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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

BRITTANY DITTO, Plaintiff and Appellant, v. DAVID HART, Defendant and Respondent.	G064397 (Super. Ct. No. 21V002110) O P I N I O N

Appeal from an order of the Superior Court of Orange County, Barry S. Michaelson, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Brittany Ditto, in pro. per., for Plaintiff and Appellant.

No appearance for Defendant and Respondent.

* * *

After an evidentiary hearing, the trial court issued a restraining order against Brittany Ditto and in favor of David Hart. Ditto appealed from the order. Having reviewed the appellate record, we find no grounds for reversal and therefore affirm.

FACTUAL AND PROCEDURAL BACKGROUND[1]

In October 2021, Hart requested a domestic violence restraining order (DVRO) against Ditto, who Hart described as a person with whom he was or had been in a dating relationship. In his request, Hart claimed he had been in a relationship with Ditto since 2010 or 2011, although the relationship had been conducted by phone and e-mail for the majority of the time. The two "began a short-lived intimate relationship" in June through July 2021. Hart claimed Ditto began sending him harassing and threatening text messages; she also sent nonsensical and harassing e-mails to his law firm e-mail address and left voicemails at his place of employment. The court issued a temporary restraining order (TRO) against Ditto. The parties agreed that the TRO should be extended for two years on the same terms and conditions. The court issued an amended TRO with an expiration date of January 3, 2024.

In March 2024, Hart filed a new request for issuance of a DVRO against Ditto. In support of the request, in addition to reasserting the facts supporting his 2021 request, Hart declared under penalty of perjury that

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[1] The appellate record contained only the reporter's transcript of the May 9, 2024 hearing, the DVRO issued on May 9, 2024, the court's minute order of the same day, the notice of appeal, the appellant's designation of record, and the register of actions. On our own motion, we augmented the record on appeal with the other documents referenced in this section of the opinion. Neither party filed any objection.

Ditto had reached out to his wife and sister via social media and had posted photos of text messages on Hart's Yelp page. All of these communications by Ditto involved accusations regarding sexual acts and illegal activities. The court issued a new TRO against Ditto.

On the same day, Ditto filed a request for issuance of a DVRO against Hart. Under penalty of perjury, Ditto declared that since 2019, Hart had manipulated her, tried to coerce her into sex acts, and tricked her with a fake job offer.

Following a hearing on both DVRO requests on May 9, 2024, the trial court granted Hart's request for a DVRO against Ditto, but denied Ditto's request for a DVRO against Hart. As to Ditto's request, the court found she had not met her burden of proving her case by a preponderance of the evidence. The court also found Ditto lacked credibility.

As to Hart's request, the trial court found "by a preponderance of the evidence, that acts of domestic violence have occurred and that [Ditto] is the perpetrator, and [Hart] is the victim." The order restrained Ditto from abusing, contacting, or coming within 100 yards of Hart. The order was issued for a period of two years.

Ditto filed a timely notice of appeal.

DISCUSSION

I.

STANDARD OF REVIEW

To obtain a DVRO under the Domestic Violence Prevention Act (DVPA) (Fam. Code, § 6200 et seq.), a petitioner has the burden to show by a preponderance of the evidence that they have been subjected to "a past act or acts of abuse" by the person to be restrained. (*Id.*, § 6300, subd. (a); *In re Marriage of Everard* (2020) 47 Cal.App.5th 109, 122.) Abuse "is not limited to

the actual infliction of physical injury or assault" (Fam. Code, § 6203, subd. (b)), but also includes engaging in behavior that harasses or "disturb[s] the peace of the other party" (*id.*, § 6320, sub. (a)). "We review an order granting or denying a DVRO for abuse of discretion." (*X.K. v. M.C.* (2025) 112 Cal.App.5th 1287, 1295.)

II.

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY GRANTING HART'S REQUEST FOR A DVRO

Ditto raises five issues challenging the 2024 DVRO protecting Hart and restraining her. First, Ditto accuses both Hart and his retained counsel of attorney misconduct. In *People v. Chojnacky* (1973) 8 Cal.3d 759, 766, the California Supreme Court defined attorney misconduct as "'a dishonest act or an attempt [by an attorney] to persuade the court or jury, by use of deceptive or reprehensible methods.' [Citation.]" Examples of attorney misconduct include suggesting facts not in evidence that could be contradicted by evidence the court excluded (*Hoffman v. Brandt* (1966) 65 Cal.2d 549, 554); suggesting the jury should measure damages by what they would need to endure the plaintiff's suffering (*Horn v. Atchison T. & S. F. Ry. Co.* (1964) 61 Cal.2d 602, 609; *Zibbell v. Southern Pacific Co.* (1911) 160 Cal. 237, 255); accusing counsel of suborning perjury (*Sabella v. Southern Pac. Co.* (1969) 70 Cal.2d 311, 325 (dis. opn. of Traynor, C. J.); *Love v. Wolf* (1964) 226 Cal.App.2d 378, 391); withholding evidence (*Keena v. United Railroads of San Francisco* (1925) 197 Cal. 148, 158–160); inviting the jury to speculate about unsupported inferences (*Malkasian v. Irwin* (1964) 61 Cal.2d 738, 747); making insulting and derogatory characterizations of other parties or counsel (*Garden Grove School Dist. v. Hendler* (1965) 63 Cal.2d 141, 143; *Las Palmas Associates v. Las Palmas Center Associates* (1991) 235 Cal.App.3d

1220, 1246; *Simmons v. Southern Pac. Transportation Co.* (1976) 62 Cal.App.3d 341, 351); comparing the wealth of the plaintiff and the defendant (*Hoffman v. Brandt, supra,* at p. 553; *Love v. Wolf, supra*, at pp. 388–389); or suggesting that the jury may resort to speculation in its deliberations (*City of Los Angeles v. Decker* (1977) 18 Cal.3d 860, 870–871).

Ditto does not argue that any of the foregoing occurred in this case. She claims she was prevented from presenting evidence to the trial court in 2021 and 2022; she was threatened and abused by Hart; and Hart's counsel yelled at and threatened her before the 2024 hearing. None of the alleged misconduct occurred during the hearings; it occurred out of court before the hearings in 2021 and 2022, and before the hearing that is the basis of this appeal.[2]

Second, Ditto contends there was not substantial evidence to support the issuance of the DVRO. Regarding the harassment by Ditto that Hart claimed occurred in 2023 and 2024, the trial court did not admit the documents into evidence, but did "accept[] the evidence that you are saying that he saw it and [it] upset him." Hart's testimony regarding Ditto's posting of harassing comments and threats in 2023 and 2024 was sufficient evidence to support the court's findings and issuance of the DVRO. (Fam. Code, §§ 6203, subds. (a)(4) & (b), 6320, subds. (a) & (c).) Although Ditto testified she and Hart never had an intimate relationship justifying the application of the DVPA, Hart's testimony that he and Ditto had a sexual relationship for a period of time is sufficient to bring the DVPA into play. (See *M.A. v. B.F.* (2024) 99 Cal.App.5th 559, 568–569.)

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[2] The fact Hart is an attorney does not make his alleged sexual acts attorney misconduct.

Ditto had a binder of evidence but did not seek to offer any of it into evidence until the trial court had begun to issue its ruling. Ditto complained that she should not be expected to know how to offer her documents if the court did not explain the process to her. Self-represented parties are required to follow the rules of evidence and civil procedure as if they were attorneys. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984–985.)

Nevertheless, the trial court expressed its willingness to reopen the hearing, but Ditto acknowledged the evidence she sought to offer did not address the relevant time period or issues relevant to the competing DVRO requests. The court's failure to admit irrelevant evidence is not an abuse of discretion.

Third, Ditto claims certain procedural errors prevented her from receiving a fair, unbiased hearing. Ditto argues the hearing was moved from the regular courtroom to a "private room" in the courthouse. Moving the hearing from one courtroom to another does not violate a party's rights as long as the parties are given notice of the move. The reporter's transcript shows Ditto was present when the hearing began and thus must have had sufficient notice of the change in courtrooms.

Ditto requested a continuance at the start of the hearing; that request was denied. The hearing had already been continued one month at Ditto's request. Ditto sought a further two or three month continuance because she felt threatened and intimidated by Hart and his counsel, she needed more time to prepare, and she had "severe health issues." The trial court did not err by denying the request for a continuance on those grounds.

The trial court also did not err by suggesting that Ditto participate in the hearing after she explained she would be retraumatized by hearing Hart testify. Although Ditto claims she was too physically and

mentally unwell to continue the hearing, there is no evidence she requested a continuance at any time after her initial request. To the contrary, the court offered Ditto an opportunity to take a break from the proceedings to be alone and calm down, but she refused. The transcript indicates Ditto was able to participate throughout the proceedings.

Fourth, Ditto claims she was badgered by Hart's counsel. Having reviewed the record, we see that the trial court reined in Hart's counsel and even interposed its own objections to counsel's questions. Ditto fails to point to any particular question or act on counsel's part that was improper or inappropriate, and we have found none. Ditto notes the courtroom bailiff suggested Ditto be seated in the witness stand while being cross-examined by Hart's counsel to avoid counsel approaching Ditto at counsel table. The trial court instead resolved the problem by having counsel remain seated during the cross-examination. Nothing about this process suggests Ditto was being badgered.

Fifth, Ditto claims the trial court applied the wrong law. The DVPA is the law applicable to requests for DVROs, and that is the law the court applied. Ditto cites to Senate Bill No. 1386 (Reg. Sess. 2023-2024), which amended Evidence Code section 1106 to make evidence of the plaintiff's sexual conduct inadmissible to prove consent or absence of injury or to attack the plaintiff's credibility in a civil action alleging sexual harassment, sexual assault, or sexual battery. (Evid. Code, § 1106; Stats. 2024, ch. 993, § 1.) In the present case, evidence of sexual conduct between Hart and Ditto was primarily offered by Ditto and was not offered for one of the prohibited purposes.

We note Ditto's appellate brief violates many of the rules applicable to appellate briefing. (*Crouch v. Trinity Christian Center of Santa*

Ana, Inc. (2019) 39 Cal.App.5th 995, 1019–1020, fn. 5 ["'Failure to provide proper headings forfeits issues that may be discussed in the brief but are not clearly identified by a heading'"]; Cal. Rules of Court, rule 8.204(a)(1)(B) [every point in brief must be supported by argument and citation to authority]; *id.*, rule 8.204(a)(1)(C) [every reference to a matter in the record must be cited].) We could deem Ditto's arguments to be forfeited. However, in the interests of justice, we have considered her appeal on its merits.

We find no abuse of discretion by the trial court in issuing the DVRO in favor of Hart and against Ditto.

III.

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY DENYING DITTO'S REQUEST FOR A DVRO

Ditto's appellate brief does not specifically address the trial court's order denying her request for a DVRO against Hart. The court denied her request due to lack of sufficient evidence. "With [respect] to the request for domestic violence restraining order filed by Ms. Ditto, she must prove by a preponderance of the evidence, activities, actions that have occurred, by pattern, by conduct, as I had stated when I read the law earlier in this case. [¶] The Court denies Ms. Ditto's request for domestic violence restraining order because, one, all of her allegations are back in 2021 or prior thereto. None are—show a pattern after 2021. In fact, she stated clearly that she had not had any contact with Mr. Hart subsequently. In fact, she stated that she was not even aware of where he lived."

No abuse of discretion by the trial court has been shown.

DISPOSITION

The order is affirmed. In the interests of justice, because respondent did not appear in this matter, neither side shall recover costs on appeal.

BANCROFT, J.*

WE CONCUR:

MOORE, ACTING P. J.

SANCHEZ, J.

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