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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

MARION DeMELLO LIONEL,

Plaintiff and Respondent,

v.

EVAN LIONEL,

Defendant and Appellant.

B282168

(Los Angeles County  
Super. Ct. No. PQ012729)

APPEAL from an order of the Superior Court of  
Los Angeles County. Virginia Kenny, Judge. Reversed and  
vacated.

Evan Lionel, in pro. per., for Defendant and Appellant.

Leigh Datzker, for Plaintiff and Respondent.

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Appellant Evan Lionel (Evan)<sup>1</sup> appeals from a February 24, 2017 order permanently renewing a Domestic Violence Restraining Order that originally was issued against him on February 10, 2012. He argues the order must be reversed because the Request to Renew Restraining Order was served upon him by mail, rather than by personal service as required by Family Code section 243. He contends he never received the service copy through the mail, did not know about the hearing and therefore did not appear at the hearing where the restraining order was renewed. We reverse the order renewing the restraining order.

### **BACKGROUND**

Marion DeMello Lionel (Marion), Evan's former spouse, obtained a Domestic Violence Restraining Order against Evan on February 10, 2012. On February 10, 2017, one week before the original restraining order was to expire, Marion sought to renew it by filing a Request to Renew Restraining Order. A hearing date was set for February 24, 2017.

The Notice of Hearing to Renew Restraining Order and Request to Renew Restraining Order documents were served by mail upon Evan and the attorney who represented him during the 2016 trial in the consolidated dissolution proceeding.

Neither Evan nor any attorney representing him appeared at the hearing to renew the restraining order. The trial court did not make any findings on the record concerning service. The hearing simply went forward in Evan's absence once the court's

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<sup>1</sup> We refer to appellant and respondent by their first names for clarity since they share the same last name. No disrespect is intended.

inquiry into whether he was present was answered in the negative.

Marion testified that Evan continued to display menacing conduct towards her and the children. At the conclusion of her testimony, the court found that Evan's menacing conduct was continuing, that he had directed derogatory and/or frightening comments at Marion in the courthouse, that he never demonstrated any remorse or recognition of his personal responsibility for the underlying (and unspecified) acts of violence against Marion and he did not present any evidence at the hearing that indicated he had adequately addressed these behavioral issues. Accordingly, the court found that Marion established there was a probability of future abuse and that she harbored a reasonable apprehension of future abusive conduct by Evan. A permanent restraining order was issued.

### **DISCUSSION**

Evan's sole argument on appeal is that he was not personally served with the petition for renewal or the notice of hearing, as required by Family Code section 243.<sup>2</sup> He was served by mail and he contends he failed to appear at the hearing on the renewal application because he never received the service copies of the papers. Subdivision (a) of section 243 states in pertinent part that "[i]f a petition under this part has been filed, the respondent shall be personally served with a copy of the petition, the temporary restraining order, if any, and the notice of hearing on the petition."

Marion argues, in substance, that Evan had waived personal service in the consolidated action. She contends that

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<sup>2</sup> Unless otherwise indicated, all further statutory references are to the Family Code.

the “Notice of the Hearing was, per Mr. Lionel’s request that he only be served by mail in all proceedings, served at his Post Office Box as well as the moving papers being sent to his attorney of record, Charles Agege.” The record is insufficient to support this claim. There is no citation to anywhere in the record where evidence of Evan’s purported request for service of all papers by mail could be found. Service by mail does not meet the requirements of section 243 and service by mail upon a party’s attorney likewise fails to meet the requirement of personal service upon the party to be restrained.

The further argument that objections to the renewal of the order were waived because Evan’s counsel did not appear at the hearing and assert them despite having email notice of the hearing two days before the hearing are unavailing. The statute provides the respondent, not his or her attorney, must be given notice of the hearing by personal service.

The court also declines to dismiss the appeal “under the doctrine of disentitlement” providing that an appellate court has inherent power to dismiss an appeal by a party that refuses to comply with a lower court order. (*MacPherson v. MacPherson* (1939) 13 Cal.2d 271.) Marion argues that Evan “has shown several instances of noncompliance with Court Orders justifying that his appeal be dismissed” and invites the court to discover those instances itself by reviewing the trial court’s Final Statement of Decision of March 7, 2017, and its ruling in April 2017. She claims that Evan filed two frivolous appeals in 2013 and 2015, failed to appear at some unidentified hearing in 2013, filed a petition to the California Supreme Court which was summarily denied, and filed two unsuccessful petitions for writs of mandate, as evidence that he has disdain for the court’s orders.

However, these documents are not part of the record on appeal and there is no basis for this court to evaluate their legal sufficiency. Marion's record is insufficient to persuade the court to exercise its discretionary power in her favor.

**DISPOSITION**

The Order to Renew Domestic Violence Restraining Order signed and filed on February 24, 2017, is reversed and vacated. Appellant to recover costs.

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\_\_\_\_\_, J.\*  
MATZ

We concur:

\_\_\_\_\_, Acting P. J.  
ASHMANN-GERST

\_\_\_\_\_, J.  
HOFFSTADT

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