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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re Marriage of GAZELLE  
ANN and PAUL GREGORY  
INGERSON.

B269814

(Los Angeles County  
Super. Ct. No. LD062158)

GAZELLE ANN BENEDICTO,

Appellant,

v.

PAUL GREGORY INGERSON,

Respondent.

APPEAL from an order of the Superior Court of  
Los Angeles County. Armen Tamzarian, Judge. Affirmed.

Roy Legal Group and Raj D. Roy for Appellant.

Paul Gregory Ingerson, in pro. per.; and B. Harlan Field for  
Respondent.

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Gazelle Ann Benedicto, formerly Ingerson, appeals the superior court's November 30, 2015 order granting the request of her former husband, Paul Gregory Ingerson, to renew a domestic violence restraining order initially entered in his favor on December 7, 2012.<sup>1</sup> Ann contends the court abused its discretion in finding that Paul had established an objectively reasonable fear of future abuse in light of the parties' changed circumstances and the lack of evidence of any further abuse after issuance of the initial order. We affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### *1. The December 2012 Restraining Order*

Ann and Paul were married January 1, 2011. Their son Ulysses was born November 17, 2011. Ann and Paul separated on April 12, 2012; Ann filed a petition for dissolution of the marriage on April 27, 2012. Following a court-supervised mediation on August 2, 2012, Ann and Paul agreed to a custody and visitation schedule that provided for joint legal custody and physical custody of the child with Paul every weekend and alternating Fridays.

#### *a. Paul's request*

On November 16, 2012 Paul filed a request for a domestic violence restraining order, a request for child custody and visitation orders and an ex parte request for a temporary restraining order pending a full hearing. In support of his requests Paul submitted a declaration in which he stated he and

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<sup>1</sup> Materials in the record indicate Gazelle Ann Benedicto is usually referred to by her middle name, Ann. Because the parties shared a last name during much of the period at issue in this appeal, we refer to them as Ann and Paul for clarity.

Ann had meals together in restaurants several times between late July and September 2012 to discuss their family situation and he began to notice he felt ill later in the day or the day after those meals. He also declared that Ann had asked him to leave the table for one reason or another during the meals (for example, to wash his hands) and his clear liquid beverage (Sprite) had an odd taste when he returned. He began to record these episodes with a key chain video camera.

According to Paul's declaration, the recordings documented Ann taking a small plastic bottle from her purse and pouring its contents into his beverage. Printed still photographs from three video recordings were attached to the declaration. Paul also attached a report from a toxicology laboratory indicating that testing of what Paul averred were the contents of one of the contaminated Sprite bottles revealed the presence of alcohol and tramadol, an opiate available only by prescription. A second Sprite bottle was still being tested. The declaration added the explanation that Ann was a registered nurse employed at Gardena Memorial Hospital in the intensive care unit. Paul speculated that Ann had intended to trick him into taking a drug test based on a false accusation he was using marijuana with the hope a positive result for opiates would be helpful to her in the couple's custody dispute.

Paul's declaration also stated that Ann had falsely accused him of not feeding Ulysses when he was in Paul's care and had reported him to the Los Angeles County Department of Children and Family Services (DCFS). He also declared Ann had been physically violent toward him on numerous occasions in the past and provided details of several of those incidents.

The court entered temporary personal conduct and stay-away orders on behalf of Paul, ordered that Paul would have physical custody of Ulysses from Friday at 3:00 p.m. to Sunday at 8:00 p.m. every week and set the hearing on Paul's request for restraining orders for December 5, 2012.

*b. Ann's response*

Ann filed her response to Paul's request for a restraining order on December 3, 2012. In her declaration she admitted that on one occasion she had put green tea in his drink and on two others had poured in tap water, explaining she had prayed over the water to the god she believed in to help Paul deal with his anger at her. She denied ever putting anything in his beverage that could cause him harm or make him feel ill. She also declared, although she is a registered nurse, she worked in the emergency room, not the intensive care unit, and did not ever have access to tramadol. She also stated the laboratory findings presented by Paul confirmed that there was nothing toxic, dangerous or unnatural in his drinks.

Ann denied that she had reported Paul's treatment of Ulysses to DCFS, insisting the report had been made by the child's pediatrician. She also denied she had been physically abusive toward Paul, explaining that if she was emotional at times it was because she was subjected to his verbal abuse. Finally, Ann denied she had threatened to move to the Philippines or to New York with the child, as asserted in Paul's declaration.

*c. The court's order*

At the December 5, 2012 hearing on the request for a restraining order, the court (Commissioner James D. Endman) observed that Ann had admitted to placing something in Paul's

drinks on three occasions. In response to an inquiry from the court, Ann explained the prayer she said over the water was based on “an old school tradition back in the Philippines.” The court then expressed concern about how those actions reflected on Ann’s psychological fitness, “I’m greatly concerned that this was done surreptitiously. I don’t know how anybody in this modern age in this country other than those who might believe in something like witchcraft would believe that saying a prayer, and surreptitiously pouring water over it, into somebody’s drink would have any factual effect.” The court continued, “I am therefore concerned with the psychological capabilities of the petitioner [Ann], whether it was water or tramadol, that she’s psychologically fit to take care of children, that her beliefs are potentially dangerous to the children. While a person has a right to believe in a normal religion, so long as it doesn’t present harm, it seems to me that this is harming the respondent [Paul]. I’m concerned about it.”

After additional colloquy with counsel for both parties on this point, the court again stated Ann’s conduct created “a deep concern,” even if what she put in the drinks was green tea and water, not tramadol, and ruled, “as far as the restraining order, she had no right to do it. Put him at risk, put him in fear. I’m satisfied the restraining order, for the domestic violence, even under her declaration, is appropriate. . . . Whether it was water or tramadol, I’m fairly reasonably concerned that it was tramadol as opposed to plain water, but the methodology used, in either case, would clearly put the recipient of that substance in fear. And, accordingly, the court is going to issue [the] restraining order.”

Following the hearing the court issued a three-year restraining order that included personal conduct and stay-away orders that permitted Ann only “brief and peaceful contact” with Paul “as required for court-ordered visitation,” as well as a child custody and visitation order that provided Paul was to have Ulysses in his care and custody every weekend from Friday afternoon through Sunday evening and that, while Paul was to pick up the child from Ann’s residence, Ann was to pick up Ulysses on Sunday evening from a designated station of the Los Angeles Police Department.<sup>2</sup> Both Paul and Ann were ordered not to remove the child from the seven Southern California counties without the written consent of the other or a court order. Ann was also ordered to attend and cooperate with a psychiatric evaluation.

## *2. The Ongoing Custody Dispute*

In December 2013 the court awarded Ann and Paul joint legal and physical custody of Ulysses. On alternate weeks the child was to live with Paul from Wednesday evening to Friday evening or Wednesday evening to Sunday evening.

Custody and visitation with Ulysses remained an ongoing point of contention between Ann and Paul. On October 20, 2015 Ann filed a request for an order modifying the parties’ then-existing custody order, apparently her third such request. She asked the court to award her sole physical custody of the child and to limit Paul’s visitation to alternate weekends. In a supporting declaration Ann detailed various incidents and described injuries suffered by her son that she alleged

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<sup>2</sup> Ultimately Paul’s pickup of the child was moved from the front of Ann’s residence to a police station.

demonstrated he was at continuing risk of serious harm when living with his father.

On November 16, 2015 Paul filed his response to Ann's request to modify the custody order. His supporting declaration insisted Ann's claims he had mistreated their son, which were supported by a declaration from her father, were "absolutely false and, at times, constitute outright perjury." According to Paul, Ann had engaged in a never-ending campaign to obtain sole legal and physical custody and to interfere with his visitation and custody rights, including making false accusations to DCFS and attempting to frighten Ulysses just prior to Paul's custodial pickup time in an effort to make the child refuse to go with Paul. Paul's response indicated he intended to file his own request to modify, increasing his custodial care time to be equal to that of Ann's.

### *3. The Request To Renew the Restraining Order*

On October 26, 2015, after Ann had filed her request to restrict Paul's time with Ulysses and approximately six weeks before the date the 2012 restraining order was due to expire, Paul moved to renew the restraining order for an additional five years. In his supporting declaration Paul claimed, as a result of Ann's behavior and that of her family members on her behalf since the issuance of the initial restraining order, he had "experienced harassment, threats, and a disturbance of my peace." Explaining, Paul asserted Ann and her father had made numerous false allegations about him to now-four-year-old Ulysses, causing the child to be afraid of Paul, including that Paul had been in an automobile accident while Ulysses was in his care and that "[h]e will not hit you anymore ok? He will not hit you." Paul also declared that Ann personally and through her

father and her attorney had made false allegations in letters to Paul's attorneys, charges that Paul insisted were made solely to interfere with his relationship with his son. In addition, Paul summarized the grounds for the original restraining order—Ann's adulteration of his soft drinks when he and Ann dined together—and averred, "In spite of the TRO, I am worried and apprehensive that she will continue this type of abuse in an effort to continue with her interference with my custodial timeshare with our son."

On November 17, 2015 Ann filed her opposition to the request to extend the domestic violence restraining orders. As had Paul in his declaration, Ann revisited the events on which the original restraining order had been based. Ann again insisted she had added only holy water to his drinks, briefly explained the religious significance of her actions and noted that Paul had not actually been harmed in any way. Ann stated she would never use holy water again.

Ann attached to her declaration a copy of the psychiatric evaluation conducted in 2013 as ordered by the court and summarized its findings, which included the statement, "She now knows she did something totally illegal. She does not come across as an evil person. She is not sociopathic. She is stable psychologically and is not a danger to her child, to herself or to anyone."

The court (Judge Armen Tamzarian) on November 30, 2015 heard concurrently Ann's request to modify the parties' custody and visitation order and Paul's request to renew the domestic violence restraining order. After both Ann and Paul were sworn as witnesses, the court asked Ann whether she had ever placed tramadol in Paul's drink; Ann said she had not. The court then



asked Paul whether there was any danger he would drink anything Ann handed him, and Paul said there was not. But Paul testified, based on her past history of bizarre actions, he was still afraid Ann might drug him if she were somehow able to get into his house. After confirming that Paul and Ann lived separately (Ann in the San Fernando Valley; Paul in the South Bay), the court asked Paul's counsel whether Paul's fear of an act of domestic violence was real. When counsel said it was and referred the court to Paul's declaration, the court responded, "Isn't most of that related to an ongoing ugly dispute about custody and visitation and not really domestic violence?"

Counsel for Paul asserted the initial restraining order had been granted not only because of the contamination issue but also because of false accusations made by Ann that would adversely affect Paul's custody and visitation rights. Counsel pointed to the provision in the restraining order limiting Ann's contact during custody exchanges to "brief and peaceful contact" and argued Ann was violating the order directly, and indirectly through her father, by making false accusations about Paul during those exchanges. That conduct, which caused the child to be afraid and created anxiety in Paul, according to his lawyer, constituted harassment and disturbance of his peace under the DVPA.

After hearing from Ann's counsel, the court denied Ann's request to modify custody and visitation as not in the child's best interest and granted Paul's request for a five-year renewal of the restraining order, finding Paul's version of events more credible than Ann's: "I'm very concerned that petitioner [Ann] continues to try to undermine respondent's [Paul's] relationship with this child. I am very concerned about the statements made at the exchanges by petitioner's father. I find respondent's version of

those events credible, that petitioner’s father is essentially saying things that would undermine respondent’s relationship with the child at the exchanges.” Although acknowledging it was a “close call,” the court ruled Paul had “met his relatively low burden of showing that he has reasonable apprehension of future abuse.”

Ann filed a timely notice of appeal, challenging only the renewal of the restraining order.

## DISCUSSION

### 1. *Domestic Violence Restraining Orders*

The Domestic Violence Prevention Act (DVPA) (Fam. Code, § 6200 et seq.)<sup>3</sup> authorizes the trial court to issue a restraining order “to prevent acts of domestic violence, abuse, and sexual abuse and to provide for a separation of the persons involved in the domestic violence for a period sufficient to enable these persons to seek a resolution of the causes of the violence.”

(§ 6220.) The individual requesting the order must present “reasonable proof of a past act or acts of abuse.” (§ 6300.)

“Abuse” within the meaning of the DVPA includes bodily injury (§ 6203, subd. (a)(1)), reasonable apprehension of serious bodily injury (§ 6203, subd. (a)(3)), and “behavior that has been or could be enjoined pursuant to Section 6320.” (§ 6203, subd. (a)(4).)

Section 6320, in turn, permits the court to enjoin “molesting, attacking, striking, stalking, threatening, sexually assaulting, battering . . . , harassing, . . . or disturbing the peace of the other party . . . .” (§ 6320, subd. (a).) “As a result, abuse under the DVPA includes physical abuse or injury, as well as acts that ‘destroy[] the mental or emotional calm of the other party.’”

(*Rodriguez v. Menjivar* (2015) 243 Cal.App.4th 816, 820, 822

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<sup>3</sup> Statutory references are to this code.

[holding ex-boyfriend's "significant acts of emotional abuse," including "acts of isolation, control, and threats[,] were sufficient to demonstrate the destruction of [ex-girlfriend's] mental and emotional calm"]; accord, *In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1498 ["a former husband's alleged conduct in destroying the mental or emotional calm of his former wife by accessing, reading and publicly disclosing her confidential e-mails" may qualify as abuse under the DVPA].)

Once an order has been issued, it may be renewed without a showing of further abuse. (§ 6345, subd. (a).)<sup>4</sup> Although section 6345 does not set forth the standard for a trial court to apply in deciding whether to grant a request to renew a protective order, in *Ritchie v. Konrad* (2004) 115 Cal.App.4th 1275 this court held, "A trial court should renew the protective order, if, and only if, it finds by a preponderance of the evidence that the protected party entertains a 'reasonable apprehension' of future abuse. . . . [T]his does not mean the court must find it is more likely than not future abuse will occur if the protective order is not renewed. It only means the evidence demonstrates it is more probable than not there is a sufficient risk of future abuse to find the protected party's apprehension is genuine and

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<sup>4</sup> Section 6345, subdivision (a), provides, in part, a domestic violence restraining order issued after notice and a hearing "may be renewed, upon the request of a party, either for five years or permanently, without a showing of any further abuse since the issuance of the original order, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party. The request for renewal may be brought at any time within the three months before the expiration of the orders."

reasonable.” (*Id.* at p. 1290; accord, *Lister v. Bowen* (2013) 215 Cal.App.4th 319, 332 [“When contested, a request to renew a restraining order should not be granted pursuant to section 6345 simply because the requesting party has ‘a subjective fear the party to be restrained will commit abusive acts in the future.’ [Citation.] ‘The “apprehension” those acts will occur must be “reasonable.””].)

“In evaluating whether the requesting party has a reasonable apprehension of future abuse, “the existence of the initial order certainly is relevant and the underlying findings and facts supporting that order often will be enough in themselves to provide the necessary proof to satisfy that test.” [Citation.] “Also potentially relevant are any significant changes in the circumstances surrounding the events justifying the initial protective order. For instance, have the restrained and protected parties moved on with their lives so far that the opportunity and likelihood of future abuse has diminished to the degree they no longer support a renewal of the order?” [Citation.] Also relevant are the seriousness and degree of risk, such as whether it involves potential physical abuse, and the burdens the protective order imposes on the restrained person, such as interference with job opportunities.” (*Cueto v. Dozier* (2015) 241 Cal.App.4th 550, 560; accord, *Lister v. Bowen, supra*, 215 Cal.App.4th at p. 333; see *Eneaji v. Ubboe* (2014) 229 Cal.App.4th 1457, 1463.)

## 2. *Standard of Review*

We review an appeal from an order granting or denying a request to renew a DVPA restraining order for abuse of discretion. (*Cueto v. Dozier, supra*, 241 Cal.App.4th at p. 560; *Eneaji v. Ubboe, supra*, 229 Cal.App.4th at p. 1463.) “An abuse of discretion occurs when the ruling exceeds the bounds of reason.”

(*Eneaji*, at p. 1463; see *Lister v. Bowen*, *supra*, 215 Cal.App.4th at p. 333.)

3. *The Trial Court Did Not Abuse Its Discretion in Finding Paul's Apprehension of Future Abuse Genuine and Reasonable*

As the trial court plainly recognized, nothing in the record would support a finding that in November 2015 Paul entertained an objectively reasonable fear Ann would attempt to drug him in the future. Although, as Paul argues, the existence of the initial order and underlying findings supporting it are often sufficient to justify renewal of the restraining order (see *Cueto v. Dozier*, *supra*, 241 Cal.App.4th at p. 560), Paul acknowledged he would not again knowingly consume any food or drink provided to him by Ann; and his suggestion she might sneak into his house and contaminate his food or drink falls far short of establishing the necessary evidentiary basis to extend the restraining order for an additional five years.<sup>5</sup> The opportunity and likelihood of a repetition of the acts of domestic violence upon which the initial order was based have so diminished that they no longer support a renewal of the order. (*Ibid.*; see *Lister v. Bowen*, *supra*, 215 Cal.App.4th at p. 333.)

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<sup>5</sup> Paul attached to his supporting declaration a copy of a June 10, 2015 letter from Ann's lawyer, Raj Roy, to his lawyer asking for written authorization for Ann to enter Paul's house to retrieve belongings she left there. The letter states someone from Mr. Roy's law office would accompany Ann if required. Although Paul has asserted no property of Ann's remains in the San Pedro home, his contention the letter reasonably justifies his fear that, if the restraining order is not renewed, Ann will enter his home without notice borders the frivolous.

The trial court based its decision to renew the restraining order not on Ann's adulteration of Paul's drinks in 2012 or her continued insistence that she had only added water, not a controlled substance, to his Sprite, but on the evidence submitted by Paul that she and her father, on her behalf, continually made false accusations about Paul during custody exchanges, to the DCFS, in letters her counsel wrote to his counsel and in court filings in an effort to undermine Paul's custody and visitation rights. Paul's contention to the contrary notwithstanding, the initial restraining order was not predicated on similar conduct by Ann. Rather, as discussed, it was grounded solely on Paul's concern for his physical safety after Ann surreptitiously added foreign substances to his beverages when they were dining together at restaurants in 2012 and the court's questions about her psychological fitness in light of her nontraditional religious beliefs. Thus, neither the existence of that initial order nor the findings upon which it was based supported a new finding that, as of November 2015, Paul reasonably feared future abuse from Ann.

Nonetheless, although we agree with the trial court that this case presents a "close call," in light of the low evidentiary threshold required for renewal of the restraining order and the deferential standard of review, we affirm the order. We accept, as we must, the trial court's finding that Paul's version of events at the custody/visitation exchanges was more credible than Ann's. Paul's description of those events falls well within the broad definition of "disturbing the peace" of the party seeking a domestic violence restraining order, which, as discussed, includes destroying the mental or emotional calm of a former spouse. (See, e.g., *Burquet v. Brumbaugh* (2014) 223 Cal.App.4th 1140,

1145-1146; *In re Marriage of Nadkarni*, *supra*, 173 Cal.App.4th at p. 1497.) Although none of the incidents identified in Paul's declaration concerned direct interaction between Ann and Paul, it was reasonable for the court to infer that Ann was at least indirectly responsible for the comments made by her father to Ulysses, which Paul said made the child anxious and afraid and, as a consequence, had a "stressful impact" on Paul. Similarly, false reports to DCFS of child abuse, as Paul described, will support a finding the reporting parent was disturbing the peace of his or her former spouse.

Finally, as the trial court indicated at the hearing, court filings by Ann's counsel or lawyers' letters written in connection with the parties' highly contentious custody proceedings, considered in isolation, are not a proper basis for issuance of a domestic violence restraining order. Indeed, when explaining its decision to renew the restraining order, the court did not include this as one of its grounds. But these false allegations of child abuse were part of an overall pattern of conduct by Ann that justified the court's finding that Paul entertained a genuine and reasonable fear of future abuse from Ann. The request for a five-year renewal of the domestic violence restraining order was properly granted.

### **DISPOSITION**

The November 30, 2015 order is affirmed. Paul Ingerson's motion for sanctions and request for judicial notice is denied. The parties are to bear their own costs on appeal.

PERLUSS, P. J.

We concur:

SEGAL, J.

MENETREZ, J.\*

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