Filed 3/8/18 C.G. v. Murata CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

C.G.,

Plaintiff and Respondent,

v.

CHARLES MURATA,

Defendant and Appellant.

2d Crim. No. B281696
(Super. Ct. No. D379505)
(Ventura County)

Defendant Charles Murata appeals an order of the superior court granting a Domestic Violence Prevention Act (DVPA) restraining order. (Fam. Code, §§ 6200, 6300.) The court did not abuse its discretion in granting this order. We affirm.

FACTS

In December 2016, C.G. filed a request for a DVPA restraining order against Murata. She said she ended her relationship with him. She claimed, "[H]e continued to text and phone [her] after [she] asked him to stop." She said, "I was forced to block him on all types of social media, he then came back with a new phone number and e-mail so he could get around the first

time I blocked him." C.G. filed a report with the police department due to continuing harassment. The police recommended that she obtain a restraining order. She said because she ended the relationship with Murata, he "willfully and with malice toward [her]" 1) filed a false report with a social services agency that she had mistreated her uncle, and 2) filed a defamation action against her for contacting the police.

A few weeks later, the trial court issued a temporary restraining order against Murata and set a hearing date.

Murata filed several responsive documents and requested that the restraining order be dismissed. He said that 1) he had filed a lawsuit against C.G., 2) C.G. sought a restraining order to impede his ability to litigate that case, and 3) C.G. made false allegations against him.

The court set a trial for the next month to determine whether a permanent restraining order should issue.

The parties appeared for trial in propria persona. C.G. testified that, after she ended her relationship with Murata, he was "stalking" and "harassing" her. She told him to stop contacting her, but he refused her requests to "leave [her] alone." He inflicted "emotional terror" and his repeated and unwanted phone calls and text messages made her feel "[s]cared, terrified." She contacted the police because she was "afraid." The police told her to get a restraining order.

Murata testified that he received a call from the police department about harassing C.G. by "calling her and driving by her house." He said, "Did I call her? At her invitation, I did. Did I drive by her house? Never." He said C.G. "indicated . . . there was nothing that she would even describe as necessarily harassing about the communications." He left a voicemail

message telling C.G. that "[she] need[ed] to get help" involving her "elder abuse" of her uncle and her "alcohol problem." He said he sent three or four e-mails and also "some text messages" involving those issues. He said C.G. had "abused" her uncle. His relationship with C.G. "was clearly over," but he "want[ed] to remain on good terms with [her]." He filed a lawsuit against her for making "false statements" to the police. He sent a letter to C.G. on November 23, but it involved "discovery in the civil case." He said, "[C.G.] is using the domestic violence [temporary restraining order] as a means to obstruct or delay the civil case. . . . [She] never notified me, you are harassing me, stop."

The trial court issued a three-year restraining order. It found Murata made "annoying, unwanted communications by . . . text, e-mail and phone." The court said C.G. suffered "harassment at the hands of Mr. Murata." It said it was resolving conflicts in the evidence against Murata.

DISCUSSION

Sufficiency of the Evidence

Murata contends there was insufficient evidence to support the issuance of a permanent restraining order. He cites to portions of the record that are favorable to his position. He omits material portions of C.G.'s testimony upon which the court relied. The issue on appeal is not whether some evidence supports appellant, but only whether substantial evidence supports the order.

"An appellant asserting lack of substantial evidence must fairly state all the evidence, not just the evidence favorable to the appellant." (*Chicago Title Insurance Co. v. AMZ Insurance Services, Inc.* (2010) 188 Cal.App.4th 401, 415.) "If the appellant fails to fairly state all material evidence, we may deem waived

any challenge based on insufficiency of the evidence." (*Ibid.*) "It is a fundamental principle of appellate review that we presume that a judgment or order is correct." (*Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1271.) It is appellant's burden to show error. (*Ibid.*)

In determining the sufficiency of the evidence, we draw all reasonable inferences in support of the judgment. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) We do not weigh the evidence, decide the credibility of the witnesses or resolve factual conflicts, as those are matters exclusively decided by the trier of fact. (*Ibid.*; *In re Daniel G.* (2004) 120 Cal.App.4th 824, 830.)

A trial court may issue a DVPA restraining order where the evidence "shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse." (Fam. Code, § 6300.) Abuse may be shown by behavior including "'molesting, attacking, striking, *stalking*, threatening, sexually assaulting, battering, *harassing*, [and making] *annoying telephone calls* . . . ." (*Nakamura v. Parker* (2007) 156 Cal.App.4th 327, 334, italics added.) "Mental abuse is relevant evidence in a DVPA proceeding." (*Rodriguez v. Menjivar* (2015) 243 Cal.App.4th 816, 821.) Acts constituting "a disturbance of the petitioner's peace" constitute "abuse under the statute." (*Id.* at p. 822.) These include acts that destroy the petitioner's "mental and emotional calm," such as continuing to contact the petitioner after he or she has told the respondent to stop the communications. (*Ibid.*) Such acts may be sufficient for the issuance of the injunction "[e]ven in the absence of any allegations of physical abuse." (*Ibid.*) The granting or denial of the injunction is reviewed on appeal for abuse of discretion. (*Burquet v. Brumbaugh* (2014) 223 Cal.App.4th 1140, 1143.)

C.G. testified that she sought a restraining order because Murata "has been harassing, and he has been stalking." Murata had sent her three or four text messages "every other day" since she ended her relationship with him. C.G. told him to leave her alone four or five times. She told him, "[S]top texting me. . . . I'm done with you." But he continued by "driving by the house," texting her and e-mailing her. Because of his conduct, she had to "change [her] e-mail address, [her] text" and "block him from [her] phone." After she blocked him, he continued to contact her. When he contacted her through a different phone number, she told him "ten times [to] move on, don't get stuck on [her]." She testified Murata refuses to heed her request to "leave" her "alone." He was inflicting "emotional terror" on her and her family. His phone calls and text messages made her feel "[s]cared, terrified."

C.G. testified Murata was "bullying [her] because [she] broke up with him" and was "using the [legal] system" to achieve that result. She said Murata told her, "[Y]ou're going to end up in court. And you know that I'm going to beat you because I know the legal system. I'm a paralegal." He "defamed" her and "wanted to get [her] brother against [her]." She said Murata left messages stating, "[I]f you don't call me back, the world's gonna know how you beat your uncle and how you feed him mush." C.G. said, "So I wouldn't call him back." The court asked her, "Did he say that he wanted you to lose your job or lose your home?" C.G. responded, "[H]e said he was going to make sure that was going to happen." She said after the court issued the initial restraining order, Murata violated it by contacting her daughter.

Murata contends his communications with C.G. "were made in good faith and . . . related to his pending civil action against [her]." But the trial court did not find his testimony to be credible. It found his actions and communications were "annoying, unwarranted" and C.G. was the victim of "harassment." The parties gave conflicting accounts. But the court resolved the conflicts against appellant. We do not weigh the evidence, decide the credibility of the witnesses or resolve evidentiary conflicts. Those are matters exclusively decided by the trier of fact. (*In re Daniel G.*, *supra*, 120 Cal.App.4th at p. 830.) The evidence is sufficient.

Other Issues

Murata contends the trial court contravened his right to "due process" by not granting his request for discovery. We disagree.

Murata prepared a "request for order-motion-discovery." But this two-page document was served on C.G. on January 30, 2017, the date of the trial on the DVPA restraining order. At the beginning of trial, the court asked Murata what type of discovery he was requesting. Murata did not give a definitive answer. He said, "Well, we haven't discussed the evidence yet." The court could reasonably deny the discovery request because it was not timely served and not specific. (*Pomona Valley Hospital Medical Center v. Superior Court* (1997) 55 Cal.App.4th 93, 102.)

Moreover, the trial court noted that Murata had notice of the issues and he did not take advantage of reasonably available procedures. It said, "[Y]ou were aware that the number and durations and the timing of text messages and phone calls were certainly going to be an issue at this proceeding. You didn't indicate to me that you had subpoenaed any records." The court

also noted that he had the opportunity to bring his own phone records to refute C.G.'s claims. Murata was present at the December 28th hearing. He did not ask the court at that hearing for an order shortening time to take C.G.'s deposition or to propound other discovery. The parties represented themselves at trial. The court carefully and patiently asked questions on all the relevant issues in this two-day trial. It provided Murata a reasonable opportunity to testify, make objections and present evidence. We have reviewed Murata's remaining contentions and we conclude he has not shown grounds for a reversal.

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Derek D. Malan, Commissioner

Superior Court County of Ventura

Charles H. Murata, in pro. per., for Defendant and Appellant.

No appearance for Plaintiff and Respondent.