Filed 12/19/25 Danaher v. Loe CA1/4

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

STEPHANIE DANAHER, Plaintiff and Appellant, v. JOHN LOE, Defendant and Respondent.	A171021, A171839 (Sonoma County Super. Ct. No. SCV273372)

The trial court entered a judgment denying Stephanie Danaher's petition for a restraining order under the Elder Abuse and Dependent Adult Civil Protection Act (Welf. & Inst. Code, § 15600 et seq.; Elder Abuse Act) against John Loe.[1] The trial court found that Stephanie failed to prove by a preponderance of the evidence that John had abused Stephanie by firing bullets near the homes of Stephanie and her husband, Tom Danaher, and mother, Patricia K., or by playing racist music on one

[1] Subsequent undesignated statutory citations are to the Welfare and Institutions Code.

occasion.[2] The trial court awarded John about $35,000 in prevailing party attorney's fees and costs.

Stephanie contends the trial court erred by failing to consider the evidence of the racist music and preventing her from calling certain rebuttal witnesses. She also argues that substantial evidence does not support the trial court's judgment. She finally contends that the award of attorney's fees should be reversed with the judgment. We find no error and affirm.

BACKGROUND

I. Layout of the Properties

Stephanie and Tom live on a property in rural Sonoma County that stretches mostly east-west. John and his wife Samantha live on a property to the north of Stephanie. On the western end, Stephanie's property abuts John's property. The property lines diverge on the eastern end, with an orchard owned by the Abrams family separating Stephanie and John's properties.

The western ends of the Loe and Danaher properties, where the properties abut, are lower in elevation than the eastern ends, but the slope is not uniform. The land is fairly flat on the western end. There is a steep 20 to 25 meter hill to the

[2] To avoid ambiguity, we use first names to refer to individuals involved in this case that have the same surname. Except for law enforcement or expert witnesses, we refer to other witnesses by their first name and last initial out of respect for their privacy. (Cal. Rules of Court, rule 8.90(b)(10); Advisory Com. com., Cal. Rules of Court, rule 8.90.)

east of that, where the Abrams property begins. The land rises at a more gradual incline further to the east.

The Loes' home is on the eastern end of their property. John operates a cannabis farm elsewhere on the property. In May 2022, John established a private shooting range in the southwest area. The range is oriented east-west, parallel but to the north of his property line with the Abrams, with John standing in the west and shooting at a target to the east.

John previously shot from two locations 60 and 75 yards from the target, which were visible to the Danahers. By the time of events relevant to this case, he moved to a shooting location further away, about 90 yards from the target, that was obscured by trees from the Danaher property. The target sits at the bottom of the hill. Behind the target is a wooden retaining wall, and then the hillside rises above it. Buildings on the Loes' property are in a direct line further east, such that if John were to raise his muzzle up from the target, he would be aiming directly above the top of his basketball court and into the window of his children's nursery in the second floor of his house.

Between the shooting locations and the target but offset to the south is a utility pole with an electrical panel and water pressure tank mounted to it. Because the shooting range is parallel to the Loe property line with the Abrams orchard and lower in elevation than the orchard or Danaher property, to shoot at the Abrams orchard or the Danaher property John would have to aim distinctly up and to the right or south of the target. The trees obstructing visibility of John's shooting location from the

Danahers' property likewise obscure visibility of the Abrams orchard or Danahers' property from the shooting location, especially in months when trees have not dropped their leaves.

The Danahers have three buildings on their property. Farthest west is a doublewide trailer on blocks. The trailer is about 5 feet from the boundary of the Danahers' property to the north with the Abrams orchard. The trailer is roughly 200 meters from John's shooting location. Farthest east is a cottage or granny unit, which is about 25 or 30 feet from the northern fence line with the Abrams orchard. Stephanie's mother, Patricia K., lives in the cottage. In between the trailer and cottage is a two-story building where Stephanie and Thomas live. This building is further south than the other two buildings.

II. Perceptions of Shooting

Stephanie first heard shooting on John's property in May 2022. She called law enforcement because she thought it was a shootout related to the Loes' cannabis crop. Tom set up cameras on the edge of their property to record the shootings after that. Tom believed he had heard 5,000 to 10,000 rounds or more fired on the Loe property in the year and a half before the trial.

In October 2022, Stephanie's sister, Maryann K., was visiting Patricia K. and heard a bullet whiz by the window of the granny unit. Maryann K. could not recall whether the window was open or closed. The shot startled Patricia K. and made Maryann K. fear for her mother. Maryann K. had heard gunshots earlier, but this bullet sounded different.

On November 12, 2022, Sheriff's Deputy Jack Carpenter, responding to a complaint from Tom, came to the Danahers' property while John was shooting. Tom was recording that day, and the video was introduced at trial as Exhibit 3-D. Tom and Carpenter walked up to the location of the camera while John was shooting. Carpenter heard the sounds of foliage being disturbed in the trees above him and saw leaves falling, but he could not say for sure that it was caused by bullets. He did not see anything that indicated there were bullets flying over his location or that would cause problems to any homes. But they left the area of the camera because he could not see exactly where the shooting was happening and did not want to be downrange of gunfire. Carpenter listened to the video at trial and heard one bullet ricochet, which he also commented on in the video.

On November 16, 2022, Stephanie was sitting outside having lunch when John began shooting. She claimed that a bullet whizzed by at about ten feet, at eye level. She thought she saw the bullet, but she admitted that was likely impossible. She then heard bullets whiz through the Abrams orchard, hit a tree in the Abrams orchard, hit something metal in the Loes' yard, and hit high up on a redwood tree at her neighbor's house on the east side of the Danahers' property.

Tom recorded a video on November 25, 2022, in which he narrated hearing a bullet hit a tree on the Abrams property and then tumble. This was introduced as Exhibit 3-A at trial.

Tom recorded a video in August 2023, introduced at trial as Exhibit 3-E, that captured the playing of music with white

supremacist lyrics. Tom testified at trial that he heard the music coming from the Loe property. About ten minutes after the music turned off, John began shooting on his property. A recording of those shots was introduced as Exhibit 3-B.

Tom recorded an undated video that he believed showed a bullet strike a tree. He took the video to a professional company and had them create an excerpt of just the relevant portion and repeat it several times at increasing levels of magnification. In the professional excerpt, labeled Exhibit 3-C at trial, there are two gunshot sounds, followed by leaves falling to the ground and the sound of an object striking a tree.

In early November 2022, a week before Stephanie believed she heard bullets whizzing past her, Tom hired two men with metal detectors to search the Abrams orchard for bullets. They found 12 bullets in the Abrams orchard and turned them over to the Sonoma County Sheriff's Office. In August 2023, Tom searched again and found 8 or 10 more bullets.

III. Petition and Trial

Stephanie filed a petition for an Elder Abuse Act restraining order in May 2023. Stephanie was 65 years old at the time, and Tom was 61 years old. Stephanie alleged that John's shooting made her afraid that he would hit her, her family, or her dog. She named Tom and her mother, Patricia K., as additional parties to be protected. The trial court denied Stephanie's request for a temporary restraining order and set the matter for a hearing. Trial commenced on October 26, 2023.

A. Stephanie's case

Stephanie, Tom, Patricia K., Maryann K., and Carpenter testified as witnesses in Stephanie's case in chief. Stephanie testified about John's shooting and the history of the Danahers' relationship with him. Shortly after John moved into his property in 2010, Stephanie went to his house to complain about noise from his property at night. John went "ballistic," got very aggressive, yelled at her from six inches away, and told her to leave. Stephanie claimed that John later accosted her and got into a yelling match when she was walking in the neighborhood, after she had complained about his cannabis operation to county officials. On another occasion, John banged on the fence near the Danahers' property in the middle of the night and screamed, referring to Stephanie by her nickname "Tess," "You'll never get rid of me, Tessie."

Stephanie also said that John had harassed her during the pendency of the case. She said that when she was walking past John while leaving the courtroom one day, John said, "Good-bye Tess. Good-bye, Tess." On a different occasion, after Stephanie and her sister parked in the courthouse lot one or two cars over from John, John pulled out in front of them, went around, and parked in another spot in the lot.

Tom acknowledged making various complaints to county officials about the shooting and other activities on John's property. He also acknowledged calling the sheriff's office to complain that one of John's cars had been idling noisily on John's property, "a long ways away" from Tom.

Tom testified about the various videos he had recorded. He identified six bullets that he said he had found in the second search of the Abrams orchard, which were admitted into evidence. He also described finding what he believed was a bullet hole on the outside of the north wall of the Danahers' doublewide trailer. However, he acknowledged that he did not witness a bullet strike the trailer, he merely noticed the hole one day.

In between dates of Tom's testimony, the trial court conducted a site visit of the Loe, Abrams, and Danaher properties. It observed John's shooting range, including the different shooting locations and the location of the target.

B. John's Defense

John's witnesses were his wife, Samantha; himself; and John Carbiener, a Marine veteran and firearms expert. John and Samantha described the history of their difficult relationship with the Danahers, including disputes about slamming car doors, noisily idling cars, and other issues. Samantha said they had offered not to use their shooting range during periods when two different neighbors were holding open houses to sell their properties.

John testified that he had to file two reports with the sheriff about another neighbor, Robert N., who flew a drone over John's property at an intimidating height above his children.[3] John testified that he "hollered over" to Robert N. to get him to

[3] Because the trial court's ruling relied on Carbiener's testimony and not John's, we omit from our summary much of John's testimony.

get the drone off John's property and then called the sheriff. He denied confronting Robert N. and said they never got closer than 300 yards from each other.

John said he never fired anywhere but at his target. He said he had never heard the racist music in Exhibit 3-E and had never programmed it to play on his boom box. He said he was opposed to racism against anyone, including white people.

The record does not contain the beginning of Carbiener's testimony, picking up only partway through John's direct examination. So far as the record shows, Carbiener testified that he found one or two pieces of rebar near John's target showing multiple bullet impacts that could explain any ricochet sounds people heard. But based on the location of the rebar close to the targets, Carbiener concluded that any ricochets would have deflected into the ground, into the retaining wall behind the target, or straight up into the sky. Carbiener did not believe that any bullets could have ricocheted from the rebar onto the Danaher property.

Carbiener explained that if a bullet, including a 9-millimeter bullet, hits metal or steel, it will deform or mushroom in some way. Carbiener examined the bullets that were introduced into evidence. With one exception, the bullets were .22 caliber and, based on their appearance, had been in the ground for multiple years. These bullets had varying degrees of mushrooming, but none were consistent with being fired into a tree on the Abrams property. Bullets that hit a tree will very

likely lodge in the tree, not drop down. Carbiener believed these bullets pre-dated John's shooting range.

The exception was Exhibit 6. This was a 9-millimeter bullet and had no mushrooming at all. It had not impacted a tree or steel. To be found in its condition, it would have had to land in soft sand or mud. It was also newer and had been in the elements for a year or less. Carbiener could not say for certain that the bullet had even been fired. Carbiener noticed a mark on one side of the bullet, which was odd because the bullet couldn't hit an object sideways. The mark on the side was consistent with marks left by pliers from someone manually removing the bullet from the cartridge, except that pliers would normally leave two marks, not just one. Carbiener did not think the bullet could have been shot from John's shooting location.

According to Carbiener, bullets drop over the course of their trajectory, with a 9-millimer round dropping 59 inches in 100 meters. The orchard and Danaher property were about 20 to 25 meters higher in elevation than the shooting location and the Danaher house was 200 meters away from the shooting location. For a 9-millimeter pistol bullet to land in the orchard, someone would have to lob it by purposefully aiming up into the sky above the trees on the hill. It was theoretically possible to get the correct angle to do this, but it would be extremely difficult, requiring hundreds if not thousands of attempts. If someone were doing this from the Loe property, one would expect complaints about hundreds of bullets falling in the neighborhood.

A rifle round could easily reach the distance to the orchard area but would need line of sight to hit a tree, otherwise it would go so far that it would not drop onto the orchard. A shooter would still have to intentionally aim high with a rifle. There were also multiple obstructions on John's property, such as trees and the utility pole, between John's shooting location and the Abrams orchard. One would also expect complaints from neighbors from rounds landing on distant properties as they reached the end of their maximum range.

Carbiener explained that when someone is close to where a bullet passes, the person will hear a terrifying crack or snap of the bullet as it breaks the sound barrier. At 200 meters, there is a cone of around 20 or 40 feet around the path of the bullet in which one would hear the crack. The crack would almost overlap with the sound of the gunshot. If someone does not hear the crack, the person cannot be close to the path of the bullet. But a person not close enough to hear the crack could potentially hear the sound of a bullet traveling through the air.

Carbiener reviewed the video exhibits. Carbiener did not hear a supersonic crack in any video. He heard a ricochet in Exhibit 3-A, the video in which Tom narrates hearing a bullet strike and then tumble. But ricochets can be heard widely, and it is very difficult to determine where a bullet is ricocheting based on sound. In Carbiener's opinion, if a camera is close enough to hear a bullet strike leaves or branches in tree, the camera should also capture the supersonic crack. Carbiener heard foliage being

disturbed in some videos but could not say it was from bullets because of the lack of a crack.

Carbiener did not believe that Exhibit 3-C, the video that Tom had professionally edited showing leaves falling after two gunshots and the sound of an object hitting the tree, showed a bullet strike. He noted that there were two gunshots but only one impact. There was no sound of the crack of a supersonic bullet. The object did not penetrate the tree but bounced off. There was little damage, just leaves falling and a gentle clunking sound rather than an uncomfortable explosion of wood that he would expect. Carbiener thought the object that hit the tree might have been something like a paintball or a marble, rock, or bullet fired from a slingshot.

Carbiener did not believe the bullet hole on the north side of the Danahers' trailer could have come from a bullet fired on John's range. The range was oriented east-west of the trailer but the bullet hole was straight into the north side of the trailer. A bullet from the range would have needed to make a 90 degree turn to create the bullet hole, which was impossible.

Carbiener also did not think it was possible for someone in the granny unit on the Danaher property to hear a bullet whiz past the window. The bullet would need to go around the trailer to fly in front of the window, which was not possible.

C. Stephanie's rebuttal

After the conclusion of John's defense evidence, on January 30, 2024, Stephanie told the court she intended to call five rebuttal witnesses. The first witness would be Robert N., who

would authenticate a video to show that John's testimony downplayed the seriousness of his encounter with Robert N. regarding the drone. Stephanie stated that this would show John had a pattern and custom of abusing the elderly. Stephanie also said that the testimony would undermine John's credibility.

Stephanie wanted to call Reneta L. to testify about an incident in July 2021 in which John hit her fence in the middle of the night and made threats at her husband and Robert N. Stephanie said this would show John was not a calm, cool, collected person who only aimed at his target and would indicate that on some occasions he would shoot into the trees.

The trial court had numerous concerns about both witnesses, noting that their testimony did not seem like proper rebuttal and sounded instead like character evidence under Evidence Code section 1101, subdivision (b) that Stephanie should have moved prior to trial to introduce. The trial court thought that the testimony had little more than de minimis probative value under Evidence Code section 352 and would entail undue consumption of time because the events occurred before John created the shooting range and had little bearing on whether bullets were leaving John's property. The trial court further stated that Robert N.'s video was late discovery because it was not provided to John in advance of trial. The trial court therefore excluded both witnesses.

Stephanie's third proposed witness was Keith R., who would dispute the testimony that the Loes offered not to shoot during times that Keith R. was showing his house for sale. Keith

R. would also testify that John told him in June or July 2022 that he was going to continue shooting whenever he wanted in retribution against the neighbors for their complaints against him. Like Robert N. and Reneta L., the trial court excluded Keith R.'s testimony for having de minimis probative value, requiring undue consumption of time, and being evidence Stephanie should have presented in her case in chief.

Stephanie wanted to call Jeannie H. to testify that in March 2023 she heard what she perceived to be a bullet strike a metal building on the property to the east of the Danahers. The court thought Stephanie should have called Jeannie H. to testify in her case in chief, but it allowed the testimony. Jeannie H.'s testimony was consistent with the offer of proof.

Tom was Stephanie's fifth rebuttal witness, to testify that John shot on his range on January 4, 2024, during a break between trial dates and hit trees on his own property. The trial court did not see how it was proper rebuttal but gave Stephanie leeway to present evidence of John's ongoing conduct. Tom testified consistent with the offer of proof, stating that on January 4, 2024, he heard a bullet hit a tree on John's property about 50 feet north of him, 20 feet above ground level. Tom also authenticated a video he took in which he narrated this as it occurred.

D. Trial court decision

After issuing a proposed statement of decision without a request from either party and considering Stephanie's objections to it, the trial court issued a final statement of decision denying

her petition. The court noted that Stephanie had conceded in closing argument that it was impossible for ricochets from John's range to reach the Abrams or Danaher properties. The only remaining possibilities were that John's bullets stayed on his property or that John intentionally fired his gun in the direction of the trees or hillside. The trial court found Stephanie had not met her burden of proof to show that bullets left John's property.

The court focused on the testimony of Stephanie, Tom, and Carbiener. It described its site visit to the Loe, Abrams, and Danaher properties as very informative. It did not find any witness other than Carbiener to be sufficiently persuasive or credible to establish any material fact for Stephanie to meet her burden of proof. It expressly found Stephanie and Tom were not credible witnesses. It found Carbiener to be very credible and resolved all disputed issues of fact in favor of his testimony.

The court did not find that John fired any of the bullets introduced into evidence. It was concerned that Exhibit 6, the bullet that was recent and had not struck anything, could have been intentionally removed and placed in the dirt. But it did not rule on the issue definitively, concluding only that Stephanie had not carried her burden of proving that John shot the bullet. It found Carbiener had raised too much doubt about the shooting videos for them to have persuasive value. The court also noted the absence of any physical evidence of bullets being removed from trees, the trailer, or the metal building on the Danahers' neighbor's property.

The trial court stated that Stephanie had not mentioned the playing of racist music as a basis for the restraining order in her petition or moved to amend her petition to raise it. It said she had raised it for the first time in her objections to the proposed statement of decision. The trial court also remarked that Stephanie had not provided argument or authority that a single instance of racist music would support the issuance of a restraining order and that there was no evidence that Stephanie had heard the music or been distressed by it. But the court went on to find that Stephanie had not proved that John played the music.

The court finally observed that shooting at a neighbor's property is a felony and extremely dangerous. It found Stephanie had not presented credible evidence that John had a motive to intentionally shoot at neighboring properties. The trial court did not believe that the evidence of dislike between the parties rose to the level of intentionally shooting at a neighbor. It acknowledged Stephanie's argument that John had minimized portions of his testimony or was not credible in other portions. But the trial court noted that Stephanie, not John, had the burden of proof.

John moved for an award of attorney's fees as the prevailing party under section 15657.03, subdivision (t). The trial court awarded John $34,440 in prevailing party attorney's fees and about $300 in costs.

DISCUSSION

I. Elder Abuse Act Restraining Orders

Section 15657.03, subdivision (a) allows an "elder or dependent adult who has suffered abuse, as defined in [s]ection 15610.07," to seek a protective order. Section 15610.07, subdivision (a)(1) defines " '[a]buse of an elder or a dependent adult' " to include "[p]hysical abuse, neglect, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering." " 'Mental suffering' means fear, agitation, confusion, severe depression, or other forms of serious emotional distress that is brought about by forms of intimidating behavior, threats, harassment, or by deceptive acts performed or false or misleading statements made with malicious intent to agitate, confuse, frighten, or cause severe depression or serious emotional distress of the elder or dependent adult." (§ 15610.53.)

II. White Supremacist Music

Stephanie challenges the trial court's ruling that the white supremacist music could not support a restraining order because Stephanie never amended her petition to include the playing of music as an allegation warranting relief. She argues that acts of abuse that support the issuance of a restraining order need not occur before the filing of a petition for the order. She cites *In re Marriage of F.M. & M.M.* (2021) 65 Cal.App.5th 106, 117, which held as much regarding restraining orders under the Domestic Violence Prevention Act (Fam. Code, § 6200 et seq.), which Stephanie argues has language similar to the Elder Abuse Act. She separately argues that the trial court also erred by ruling that she raised the issue for the first time in her objections and

that the music could not support the issuance of an order because there was no evidence that she heard the music, only that Tom did. She cites to her brief filed before trial where she argued the music would support a restraining order and points out that section 15657.03, subdivision (b)(5)(A) allows a restraining order to protect other family or household members. (See *Tanguilig v. Valdez* (2019) 36 Cal.App.5th 514, 516–517, 521–522 [affirming order that protected family member based on family member's testimony of abuse].)

We need not decide whether any of these rationales was a sound reason to deny Stephanie's petition related to the playing of racist music. After making these points in its statement of decision, the trial court went on to rule in the alternative that Stephanie had not proved by a preponderance of the evidence that John played the racist music because the trial court did not find Stephanie or Tom to be credible. This ruling provides an independent basis for the trial court's refusal to issue a restraining order based on the racist music, making any error in the trial court's other rationales harmless.

III. Rebuttal Evidence

Stephanie contends the trial court erred by not allowing her to call Robert N., Keith R., and Reneta L. as rebuttal witnesses. The trial court provided several reasons to exclude these witnesses' testimony, one of which was Evidence Code section 352. " 'Evidence Code section 352 vests the trial court with discretion to "balance the probative value of the offered evidence against its potential of prejudice, undue consumption of

time, and confusion." ' [Citation.] And a trial court's exercise of discretion under Evidence Code section 352 'will be upheld on appeal unless the court abused its discretion, that is, unless it exercised its discretion in an arbitrary, capricious, or patently absurd manner.' " (*Watts v. Pneumo Abex, LLC* (2024) 106 Cal.App.5th 248, 272.)

We find no abuse of discretion in the trial court's decision not to allow Stephanie to call these witnesses. Stephanie wanted Robert N. and Reneta L. to testify about quarrels they had before John created his shooting range to prove he had a pattern and custom of abusing the elderly and undermine the credibility of his claims that he always fired towards the targets on his range. Keith R. would contradict John's testimony about offering to cease shooting during property showings and testify that shortly after John first created his shooting range, he insisted on shooting whenever he wanted to get back at neighbors who complained against him. Stephanie argues this evidence would have helped her case, based on the trial court's remarks in its statement of decision that firing off the property would be a criminal offense and that Stephanie had not presented credible evidence that John had a motive to intentionally shoot off the property.[4]

---

[4] Stephanie suggests in passing that the trial court's remark indicates it applied the criminal standard of proof of beyond a reasonable doubt, instead of the preponderance of the evidence standard applicable to Elder Abuse Act restraining order cases. The trial court repeatedly referred to the preponderance of the evidence standard before and after making

The trial court could reasonably decide that the witnesses had little probative value under Evidence Code section 352. Stephanie testified about quarrels with John in which he was aggressive and yelled at her from six inches away, as well as alleged harassment during the litigation. This already provided Stephanie a basis to argue that John's history of antagonistic, aggressive behavior supported an inference that he would fire off his property to intimidate the Danahers. The testimony from Stephanie's proposed rebuttal witnesses did not meaningfully change the calculus on this point, since it would have merely provided further evidence that John was disagreeable, not that he was reckless enough to shoot indiscriminately off his property.

In any event, John's motivations were of secondary importance. Carbiener was clear that there was no realistic way for bullets to have ricocheted into the Abrams orchard, and that if bullets were leaving the property, they had to have been fired intentionally. Stephanie did not appear to dispute this, since she conceded at closing argument that Carbiener's testimony ruled out the possibility of negligent discharges leading to bullets traversing the Abrams property. The key question after Carbiener's testimony was whether it was physically realistic, given general ballistics and physics principles, that Stephanie and Tom heard and their videos captured bullets passing through and landing on the Abrams orchard. In other words, it was less important whether John *would* have fired bullets as Stephanie

---

this remark. We have no concerns that the trial court applied the wrong standard of proof.

claimed, given the sharp and, ultimately, dispositive conflict on the more objective question of whether he *could* have fired bullets as Stephanie claimed. The additional witnesses' testimony had no bearing on the latter question, so the trial court reasonably concluded their additional evidence regarding John's motivations had little probative value.

On the other side of the Evidence Code section 352 balance, the trial court could reasonably decide that the additional testimony about John's character required undue consumption of time. The trial had already stretched across eight trial days spread over approximately three months. The issue of whether John was firing off his property was fairly narrow, so the trial court could reasonably decide to streamline matters instead of allowing further testimony about John's behavior only indirectly connected to the shooting on his range. (*California Crane School, Inc. v. National Com. for Certification of Crane Operators* (2014) 226 Cal.App.4th 12, 22 [trial court has authority to "supervise proceedings for the orderly conduct of the court's business and to guard against inept procedures and unnecessary indulgences that tend to delay the conduct of its proceedings," as well as "the power to expedite proceedings which, in the court's view, are dragging on too long without significantly aiding the trier of fact"].)

IV. Sufficiency of Evidence Supporting Trial Court's Finding That Stephanie Failed To Establish Abuse

Stephanie challenges the trial court's finding that she failed to prove John committed abuse by firing guns towards her

property. As she acknowledges, "the issuance of a protective order under the Elder Abuse Act is reviewed for abuse of [discretion], and the factual findings necessary to support such a protective order are reviewed under the substantial evidence test." (*Bookout v. Nielsen* (2007) 155 Cal.App.4th 1131, 1137.) Legal questions are reviewed de novo. (*Tanguilig v. Valdez*, *supra*, 36 Cal.App.5th at p. 524.)

" 'Under [the substantial evidence] standard of review, "the power of an appellate court begins and ends with the determination as to whether there is any substantial evidence, contradicted or uncontradicted, which will support the finding of fact." [Citation.] In so doing, we accept all evidence that supports the judgment, disregard contrary evidence, and draw all reasonable inferences to uphold the judgment. [Citation.] "It is not our role to reweigh the evidence, redetermine the credibility of the witnesses, or resolve conflicts in the testimony, and we will not disturb the judgment if there is evidence to support it." ' [Citation.] [¶] '[T]he direct testimony of a single witness is sufficient to support a finding unless the testimony is physically impossible or its falsity is apparent "without resorting to inferences or deductions." ' [Citation.] A party 'raising a claim of insufficiency of the evidence assumes a "daunting burden." ' " (*In re Marriage of Nelson* (2025) 115 Cal.App.5th 904, 914.)

" 'The substantial evidence standard of review takes on a unique formulation where, as here, "the trier of fact has expressly or implicitly concluded that the party with the burden of proof did not carry the burden and that party appeals." ' [Citation.]

Under these circumstances, ' " ' "the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law. [Citations.] Specifically, the question becomes whether the appellant's evidence was (1) 'uncontradicted and unimpeached' and (2) 'of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding.' " ' " ' " (*Symons Emergency Specialties v. City of Riverside* (2024) 99 Cal.App.5th 583, 597.)

Additionally, "it is a fundamental principle of appellate procedure that a trial court judgment is ordinarily presumed to be correct and the burden is on an appellant to demonstrate, on the basis of the record presented to the appellate court, that the trial court committed an error that justifies reversal of the judgment. [Citations.] 'This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.' [Citations.] 'In the absence of a contrary showing in the record, all presumptions in favor of the trial court's action will be made by the appellate court. "[I]f any matters could have been presented to the court below which would have authorized the order complained of, it will be presumed that such matters were presented." ' [Citation.] ' "A necessary corollary to this rule is that if the record is inadequate for meaningful review, the appellant defaults and the decision of the trial court should be affirmed." ' [Citation.] 'Consequently, [the appellant] has the burden of providing an adequate record. [Citation.] Failure to provide an adequate record on an issue

requires that the issue be resolved against [the appellant].' " (*Jameson v. Desta* (2018) 5 Cal.5th 594, 608–609.)

We are not persuaded that the trial court's ruling lacks substantial evidentiary support. This is in part because the record does not contain a full record of Carbiener's testimony. The trial court's register states that on January 16, 2024, John concluded his testimony, Carbiener began testifying, and then the court adjourned. Carbiener resumed testifying on January 24, 2024. The reporter's transcript, however, ends on January 16, 2024, with John's testimony and then skips to the resumption of Carbiener's testimony on January 24, 2024. The reporter's transcript therefore does not include any of Carbiener's testimony on January 16, 2024. Stephanie, as the appellant, has the burden of providing an adequate record. (*Jameson v. Desta*, *supra*, 5 Cal.5th at p. 609.) In the absence of an adequate reporter's transcript or acceptable substitute, we must assume that Carbiener gave testimony on January 16, 2024, that would support the trial court's judgment. (*Ibid.*) This alone is fatal to Stephanie's substantial evidence challenge to the judgment and requires us to affirm. (*Ibid*)

Even if we were to disregard this problem, the incomplete record available to us still contains sufficient evidence to support the judgment. As noted *ante*, because Stephanie had the burden of proof and the trial court found she had not prevailed, to prevail Stephanie must show her evidence was uncontradicted, unimpeached, and of such weight as to compel a judgment in her favor as a matter of law. (*Symons Emergency Specialties v. City*

of Riverside, *supra*, 99 Cal.App.5th at p. 597.) Stephanie's evidence does not rise to this level because Carbiener contradicted her witnesses' claims at every turn.

Carbiener explained that it would be impossible for bullets to leave John's range and fly onto the Abrams orchard or near the Danaher property unless John were purposefully aiming them in that direction. Stephanie accepted this by the end of the trial, since she did not argue that bullets were negligently leaving John's property, only that he was intentionally aiming away from his target. Even if John were purposefully trying to shoot at the orchard or Danaher property, the elevation difference between John's shooting location and the uphill properties would make it extremely difficult or almost impossible to land pistol bullets or hit trees in the orchard. Because pistol bullets fall fairly quickly after leaving the barrel of the gun, one would need to lob the bullets into the orchard by purposefully aiming into the sky over the orchard area. This would be extremely difficult.

Rifle bullets could easily cover the distance from John's shooting location to the orchard area and could impact trees there, assuming a line of sight from the shooting location. But rifle bullets that hit trees would most likely lodge in the trees, not fall to the ground. Because of the difference in elevation, rifle bullets that did not hit any trees would sail far over the orchard and Danaher property instead of dropping onto the land as Stephanie and Tom claimed. The angle necessary when firing from John's shooting location would also send the bullets past John's utility pole, with its electrical panel and water pressure

tank. This pole and trees near it would obstruct the view and line of fire. The trial court noted that it found its site visit helpful, so we infer that it found the topography supported Carbiener's testimony on these points.

Stephanie argues that Carbiener did not say it was impossible to land shots on the Abrams orchard, merely that it would take hundreds of attempts. She points to Tom's testimony that John had shot over 10,000 rounds over a year and a half and argues this means it was more likely than not that he landed pistol bullets in the orchard. But Carbiener pointed out that this trial-and-error process would result in hundreds if not thousands of pistol bullets in the area from all of the failed attempts. Even shooting a rifle at the trees would result in many bullets falling on distant properties as the bullets that did not hit and lodge in trees reached the limit of their range. Stephanie offered evidence of only a single instance of bullets falling in the surrounding neighborhood, from Jeannie H.'s testimony about a round striking a metal building on Stephanie's neighbor's property. Even that testimony was not conclusive, however, since Jeannie H. only said she heard a sound, not that she saw a bullet or bullet hole. The absence of complaints about large volumes of pistol or rifle bullets in the neighborhood suggests John was not landing bullets in the orchard area.

Carbiener undermined the significance of the bullets Tom found in the orchard. Carbiener pointed out that the condition of the .22 caliber bullets indicated they were older than John's range. The deformation and location of most of the .22 bullets

also indicated they had impacted metal, not wood or the ground. Exhibit 6, a 9-millimeter bullet, was more recent and in such condition that it could not have impacted anything harder than mud or soft sand. It had a peculiar mark that suggested it could have been manually removed from the cartridge. Because of its perfect condition and the difficulty in landing pistol bullets in the orchard, Carbiener did not think Exhibit 6 had been shot from John's shooting location on his property. Tom himself appeared at least partly persuaded by these points, since he testified on rebuttal that he did not believe all of the bullets found belonged to John, just some of them.

Carbiener also pointed out the impossibility of a bullet from John's range impacting the north wall of the Danaher trailer, since a bullet fired from west to east would have to make a 90-degree turn to hit the north wall squarely. As the trial court observed, it is further significant that Stephanie and Tom, despite claiming John shot a bullet hole into their trailer, never took apart the wall inside the trailer to see if there was a bullet in it.

Stephanie insists that Carbiener's testimony cannot overcome their video evidence of bullets passing nearby and striking trees. But the shooting videos are not conclusive on their own. As one would expect, they capture sounds of gunfire and bullets but not images of bullets in the air. Their value lies almost entirely in Tom's descriptions of events, either his narrations within the videos or his testimony on the stand about where bullets were passing or impacting. Credibility

determinations are the sole province of the trial court, and the trial court found Stephanie and Tom not to be credible. (*In re Marriage of Nelson*, *supra*, 115 Cal.App.5th at p. 914.) This credibility finding provides sufficient reason for the trial court not to credit the video evidence or any of Tom or Stephanie's other testimony that contradicted Carbiener.

Carbiener also provided another reason to question Stephanie and Tom's claims that their videos captured bullets passing nearby. Carbiener said that when a bullet passes near someone, that person should hear a supersonic crack, not just a whiz. Conversely, if someone hears a whiz but no crack, that person cannot be close to where the bullet is passing. Similarly, if a camera is close enough to hear a bullet strike leaves or branches in tree, the camera should capture a supersonic crack. Carbiener did not hear any cracks in the Danahers' videos. The videos do contain the sounds of ricochets, but a ricochet is heard widely in the area where it occurs, making it very difficult to determine where a bullet is traveling based on sound. This suggests that what Stephanie and Tom heard and what the videos captured was not the sound of bullets passing nearby in the orchard, but merely the sound of bullets striking objects on John's property. In addition to the trial court's finding that Stephanie's other witnesses were not persuasive or credible, this evidence calls into question Maryann K.'s claim that she heard a bullet pass near Patricia K.'s cottage window.

Exhibit 3-C, the professionally edited video, was perhaps Stephanie's strongest video, since it appeared to show a bullet

striking a tree with a clunk sound and causing several leaves to fall to the ground. But Carbiener contradicted the notion that this was a bullet striking the tree, noting that there was no supersonic crack and a bullet would have had an explosive impact, not a clunk. It is also significant that the purported impact follows the sound of gunfire by a perceptible margin. Given that bullets travel supersonically, as Carbiener elsewhere explained, if the video captured the strike of a bullet that John shot into the trees, one would expect the image of the strike to be apparent before or at least simultaneous with the sound of the gunfire. This provides further reason for the trial court to side with Carbiener over Stephanie's videos.

The trial court's credibility finding is also dispositive on the question of the racist music. Stephanie emphasizes that Exhibit 3-E captured the sound of the racist music. But the video does not show where the music was coming from. The only evidence that the music came from the Loe property was Tom's testimony. The trial court could disregard Tom's testimony based on its credibility finding, which would leave no evidence to establish that John played the music.

Stephanie repeatedly insists that there was substantial evidence supporting her version of events and that it was more likely than the court's view that her witnesses were lying or did not understand what they were perceiving. Even if we agreed with her, it would not entitle her to a reversal. The trial court had the responsibility of deciding in the first instance which version of events was more credible. On appeal, we determine

only whether the record provides enough support for the trial court to make the decision it did. And because the trial court did not find Stephanie's evidence persuasive, we may only reverse if her evidence was so compelling, uncontradicted, and unimpeached as to compel a ruling in her favor as a matter of law. (*Symons Emergency Specialties v. City of Riverside*, *supra*, 99 Cal.App.5th at p. 597.) Her evidence does not rise to this level, so we must affirm.

V. Attorney's Fees

Stephanie's sole challenge to the trial court's attorney's fees award is that if the judgment is reversed, the fees award must be as well. Because we find no basis to reverse the judgment, we also affirm the fees award.

DISPOSITION

The judgment and post-judgment fee award are affirmed.

BROWN, P. J.

WE CONCUR:

GOLDMAN, J.
MOORMAN, J.*

Danaher v. Loe (A171021, A171839)

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