

Fundamental to appellate review is the principle that an appealed judgment or order is presumed correct. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) “‘All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.’ [Citations].” (*Ibid.*)

To overcome this presumption, an “appellant must provide an adequate appellate record demonstrating error. [Citation.] ‘A necessary corollary to this rule [is] that a record is inadequate . . . if the appellant predicates error only on the part of the record he [or she] provides the trial court, but ignores or does not present to the appellate court portions of the proceedings below which may provide grounds upon which the decision of the trial court could be affirmed.’ [Citation.]’ Where the appellant fails to provide an adequate record of the challenged proceedings, we must presume that the appealed judgment or order is correct, and on that basis, affirm.” (*Jade Fashion & Co., Inc. v. Harkham Industries, Inc.* (2014) 229 Cal.App.4th 635, 644.) These rules apply whether an appellant is represented by counsel or is self-represented, as Jacobs is here. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1247.)

Jacobs’s brief presents challenges in discerning her arguments as to why the trial court erred in issuing the restraining order. Jacobs’s arguments appear to center around (1) the trial court’s refusal to grant a continuance to obtain counsel and cross-examine Brooke M.; (2) Jacobs’s community advocacy work showing

that she was not a threat; (3) the trial court's crediting of Brooke M.'s false photographs and testimony about Jacobs's vandalizing Brooke M.'s car and breaking into her home; (4) the trial court's refusal to hear Jacobs's "two [e]xpert [w]itnesses and associates . . . presenting reference to their daily working relations and additional business electronic evidence of the nightly whereabouts of [. . .] Jacobs"; (5) the superior court's loss of "[t]hese [e]xhibits"; (6) Brooke M.'s counsel's withdrawal as proof that Brooke M. falsified her testimony; and (7) being improperly arrested while she was served with " 'a civil [restraining] order application.' "

The pivotal problems with these arguments are threefold: first, we do not have the petition against which to gauge the relevance of evidence; second, there is no transcript or settled statement that would demonstrate that Jacobs even proffered the documents that appear in her augmented record or established their relevance to the court's decision; and third, Jacobs fails to demonstrate the relevance of some of her arguments to the restraining order at issue here.

Jacobs relies on documents extolling her good reputation in the advocacy community and a purported illegal arrest relating to a "civil [restraining] order application." Even if we were to assume that the application to which Jacobs is referring is the August 30, 2016 workplace violence restraining order application in her motion to augment the record, she does not explain how that application or arrest is relevant to the September 29, 2017 restraining order at issue here. Other than the statement in her appellate brief, the record contains no evidence of any arrest.

As for the good character references and documents detailing Jacobs's community advocacy work, Jacobs asserts that they do not support a finding of threat to Brooke M. She explains "her simple

communication with the City of West Hollywood concerning her alliances were not at any time ever connected to . . . [Brooke M.].” Nowhere in her brief, however, does Jacobs connect how these documents and references address Brooke M.’s claims that led to the trial court’s issuance of the restraining order, or that the trial court erred in issuing that order. Without a copy of the petition or any record of the trial court’s hearing, we are disabled from considering Jacobs’s arguments based on these documents.

The same is true for the two expert witnesses whom Jacobs contends were not permitted to testify. Although Jacobs does not identify these experts, we presume them to be Messrs. Garcia and Raye. As noted above, their letter and declaration attest to Jacobs’s work as a community and victim advocate and her good character; they do not reference any interaction between Brooke M. and Jacobs. Without a copy of the petition and any record of the September 29, 2017 hearing, we simply cannot discern the relevance of any such testimony to the restraining order at issue here, much less how the exclusion of Garcia’s and Raye’s testimony demonstrates error below.

Jacobs asserts the trial court disallowed evidence of her “nightly whereabouts.” Presumably, that evidence included the records of her access to the 24 Hour Fitness gym attached to her motion to augment. Those records detail entries for various dates in the daytime and nighttime during the March 2016 through May 2016 time period. Jacobs fails to show the relevance of those time entries to the restraining order here, and we are unable to discern relevance without a copy of the petition and a record of the trial court’s hearing. Without a record of Brooke M.’s testimony, we have the same problem in evaluating Jacobs’s argument that the trial

court did not allow her to cross-examine Brooke M. and that this led to reversible error.

Jacobs also criticizes the trial court for crediting photographs of damages to Brooke M.'s car that Jacobs contends were falsified. She presents no evidence of any such falsification other than her labeling of the photographs attached to her motion to augment the record. To the extent she asks this court to reweigh the trial court's credibility determinations, we decline. (*City of Glendale v. Marcus Cable Associates, LLC* (2014) 231 Cal.App.4th 1359, 1385 [“ ‘appellate court does not reweigh the evidence or evaluate the credibility of witnesses, but rather defers to the trier of fact’ ”].)

Jacobs further criticizes the trial court for not granting her continuance request. Presumably, she is referring to the request for a continuance to obtain counsel referenced in the court's September 29, 2017 minute order. There is nothing in the record, or Jacobs's brief, connecting the denial of that continuance with the court's issuance of the restraining order.

Jacobs contends that Brooke M.'s counsel withdrew from the representation to “protect her practice from any ethics violations, upon evidence presented of her client to perjure her testimony.” The record does not contain a motion to withdraw, a minute order granting such a motion, or any objection by Jacobs preserving her argument for appeal. (*Hepner v. Franchise Tax Bd.* (1997) 52 Cal.App.4th 1475, 1486 [“[p]oints not raised in the trial court will not be considered on appeal”].) Jacobs also fails to demonstrate the relevance of that withdrawal other than Jacobs's supposition that opposing counsel thought Brooke M. was lying.

Jacobs argues that she provided the trial court with a declaration of a hypnotherapist, who purportedly would confirm that Jacobs was providing services and therapy to others “during

the exact same time” of a police report filed by Brooke M. regarding Jacobs’s actions. Jacobs states that the trial court did not review that declaration, which she represents is in the augmented record. The only declaration of a hypnotherapist in the augmented record is Raye’s. Nowhere in that declaration does Raye reference working with Jacobs at the time Brooke M. filed a police report against Jacobs.²

In sum, the record produced by Jacobs is inadequate to support her contentions that the trial court erred in granting the restraining order at issue here. “The appellate court is not required to search the record on its own seeking error.’ [Citation.] Thus, ‘[i]f a party fails to support an argument with the necessary citations to the record, . . . the argument [will be] deemed to have been waived.’ ” (*Nwosu v. Uba, supra*, 122 Cal.App.4th at p. 1246.) Accordingly, under the authorities set forth above, we must presume that the trial court’s decision was correct, and affirm. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295-1296; *Denham v. Superior Court, supra*, 2 Cal.3d at p. 564.)

² Jacobs argues that the police report and statements described in Jacobs’s cease and desist letter in the augmented record are defamatory. Once again, she fails to connect such a defamation claim to review of the restraining order before us.

DISPOSITION

The order of the trial court is affirmed. Brooke M. is awarded costs on appeal, if any.

NOT TO BE PUBLISHED.

BENDIX, J.*

We concur:

CHANEY, Acting P. J.

JOHNSON, J.

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