Filed 6/29/18 Cathy B. v. Christopher B. CA2/5

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

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| CATHY B.,<br><br>Respondent,<br><br>v.<br><br>CHRISTOPHER B.,<br><br>Appellant. | B277144<br><br>(Los Angeles County Super. Ct. No. GQ013771) |

APPEAL from order of the Superior Court of Los Angeles County, R. Carlton Seaver, Judge (Ret.). Reversed.

The Law Office of Andrew M. Rosenfeld and Andrew M. Rosenfeld, for Appellant.

The Law Office of Herb Fox and Herb Fox, for Respondent.

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Christopher B. appeals from a domestic violence restraining order issued under the Domestic Violence Prevention Act (DVPA) (Fam. Code, § 6200 et seq.),[1] ordering him to stay away from his sister, respondent Cathy B. Christopher contends the order is not supported by substantial evidence. We conclude that Christopher's conduct does not constitute domestic violence under the DVPA, because there is no substantial evidence that he physically injured Cathy, placed her in reasonable apprehension of imminent serious bodily injury, or disturbed her emotional calm within the meaning of the statute. We reverse.

## FACTS AND PROCEDURAL HISTORY

Cathy and Christopher have been embroiled over the limited conservatorship of their developmentally disabled sister Barbara. Cathy was appointed limited conservator in 2000. Christopher unsuccessfully sought to remove Cathy as conservator in 2011.

Over the course of the conservatorship dispute, Christopher would send "hundreds" of emails, phone calls, and text messages to Cathy, their family members, and Barbara's healthcare providers that questioned Cathy's competency as conservator. Cathy estimated Christopher might send as many as 10 to 20 emails in a single month

[1] All further statutory references are to the Family Code unless otherwise indicated.

regarding the care of Barbara. Christopher also recorded his conversations with Cathy with her knowledge, but without her prior permission.[2] Christopher claimed he did so because he believed Cathy would cause an incident amongst the family.

On March 13, 2016, Christopher confronted Cathy outside of Barbara's home after Cathy placed Barbara in her car. Christopher approached and opened the driver's side door. He would not let go of the door and would not leave the area, even though Cathy repeatedly asked him to do so. Cathy tried several times to close her door, but Christopher physically resisted by holding the door. Christopher had his hand in the window and kept "pulling back and pulling back, and [they] were struggling with the door." Christopher finally let go of the door after Cathy said she would "have to call the police." Cathy felt afraid for her safety because (1) Christopher is six-foot-five and 240 pounds, and he "is very imposing;" and (2) the prior evening Christopher took Barbara to an aqua bounce course, which was against the healthcare protocol set in place for Barbara because she is fearful of water and has limited mobility and medical conditions. That evening, Barbara returned wet, shivering,

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[2] Christopher unsuccessfully sought to introduce a transcript of one recorded conversation. He argued that Penal Code section 632, subdivision (a)(3), permitted the recording because it was in a public gathering. The court rejected his argument, finding the communication was a private conversation.

and had urinated herself. Following the car incident, Christopher called the police and alleged Cathy assaulted him by scraping his chest with the car door.

The conservatorship dispute culminated on April 8, 2016, when Cathy filed a request for a domestic violence restraining order against Christopher to protect herself, and to include as other protected parties her sisters Barbara and Stephanie.[3] Cathy listed emotional and physical distress, fear of attack, and fear for her safety. Cathy based her request on the March 13, 2016 car incident, which she alleged disturbed her peace because she had to discuss her family issues with the police. Cathy also alleged Christopher sent harassing emails, phone calls, and texts, and would record all conversations without her permission.

Cathy, Christopher, and their youngest sister Stephanie testified during an evidentiary hearing.[4] Cathy

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[3] Cathy, as conservator for Barbara, also filed a separate request for a Domestic Violence Restraining Order on behalf of Barbara on April 8, 2016. In a separate opinion, we affirm the issuance of a domestic violence restraining order against Christopher on behalf of Barbara. (*Barbara B. v. Christopher B.* (June 29, B2766931) [nonpub. opn.].)

[4] Our recitation and analysis of the evidence in this case takes into account the entire record of the proceedings. As to Stephanie's testimony concerning purported past physical abuse of Cathy by Christopher, for instance, the record indicates that the trial court did not credit that testimony—finding instead that Cathy made out a prima

testified about the March 13, 2016 car incident and Christopher's email communications. With respect to the email communications, Cathy characterized them as containing misrepresentations and exaggerated, inflammatory language rising to the level of libel and slander. She testified that they were frustrating and stressful for her and had caused her health concerns due to the stress. Stephanie testified that Christopher verbally and emotionally harassed Cathy for more than a decade by writing emails that were not true depictions of events in order to show Cathy was a bad conservator. Christopher would call Cathy and accuse her of "doing a terrible job as conservator." Christopher would send many email copies of his accusations about Cathy to her, her family members, and Barbara's healthcare providers. Cathy felt compelled to respond to the false e-mails and phone calls up to five times a month. The accusations were very stressful to Cathy, and she believed they were harassing.

At the close of the hearing and after reviewing the documentary evidence, the trial court found Cathy "met her

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facie case of only non-violent conduct and instructing Christopher to respond to the matters about which Cathy herself testified. Significantly, Cathy did not seek a restraining order based on the purported prior incidents of physical abuse related by Stephanie; Cathy herself did not testify about these incidents; she did not argue for their consideration in the trial court; and Cathy's briefing and argument in this court does not rely on or mention them either.

burden of proof" and issued a two-year domestic violence restraining order on Cathy's behalf. The court found evidence of harassment and "disturbing [Cathy's] peace, both individually and in her capacity as a conservator." Christopher's conduct "interfer[ed]" with Cathy as Barbara's conservator as effectively "deciding to substitute [his] determination for hers. Period." Christopher filed a timely notice of appeal.

## DISCUSSION

### *Standard of Review*

"We review an order granting a protective order under the DVPA for abuse of discretion." (*In re Marriage of Evilsizor & Sweeney* (2015) 237 Cal.App.4th 1416, 1424.) "However, 'the exercise of discretion is not unfettered in such cases. (*Nakamura v. Parker* (2007) 156 Cal.App.4th 327, 337.)" (*Rodriguez v. Menjivar* (2015) 243 Cal.App.4th 816, 820.) A trial court abuses its discretion when "the ruling in question 'falls outside the bounds of reason' under the applicable law and the relevant facts." (*People v. Williams* (1998) 17 Cal.4th 148, 162; see also *In re Marriage of Fregoso & Hernandez* (2016) 5 Cal.App.5th 698, 702; *Polanski v. Superior Court* (2009) 180 Cal.App.4th 507, 537 [abuse of discretion review is deferential but not empty].)

"A reviewing court applies the substantial evidence standard of review to a trial court's factual findings."

(*Sabbah v. Sabbah* (2007) 151 Cal.App.4th 818, 822.) "There are two aspects to a review of the legal sufficiency of the evidence. First, one must resolve all explicit conflicts in the evidence in favor of the respondent and presume in favor of the judgment all *reasonable* inferences. [Citation.] Second, one must determine whether the evidence thus marshaled is substantial. While it is commonly stated that our 'power' begins and ends with a determination that there is substantial evidence [citation], this does not mean we must blindly seize any evidence in support of the respondent in order to affirm the judgment. . . . 'A decision supported by a mere scintilla of evidence need not be affirmed on review.' [Citation.]" (*Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1632–1633, fns. omitted.) "'[I]f the word "substantial" [is to mean] anything at all, it clearly implies that such evidence must be of ponderable legal significance. . . .' The ultimate determination is whether a *reasonable* trier of fact could have found for the respondent based on the *whole* record. [Citation.]" (*Id.* at p. 1633; see also *Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 651–652 ["A formulation of the substantial evidence rule which stresses the importance of isolated evidence supporting the judgment, . . . risks misleading the court into abdicating its duty to appraise the whole record."].)

***The Record Does Not Contain Substantial Evidence to Support Findings that Christopher Placed Cathy in Reasonable Apprehension of Imminent Serious Bodily Injury or Destroyed Cathy's Emotional Calm***

Christopher contends the trial court abused its discretion in issuing the domestic violence restraining order because there is no substantial evidence to support a finding of a past act of abuse. We agree.

The purpose of the DVPA is 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.) To further this purpose, a court may issue an order to restrain any person if an affidavit or testimony provided to the court shows "reasonable proof of a past act or acts of abuse." (§ 6300.) A party seeking a restraining order has the burden to prove a past act of abuse by a preponderance of the evidence. (See *Gdowski v. Gdowski* (2009) 175 Cal.App.4th 128, 137.)

"Abuse" includes, among other acts, placing a person in "reasonable apprehension of imminent serious bodily injury" or any behavior that could be enjoined under section 6320, such as "attacking" or "harassing" conduct, or "disturbing the peace of the other party." (§§ 6203, subds. (a)(3), (a)(4),

6320, subd. (a); see *In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1498.)[5]

Placing a person in reasonable apprehension of imminent serious bodily harm requires either a pattern of physical abuse or threatening conduct toward the victim seeking protection. (See *Gou v. Xiao* (2014) 228 Cal.App.4th 812, 814–815, 818 [court reversed order denying a DVRO request wherein wife was in "reasonable apprehension of imminent bodily injury" because husband bit her on the arm, and wife watched husband place child in a chokehold, whip with a stick, and strike on numerous occasions]; *Pugliese v. Superior Court* (2007) 146 Cal.App.4th 1444, 1450 [estranged wife sufficiently alleged being placed in a "reasonable apprehension of imminent serious bodily injury" because estranged husband "shoved, pushed, kicked, hit, slapped, shook, choked and sexually abused her. She also alleges he pulled her hair, pinched and twisted her flesh, threatened to kill her, threatened her with bodily harm, confined her in the family car while driving erratically and drunkenly and infected her with sexually transmitted diseases."].)

"'"[D]isturbing the peace of the other party" in section 6320 may be properly understood as conduct that destroys the mental or emotional calm of the other party.'" (*Burquet v. Brumbaugh* (2014) 223 Cal.App.4th 1140, 1146.)

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[5] Cathy did not claim below, and makes no argument on appeal, that anything other than subdivisions (a)(3) or (a)(4) apply to her case.

In this case, after construing the record in the light most favorable to the issuance of the restraining order, we cannot say the court acted within its discretion in finding that Christopher's conduct amounted to domestic abuse. Cathy's singular reference to the March 2016 incident as the only "physical assault" is reflective. Although she categorizes the incident as an assault, nothing in the record demonstrates that an assault in fact occurred or that she was placed in reasonable apprehension of imminent serious bodily harm. Cathy testified that she felt scared and afraid for her safety because Christopher has on prior occasions failed to abide by the healthcare protocols for his developmentally disabled sister, and he is a large, imposing man. To be sure, Christopher's past conduct toward Barbara has caused severe emotional distress to Barbara, but Cathy fails to show how Christopher's treatment of Barbara creates a reasonable apprehension of serious bodily injury for Cathy. Nor is Christopher's imposing presence sufficient to create a reasonable apprehension of bodily injury, particularly given that Cathy does not claim any past physical assaultive conduct. (See *S.M.v. E.P.* (2010) 184 Cal.App.4th 1249, 1266.)

Nor is there substantial evidence on the record to support a finding that Christopher's behavior rose to the level of conduct that destroys Cathy's emotional calm. With respect to the car incident, while Cathy testified to her stress during the brief confrontation, she pointed to no lasting emotional effect from the incident, only her discomfort in

having to discuss it with the police after Christopher called them. This falls well short of a showing that Christopher's conduct destroyed her emotional calm. With respect to the emails, Cathy's testimony was conclusory, and there is not substantial evidence of particular communications that were false, inflammatory, libelous, or slanderous. Further, Cathy's generalized testimony about the number of emails sent to her about Barbara's care does not rise to the level of substantial evidence to support a finding that Christopher's conduct could be considered abusive, particularly given Cathy's concession that he did not engage in conduct proscribed by Penal Code section 653m within the meaning of section 6320, subdivision (a).

Painting Cathy as a poor conservator in communications with her and Barbara's care providers is not obscene, does not equate to disclosing "intimate" or "private" details of Cathy's personal life, and is not directed to the masses on social media.[6] (See *Quintana v. Guijosa* (2003)

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[6] Cathy contends that Christopher's conduct "breach[ed] Cathy's legal authority and duty to protect" Barbara. This was consistently referenced by the trial court during the evidentiary hearing. At the conclusion of the hearing, the court found that Christopher disturbed "the peace" of Cathy "both individually and in her capacity as a conservator," and that his conduct "interfer[ed]" with Cathy as Barbara's conservator as effectively "deciding to substitute [his] determination for hers." We see no basis in the Domestic Violence Protection Act to conclude that

107 Cal.App.4th 1077, 1078–1079; *Conness v. Satram* (2004) 122 Cal.App.4th 197, 200–201; *Phillips v. Campbell* (2016) 2 Cal.App.5th 844, 847, 852–853 [appellant's "claim of nonviolent conduct" found inapposite because he harassed the victim by calling her names and posting personal information and photographs of her on social media].)

Cathy's reliance on *In re Marriage of Nadkarni*, *supra*, 173 Cal.App.4th 1483, and *In re Marriage of Evilsizor & Sweeney*, *supra*, 237 Cal.App.4th 1416, provides further support for our finding that her emotional calm was not destroyed. *In re Marriage of Nadkarni* involved a husband who surreptitiously accessed his wife's personal email to retrieve confidential information, including communications with her family law attorney, clients and employment prospects, financial records, her mother's medical records, and other "inflammatory and sensitive" correspondence with Child Protective Services. (*Id.* at pp. 1488–1490.) The husband told others he knew which social events the wife would be attending because he accessed her email account, which caused her to fear for her safety given their history of physical abuse. (*Id.* at p. 1490.) The court of appeal construed this conduct as "indirect and threatening contact" that "caused [the wife] to suffer 'shock' and 'embarrassment,' to fear the destruction of her 'business relationships,' and to fear for her safety." (*Id.* at pp. 1497–1499.)

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Christopher's refusal to respect Cathy's legal status as her sister's conservator renders his conduct abusive.

*In re Marriage of Evilsizor & Sweeney*, *supra*, 237 Cal.App.4th 1416, involved similar conduct wherein the husband spent between 20 and 30 hours secretly downloading and reviewing text messages from his wife's personal phone. (*Id.* at p. 1420.) He then went uninvited to her parent's home and disclosed "private and sensitive information" about the wife to her father, which caused her to feel "'very upset and shocked.'" (*Ibid.*) Following separation and dissolution proceedings, the wife sought a restraining order, alleging that the husband "downloaded her private text communications to third parties, including her attorney, without her consent, and had hacked into her Facebook account, changed her password, and rerouted the e-mail associated with her Facebook account to his own account." (*Id.* at p. 1421.) The wife also alleged the husband "threatened to reveal publicly more text messages and e-mails for leverage in the dissolution proceedings" and threatened to reveal information to the Internal Revenue Service. (*Id.* at pp. 1421, 1423.) The husband eventually provided text messages regarding fertility treatments and the wife's previous boyfriends to a custody evaluator. (*Id.* at p. 1422.) The trial court ultimately concluded that the husband disturbed the peace of the wife because he was "either disclosing or threatening to disclose to third parties for no particular reason intimate details of your lives." (*Id.* at p. 1425.) The court of appeal agreed and affirmed the issuance of the restraining order. (*Id.* at p. 1433.)

Christopher's alleged misconduct in this case (i.e., disseminating "misrepresentation[s] and exaggerations" about Cathy's effectiveness as conservator) does not rise to the level of abuse discussed *In re Marriage of Nadkarni* and *In re Marriage of Evilsizor & Sweeny*. Christopher did not surreptitiously access Cathy's personal email account or cellular phone, and he did not disclose sensitive information that left Cathy shocked or fearful for her own safety. We cannot draw reasonable inferences to support a finding that Christopher's conduct placed Cathy in "reasonable apprehension of imminent serious bodily injury," or that his conduct destroyed her emotional calm. Although there may be separate legal avenues to control Christopher's conduct, a domestic violence restraining order to protect Cathy individually is not one of them.

## DISPOSITION

The trial court's June 10, 2016 order restraining Appellant Christopher B. under the DVPA as against Respondent Cathy B. is reversed. The parties are to bear their own costs on appeal.

MOOR, J.

I concur:

BAKER, Acting P.J.

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KIN, J.,* Dissenting

Because I find there was substantial evidence in the record as a whole to support the trial court's finding that Christopher B. engaged in a course of conduct "disturbing the peace" of Cathy B., I respectfully dissent from the reversal of the trial court's issuance of the domestic violence restraining order.

The Domestic Violence Prevention Act (DVPA) permits a court to issue an order to restrain another person upon "reasonable proof of a past act or acts of abuse." (Fam. Code, 6300.)[1] "Abuse" for this purpose includes any behavior that could be enjoined pursuant to section 6320. (§ 6203, subd. (a)(4).) Section 6320 sets forth a range of behaviors that may be enjoined, including, among others, attacking, stalking, threatening, sexually assaulting, battering, harassing, and destroying property, and ending with "disturbing the peace of the other party." (§ 6320, subd. (a).)

In providing guidance as to the meaning of "disturbing the peace" for purposes of a DVPA restraining order, this court has explained: "The ordinary meaning of 'disturb' is '[t]o agitate and

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

1 All further statutory references are to the Family Code, unless otherwise indicated.

destroy (quiet, peace, rest); to break up the quiet, tranquility, or rest (of a person . . . , etc.); to stir up, trouble disquiet.' [Citation.] 'Peace,' as a condition of the individual, is ordinarily defined as 'freedom from anxiety, disturbance (emotional, mental, or spiritual), or inner conflict; calm, tranquility.' Thus the plain meaning of the phrase "disturbing the peace of the other party' in section 6320 may be properly understood as conduct that destroys the mental or emotional calm of the other party." (*Burquet v. Brumbaugh* (2014) 223 Cal.App.4th 1140, 1146 (*Burquet*).) This formulation of the concept of "disturbing the peace" is purposefully flexible to allow trial courts "to issue necessary orders suited to individual circumstances" and comport with our Legislature's intent that the DVPA be "broadly construed" to accomplish its "protective purpose." (*In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1498.)

Here, upon review of the "entire record," consisting of testimony received by the trial court over multiple days, I find there is substantial evidence, which if accepted as true as we must, supports the trial court's decision to issue the restraining order. (See *Burquet, supra,* 223 Cal.App.4th at p. 1143 ["In reviewing the evidence, the reviewing court must apply the 'substantial evidence standard of review,' meaning 'whether, on the entire record, there is any substantial evidence, contradicted or uncontradicted,' supporting the trial 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'"].) In this regard, there is evidence of three categories or types of conduct in the record that should dictate the outcome here: (1) Christopher's email

communications; (2) the car incident; and (3) one or more prior incidents of Christopher physically assaulting Cathy.

First, with respect to emails, they were constant and persistent over a prolonged period of time, i.e., a decade. Christopher would send 10 to 20 emails over the course of a month, either directly to Cathy or to others with Cathy copied on such emails. Crediting Cathy's testimony about these emails, as we must on appellate review, they were disturbing in that they were "untrue," "exaggerated," and contained "misrepresentations of the events that actually occur." Moreover, Cathy found there was "inflammatory language in these emails" and that they "portray a different character than who I am." In Cathy's view, such emails constituted "libel and slander to my reputation to all of these agencies or people that I have to work with for [sister] Barbara's betterment." Consequently, the frequency and nature of Christopher's communications were such that Cathy felt compelled to respond, stating: "So I am constantly replying to phone calls and e-mailing and telling them the correct order of how things occurred, so that the correct information is there. And also so that my integrity is upheld."

As to how Christopher's persistent email (and telephonic to some degree) communications worked to destroy her mental and emotional calm, Cathy summarized: "Christopher doesn't understand 'stop' or the word 'no.' He just continues badgering and writing emails and asks the same questions over and over again. If he doesn't get an answer that he likes, he keeps asking the same question. [¶] It's very frustrating and it's stressful for me. And I've been doing this for 10 years. It's caused me a great deal of medical concerns. I have heart problems now." Corroborating Cathy's claims that she suffered from having to

respond to Christopher's disturbing and persistent emails, Cathy's (and Christopher's) sister Stephanie testified that Cathy must respond to "false emails and false phone calls" five or six times a month and that Cathy reported having health issues due to the stress caused by having to respond to such emails and calls.

Second, against this backdrop of Christopher's persistent and disturbing communications to Cathy, the car incident, which appears to have been the catalyst for Cathy seeking the restraining order, has significant meaning as a contributing factor to the destruction of Cathy's mental and emotional calm. Much like he bothered and disturbed Cathy with his incessant and unwanted emails, with respect to the car incident, Christopher would not let Cathy get away from him, holding the car door open so that she could not leave until she finally threatened to call the police. It is also noteworthy that Christopher went to the police afterward to report that Cathy had battered him by hitting him with the car door. When viewed in the light most favorable to Cathy, that subsequent conduct raises the reasonable inference Christopher intended to disturb her peace further by making a false police report. (See *Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1632-1633.) As Cathy explained, when he does such things, that too "threatens my peace of mind." As to the car incident as a whole, Cathy testified that it "was very stressful and fearful for me" and "that [it] definitely disturbed my peace and it was harassing." She also testified that during the incident, "I was afraid for my safety," noting that Christopher "is six-foot-five and 240 pounds and he stands right over you and is very imposing."

Third, consistent with the fear for safety that Cathy expressed in connection with the car incident, Stephanie testified that Christopher has been physical with Cathy in the past.[2] In a declaration submitted in support of the request for a restraining order and while testifying during the hearing, Stephanie stated she had been told that "Christopher choked Cathy by pushing her up against the wall in my father's laundry room." During cross-examination by Christopher at the hearing, Stephanie reiterated that "Cathy and dad said you pushed her up against the wall in the laundry room."[3] Moreover, during that cross-examination,

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[2] The majority does not consider this evidence as part of the record supporting the trial court's findings, based on its conclusion that the trial court "did not credit" Stephanie's testimony. But the trial court never made any adverse credibility finding as to Stephanie and, in fact, made no comment as to what weight it would afford her testimony. As such, we must, on review for substantial evidence, conclude the trial court impliedly found Christopher had previously been physical with Cathy. (*R.D. v. P.M.* (2011) 202 Cal.App.4th 181, 188.) Instead, the majority concludes it should ignore this evidence because the trial court had indicated to Christopher during the hearing that he should respond to Cathy's testimony and address the fact that Cathy had made out "a prima facie case that you have been harassing her and disturbing her peace." That approach to the record misapplies the principles of substantial evidence review, which requires the reviewing court to consider the "*entire* record" and accept "*any* substantial evidence" that supports the trial court's findings. (*Burquet, supra*, 223 Cal.App.4th at p. 1143, italics added.)

[3] Stephanie's testimony about the laundry room incident may be hearsay, but Christopher did not object on appeal to such

Stephanie testified she had seen firsthand physical contact between Christopher and Cathy, stating "I have seen you butt her. I've seen you butt her with your hands . . ." and "I have seen you push her against the wall."

When viewing all evidence in the record together, in context, and under the totality of the circumstances, while broadly construing the flexible definition of "disturbing the peace" and making all reasonable inferences in favor of the trial court's decision, I must conclude the record as a whole—consisting of evidence of past incidents of physical assault, constant and persistent disturbing email communications, and the culminating event of the physical struggle over the car door—contains substantial evidence to support the trial court's finding of abuse.

As Cathy summarized in her final argument to the trial court: "Christopher has been verbally and emotionally harassing for decades[.] His actions are contentious, disrespectful, aggressive an[d] unrelenting. He does not follow the rules and cannot accept 'no' for an answer, and has proven himself not to be trusted. [¶] He writes many e-mails, phone calls to me . . . , saying things that are untrue as to how things happened. And he usually uses inflammatory language that libels and slanders my character, and those actions are all one-sided from him only. I try to avoid him and not engage. He doesn't understand the

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evidence having been received by the trial court for all purposes. Moreover, in addition to its evidentiary value for the truth of the matter asserted (i.e., that Christopher physically assaulted Cathy), Cathy's statements to Stephanie have evidentiary value for the non-hearsay purpose of demonstrating Cathy's state of mind (i.e., that Cathy is fearful of Christopher and that her emotional calm is disturbed by him).

answers we give him, but still he pursues me. It is emotionally and physically draining to constantly have to defend false accusations." In issuing the DVPA restraining order, the trial court necessarily credited Cathy's claims. Giving proper deference to the trial court, we must necessarily credit the trial court's findings under the applicable substantial evidence standard. Indeed, so doing properly effectuates the DVPA's purpose of preventing abuse by providing for the separation of the persons involved (see §6220), which this record amply supports.

For these reasons, I would affirm the issuance of the restraining order and respectfully dissent.

KIN, J.