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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

A.W.,

Plaintiff and Respondent,

v.

PAUL A. BRIDGES,

Defendant and Appellant.

2d Civ. No. B282465
(Super. Ct. No. D380560)
(Ventura County)

Defendant Paul A. Bridges appeals an order of the superior court granting a Domestic Violence Prevention Act (DVPA) restraining order. (Fam. Code, §§ 6200, 6300.) The trial court authorized Bridges, a state prisoner, to make a telephone appearance for an 8:30 a.m. hearing. The hearing took place at 10:05 a.m., and the court proceeded with the hearing after finding Bridges did not call in. We conclude, among other things, that the court erred by not making a finding on whether Bridges willfully failed to make a telephone appearance. We reverse and remand.

FACTS

A.W. filed a request for a DVPA restraining order against Bridges, her former husband and a state prisoner. She claimed he had harassed her by making phone calls and sending her letters from state prison. She said she contacted prison officials who blocked his phone calls. They, however, denied her request to prevent Bridges from mailing letters to her.

A.W. requested an order that would prohibit Bridges from having any “[c]ontact, either directly or indirectly, . . . including but not limited to, by telephone, mail or e-mail or other electronic means.”

Bridges filed a written in propria persona opposition. He denied her accusations. He said his contacts with her exclusively involved a pending civil action in which he and A.W. were parties. He claimed the rules of court required him to serve documents to her by mail. He attached copies of the documents he sent her. One was his request for entry of a default against A.W. Others included: 1) a request to “meet and confer,” which he claimed he was required to send to her by the rules of court; 2) an application for leave to amend his complaint in a civil action; 3) a civil subpoena; and 4) letters regarding litigation. Bridges claimed A.W. filed the request for a restraining order “to evade the civil litigation” he had filed against her. He said she did not disclose this information to the court in seeking the restraining order.

Bridges filed a notice of intent to appear by telephone for the evidentiary hearing on the restraining order. He also filed a request for telephone appearance. The trial court granted that request.

The hearing was scheduled for March 27, 2017, at 8:30 a.m. The register of actions reflects the hearing went “in session” at 10:05 a.m. on that date. The trial court said Bridges “has an order granting telephonic appearance but has failed to call in.” It heard testimony from A.W. and it granted the restraining order. The restraining order lasts until March 27, 2020. It prohibits Bridges from contacting A.W. “either directly or indirectly, by any means, including, but not limited to, by telephone, mail, e-mail, or other electronic means.”

DISCUSSION

Notice and Opportunity To Be Heard

Bridges contends the restraining order must be reversed because he did not receive adequate notice of the hearing and the trial court “proceeded without ensuring” his “opportunity to be heard.”

Bridges is an inmate in state prison. “A prisoner may not be deprived, by his or her inmate status, of meaningful access to the civil courts if the prisoner is both indigent and a party to a bona fide civil action threatening his or her personal or property interests.” (*Wantuch v. Davis* (1995) 32 Cal.App.4th 786, 792.) Prisoners have the right to present testimony in civil cases initiated against them. (*Hoversten v. Superior Court* (1999) 74 Cal.App.4th 636, 643.) “Trial courts must . . . ‘ensure indigent prisoner litigants are afforded meaningful access to the courts’” (*Jameson v. Desta* (2009) 179 Cal.App.4th 672, 675.) “Among the ways in which meaningful access may be secured is by ‘conduct[ing] . . . proceedings by telephone.’” (*Ibid.*)

Here Bridges filed a request for telephone appearance for the hearing on the DVPA restraining order. On that request he informed the trial court that he was an “[i]ndigent incarcerated

[i]nmate.” The court granted his request to appear telephonically.

The hearing was scheduled for March 27, 2017, at 8:30 a.m. But the hearing did not take place at that time. It did not commence until 10:05 a.m. on that date. At the hearing the trial court found Bridges “failed to call in.” It then heard testimony by A.W. and issued the restraining order. It made no finding on whether Bridges’s nonappearance was willful.

In *Jameson v. Desta*, *supra*, 179 Cal.App.4th at page 675, the Court of Appeal reversed a dismissal where a prisoner failed to appear telephonically at hearings in his civil action. It held the trial court erred by not determining whether his failure to appear was willful. It noted that the record reflected the prisoner “made clear his desire to participate in all court proceedings.” (*Ibid.*) The absence of a trial court finding on willfulness was a critical omission given the role third parties play. The court noted that telephonic appearances by prisoners require special coordination between court staff and prison personnel. It said, “[T]o the extent that the trial court elects to rely on telephonic hearings to provide such access, the court may wish to communicate itself, telephonically and/or by letter, with prison personnel to determine *what logistical arrangements are necessary* to enable [the prisoner] to appear telephonically, and *ensure that both court staff and prison personnel make those arrangements.*” (*Id.* at p. 684, italics added.)

Here Bridges “made clear his desire to participate in all court proceedings.” (*Jameson v. Desta*, *supra*, 179 Cal.App.4th at p. 675.) He opposed the restraining order and claimed A.W. made false accusations. He filed an eight-page response to her request for a restraining order. He claimed to have a valid

defense. He said A.W.'s claims of "harassment via telephone" were untrue. He said she improperly sought to prohibit him from sending mail to her. He suggested A.W. was attempting to improperly use a restraining order because of her involvement in civil litigation.

Bridges filed a request to appear telephonically to raise his defenses. The court found Bridges did not call at the time of the hearing. But, as in *Jameson*, it did not find his nonappearance was willful and there is no evidence in this record to show he willfully failed to appear. Bridges contends the court was "aware that [he] is a prisoner and is extremely limited to personally contacting the courts." He claims he "did not willfully fail to call in."

There was more than an hour and a half difference between the scheduled time of the hearing and the time the hearing took place. There is nothing in the record to show that court staff advised Bridges or prison staff that the hearing would not take place at the scheduled 8:30 a.m. time.

"[A] prisoner's right to telephone access, if any, is subject to rational limitations based upon legitimate security and administrative interests of the penal institution." (*Arney v. Simmons* (D.Kan. 1998) 26 F.Supp.2d 1288, 1293.) Here A.W.'s declaration indicated that she contacted the state prison and prison officials agreed to block Bridges's telephone calls to her. Bridges claims that was not the case. The record does not contain any finding as to whether a prison call blocking procedure was in effect at the time of the hearing or whether it or other administrative or "logistical arrangements" prevented Bridges from calling the court.

The trial court should “ensure that both court staff and prison personnel make [the proper arrangements]” to process these telephonic appearances. (*Jameson v. Desta, supra*, 179 Cal.App.4th at p. 684.) Here the record contains no finding on any coordination between the trial court, court staff and prison personnel for the telephonic appearance. A prisoner is not in the same category as a typical civil litigant who has no third party barriers to making a telephonic appearance.

DISPOSITION

The order is reversed and the matter is remanded to the trial court for further proceedings consistent with this opinion. Costs on appeal are awarded in favor of appellant.

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GILBERT, P. J.

We concur:

PERREN, J.

TANGEMAN, J.

William R. Redmond, Judge
Superior Court County of Ventura

Paul A. Bridges, in pro. per., for Defendant and
Appellant.
Joseph E. Hohenwarter for Plaintiff and Respondent.