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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

SACHA POLAKOFF,

Plaintiff and Respondent,

v.

NATHALIE POLAKOFF,

Defendant and Appellant.

B246029

(Los Angeles County  
Super. Ct. No. BD488361)

APPEAL from an order of the Superior Court of Los Angeles County,  
Christine Byrd, Judge. Affirmed.

Law Offices of Jeffrey W. Doeringer and Jeffrey W. Doeringer for  
Defendant and Appellant.

Law Offices of Stephen R. McLeod and Stephen R. McLeod for Plaintiff  
and Respondent.

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## **INTRODUCTION**

This is an appeal from an order granting a temporary restraining order pursuant to the Domestic Violence Protective Act (DVPA), Family Code section 6200 et seq.<sup>1</sup> The order precluded Nathalie Polakoff (Nathalie) from contacting or approaching her former husband, Sacha Polakoff (Sacha), and his new wife. Appellant contends the order was not supported by substantial evidence. Finding no error, we affirm.

## **FACTUAL AND PROCEDURAL HISTORY<sup>2</sup>**

Nathalie and Sacha were married for 15 years, had a daughter and two sons, and had been divorced by 2012. On October 17, 2012, Sacha filed a form request for an order protecting himself, his new wife, and his two minor sons from Nathalie.<sup>3</sup> In support of his request for a restraining order, Sacha submitted a sworn declaration describing recent abuse by Nathalie. He stated:

“I am a business man and the Respondent [Nathalie] has for more than two years been continually calling and emailing me, my wife and my children, as well as my employees. I, my family and my employees believe that this conduct is intended to cause serious bodily injury to ourselves. The marital dissolution case

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<sup>1</sup> All further statutory citations are to the Family Code, unless otherwise stated.

<sup>2</sup> Appellant’s opening brief contains an unintelligible factual statement, in violation of rule 8.204, subdivision (a)(2) of the California Rules of Court. The statement does not explain the nature and context of the proceedings below; it does not distinguish between significant and insignificant facts; and it does not organize the facts presented at the DVPA hearing into an understandable summary.

<sup>3</sup> As discussed below, the restraining order ultimately entered did not prohibit Nathalie from having contact with her sons. Because Sacha does not appeal that decision, we omit facts relating solely to the children.

has seen the court remove our two sons from any contact with the Respondent who has profound emotional problems. For instance, during the pendency of the custody and visitation, the Respondent attacked her boyfriend, who is in a wheel chair and was arrested for assault and battery. . . . Similarly, the Respondent has been physically abusive to our two sons . . . prior to my being awarded full custody. We disclosed to the court that Respondent stated to the children she would kill herself with [a] knife if they did not behave. . . .

“[Appellant’s] calls have put me in fear that Respondent will harm me, my employees or my family. In the last eighteen months I have had to change my home phone number twice, my business phone number and my cell phone. I have had several employees quit because of the ongoing threatening phone calls. . . .”

Nathalie did not file a written response. Instead she submitted an “Exhibit List,” stating that she intended to submit two exhibits at the DVPA hearing.

Sacha filed a reply, reiterating his allegations that Nathalie “has for more than two years continuously been calling and harassing me, my wife, my children, my home, my children’s schools and their residences, as well as my place of business.” He added the following allegations in a new sworn declaration:

“As the stalking and harassment [by Nathalie] began to get out of hand in late 2011, we had to put in place in early 2012, at my home, additional security measures to ensure that Respondent . . . would not be allowed entry into my property and hurt me or my family. We live in a gated community . . . and all guards and property management were then made aware . . . .

“[¶] . . . [¶]

“Phone calls starting in mid-June 2012 were answered either by Sara Matthews-Operation Manager or Kendall Ramos[-]Customer Service. They . . . will both be present as witnesses at the Court hearing. Prior Operations

Manager, Rachel Cooper, quit in June fearing for her own safety from all the ongoing harassment. My wife . . . shares an office with me and has witnessed and answered phone calls from Respondent. [She] is available to the Court on her cell phone[] the day of the hearing[,], as she is out of town on a prior business commitment.”

At the hearing on the request for a temporary restraining order, Sacha testified that Nathalie had called his business on numerous occasions from different phones. Most of the calls were “hang-ups” and answered by his employees. However, he answered a couple of the calls, and on two occasions, he was threatened by Nathalie. On May 29, 2012, Nathalie called him and said “she was gonna kill me and take the boys away from me.” Later that year, on August 3, Nathalie called him and said, “I’m going to come after your wife and the boys.” In response to an inquiry by the trial court, Sacha confirmed he was actually on the phone and heard Nathalie’s voice.

Sacha testified that Nathalie called his cell phone “numerous times.” During these calls, Nathalie said that she was “going to keep stalking me until the end,” and that “she would pester me through the end of my life.” Nathalie also called his home phone, but these calls were not “threatening.” Sacha testified he had to change his cell phone number, home phone number, and business phone number, each twice within the past 18 months.

Sacha further testified that Nathalie drove by his place of business in 2011. He was present and observed Nathalie “threaten[ing]” his employees, asking them what kind of car they drove and when they were done with work. The court permitted Sacha to testify that on May 31 and June 6, 2012, his secretary had informed him that Nathalie had recently driven slowly by his workplace. This latter testimony was admitted for the nonhearsay purpose of showing Sacha’s state

of mind. On the same basis, the court permitted Sacha to testify about incidents on June 9 and July 21, 2012, when he was told by security that Nathalie had shown up at the gate of his residential community. Although Nathalie's counsel originally raised a hearsay objection, she later agreed that the testimony was admissible as nonhearsay.

Sacha's counsel asked the trial court to take judicial notice of an August 16, 2011 declaration filed by Nathalie, responding to Sacha's allegations that Nathalie had pulled a knife in the presence of their sons. The court agreed, and the relevant portion of the declaration was read into the record: "'For instance, petitioner [Sacha] has blown out of context this, quote, suicidal threat incident. The truth is that I was telling our children to behave. I got flustered and stated, 'Your actions are killing me like a knife.' I was cooking in the kitchen at the time, and I happened to have a knife in my hand. It was anything but a suicide threat.'"

Sacha's employees, Sara Matthews and Kendall Ramos, also testified. Matthews testified that since May 2012, on multiple occasions -- "too many to count" -- she had answered the phone and the caller had hung up. She reported these calls to Sacha. Ramos testified that since June 2012, he had received "hang-up phone calls" two to five times a day. Once, he received four consecutive hang-up calls. He reported the calls to Sacha or his wife.

Nathalie was called as an adverse witness. She admitted that on one occasion, she had engaged in a confrontation with her boyfriend that resulted in her arrest.

Nathalie testified in opposition to the requested order. She denied calling Sacha's business within the past two years. She testified that she possessed only a single phone, and that she had never made hang-up phone calls. She submitted evidence showing that she had a family phone plan covering her phone and those

of her three children. Based on the phone records, she suggested some of the hang-up phone calls to Sacha's business were made from the cell phone of one of their sons. Finally, she denied driving to Sacha's place of business or his home, explaining the drive from her house would be "too expensive" in gas costs.

During closing argument, Sacha's counsel argued that the DVPA "permits a restraining order [to issue] in two circumstances that I think apply here. The first is placing a person in reasonable apprehension of imminent serious bodily injury. . . . Two, engaging in any behavior that has been or could be enjoined pursuant to Family Code section 6320. 6320 basically provides conduct such as stalking, threatening, battering, harassing, telephoning, including but not limited to, annoying calls as described in Penal Code section 653(m)."

The court granted the request for a restraining order as to Sacha and his wife. The court stated it had considered only the testimony presented at the hearing. The court further noted that it had reached its determination in light of Penal Code section 653m, and sections 6320 and 6340. That latter section provides that in deciding whether to issue a restraining order, "the court shall consider whether failure to [issue the order] may jeopardize the safety of the person asking for the order[]." The court found Sacha credible. It determined that Sacha had "a reasonable apprehension of physical harm and that . . . he[] [had] been subjected to sufficient conduct that justifies a restraining order against the respondent in favor of Mr. Polakoff and his current wife."

The temporary restraining order was issued November 8, 2012. Nathalie timely appealed.

## **DISCUSSION**

Section 6300 provides that: "An order may be issued under this part, with or without notice, to restrain any person for the purpose of preventing a recurrence of

domestic violence and ensuring a period of separation of the persons involved, if an affidavit or, if necessary, an affidavit and any additional information provided to the court pursuant to Section 6306, shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse.”

Section 6211 defines “[d]omestic violence” as “abuse” perpetrated against enumerated individuals, including a former spouse. (§ 6211, subds. (a), (b).) “[A]buse’ means any of the following: [¶] (a) Intentionally or recklessly to cause or attempt to cause bodily injury[;] [¶] (b) Sexual assault[;] [¶] (c) To place a person in reasonable apprehension of imminent serious bodily injury to that person or to another[;] [¶] (d) To engage in any behavior that has been or could be enjoined pursuant to Section 6320.” (§ 6203.) Section 6320 enjoins behaviors that include “molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, including, but not limited to, making annoying telephone calls as described in Section 653m of the Penal Code, destroying personal property, contacting, either directly or indirectly, by mail or otherwise, coming within a specified distance of, or disturbing the peace of the other party, and, in the discretion of the court, on a showing of good cause, of other named family or household members.” (§ 6320, subd. (a).) Penal Code section 653m, subdivision (b) prohibits “repeated telephone calls or . . . any combination of calls or contact, . . . whether or not conversation ensues from making the telephone call or contact . . . .” Thus, a party seeking a restraining order under the DVPA need not demonstrate “actual infliction of physical injury or assault. [Citation.]” (*Conness v. Satram* (2004) 122 Cal.App.4th 197, 201-202; accord *In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1498 (*Nadkarni*) [conduct that destroys the mental or emotional calm of former spouse is enjoined by section 6320].)

The grant or denial of a restraining order under the DVPA is reviewed for abuse of discretion. (*S.M. v. E.P.* (2010) 184 Cal.App.4th 1249, 1264.) On appeal, appellant contends there was insufficient evidence to support the issuance of the order. In essence, she challenges the trial court’s factual finding that she committed past acts of abuse against respondent and his wife. In reviewing the trial court’s factual findings, we apply the substantial evidence rule. Under that rule, “[o]ur sole inquiry is ‘whether, on the entire record, there is any substantial evidence, contradicted or uncontradicted,’ supporting the court’s finding. [Citation.] ‘We must accept as true all evidence . . . tending to establish the correctness of the trial court’s findings . . . , resolving every conflict in favor of the judgment.’ [Citation.]” (*Sabbah v. Sabbah* (2007) 151 Cal.App.4th 818, 822-823 (*Sabbah*) [affirming issuance of restraining order under DVPA], quoting *Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 631, italics omitted.) “‘Substantial evidence’ is evidence of ponderable legal significance, evidence that is reasonable, credible and of solid value.” (*Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 651.) Reasonable and logical inferences may constitute substantial evidence. (*Id.* at p. 652.) Finally, “[t]he testimony of a single witness may provide sufficient evidence.” (*Sabah, supra*, 151 Cal.App.4th at p. 823, citing *In re Marriage of Mix* (1975) 14 Cal.3d 604, 614.)

Here, substantial evidence supports the issuance of the temporary restraining order. Under the DVPA, an order may be issued to restrain a person from stalking, threatening, harassing, and/or telephoning (including making annoying calls to) a former spouse. The trial court expressly noted that it relied on this ground as a basis for the issuance of the order. It determined that Sacha had been subjected to “sufficient conduct” to justify the order. Ample evidence supports that finding. Sacha testified about two calls Nathalie had made, during which she threatened to



kill him, “come after” his wife, and take away his sons. He also testified that she called his cell phone numerous times, stating she would pester him until the end of his life. Sacha further testified that he felt harassed by Nathalie; his secretary told him that Nathalie had shown up several times at his workplace, and security officers reported that Nathalie had shown up repeatedly at the entrance to his gated community. Finally, he testified that she called his home on multiple occasions. He felt sufficiently harassed and threatened that he had changed his phone numbers multiple times over the past 18 months. Sacha’s testimony, credited by the trial court, was sufficient to support the court’s factual finding that Nathalie had committed past acts of abuse.

The testimony of Sacha’s employees provided additional support for his allegation that Nathalie had harassed him and his employees at his place of business. Sacha testified that Nathalie had been showing up at his place of business since 2011, when he personally witnessed her threatening his employees. In 2012, Sacha had answered calls from Nathalie at his business, and Matthews and Ramos testified to numerous “hang-up calls.” In light of other evidence of Nathalie’s conduct, it was reasonable to infer that Nathalie made the hang-up calls to harass Sacha.

Nathalie contends that Sacha’s state of mind -- that he felt harassed or threatened -- is “nothing but speculation, conjecture or surmise,” and cannot support the issuance of a restraining order under the DVPA. To the extent she suggests Sacha’s state of mind is irrelevant, we disagree. As discussed, a DVPA restraining order may be issued to enjoin conduct that would “disturb[] the peace of the other party.” (§ 6320, subd. (a).) In *Nadkarni, supra*, 173 Cal.App.4th at page 1498, the appellate court held that conduct that destroys the mental or emotional calm of a former spouse, such as accessing and reading the spouse’s

private e-mail account, may be enjoined by a DVPA restraining order. Thus, Sacha's state of mind was relevant to the court's determination whether to issue a DVPA restraining order. His testimony about his state of mind was not speculative, conjecture or surmise, as he had personal knowledge of his mental state. The testimony that Nathalie's conduct -- numerous calls to his business, home, and personal cell phone -- adversely affected his mental or emotional calm were relevant to, and supportive of, the issuance of the restraining order. In short, there was substantial evidence to show that Nathalie had committed past acts of abuse against her former spouse, as she had engaged in conduct enjoined by section 6320. (§ 6203 [defining abuse to include conduct enjoined by section 6320].) Accordingly, the court did not err in granting the restraining order.<sup>4</sup>

Nathalie contends there was insufficient evidence to support the inclusion of Sacha's wife in the restraining order, as she did not testify to her state of mind. However, section 6320, subdivision (a) provides that, "in the discretion of the court, on a showing of good cause," the court may enjoin a person from "contacting," "coming within a specified distance of, or disturbing the peace . . . of other named family or household members." Sacha's wife falls within the scope of section 6320; she lived with Sacha and shared an office at his place of business. There was ample evidence in the record to find that appellant had threatened Sacha's wife. Sacha testified he personally heard Nathalie threaten to "come after" his wife, and it was reasonable to infer that Sacha informed his wife of the threat. Ramos testified he told her about some of the "hang-up calls." From this evidence,

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<sup>4</sup> Because we conclude the trial court properly issued a restraining order on the ground that Nathalie had "engage[d] in any behavior that has been or could be enjoined pursuant to Section 6320" (§ 6203), we need not address the alternate and independent ground (reasonable apprehension of imminent serious bodily injury) cited by the trial court for issuing the restraining order.

the court could fairly infer that both Sacha and his wife would be disturbed by the threats and harassment, as well as by learning that Nathalie had come to their business and residence. Accordingly, there was good cause for the trial court to preclude appellant from contacting or approaching Sacha's wife. Under the evidence presented and the facts reasonably deducible, the court's decision to issue the restraining order was amply supported.<sup>5</sup>

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<sup>5</sup> For the first time, in her reply brief, appellant contends that section 6340 is unconstitutional, and thus, the trial court erred in considering it. We conclude she has forfeited this argument by failing to raise it in a timely manner. (*Mammoth Lakes Land Acquisition, LLC v. Town of Mammoth Lakes* (2010) 191 Cal.App.4th 435, 476.) Even were we to consider it, we would find any error harmless. Section 6340 is not necessary for the trial court to find that appellant had engaged in behavior enjoined by section 6320, which is sufficient to support the issuance of the restraining order.

## **DISPOSITION**

The order is affirmed. Costs are awarded to respondent.

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MANELLA, J.

We concur:

WILLHITE, Acting P. J.

SUZUKAWA, J.