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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

SANDRA GIL, Plaintiff and Respondent, v. MOHSEN FRANCIS, Defendant and Appellant.	B215436 (Los Angeles County Super. Ct. No. YQ011943)

APPEAL from an order of the Superior Court of Los Angeles County, Cary H. Nishimoto, Judge. Affirmed.

Jeffrey Lewis for Defendant and Appellant.

Law Offices of Nate G. Kraut and Nate G. Kraut for Plaintiff and Respondent.

Petitioner and respondent Sandra Gil (hereafter wife) was issued a restraining order against respondent and appellant Mohsen Francis (hereafter husband) because he harassed, abused, and sexually assaulted her, causing physical and emotional harm. On appeal, husband contends that the order should be reversed because the trial court abused its discretion when it granted wife's request for the restraining order. He contends that the court abused its discretion because it failed to make adequate findings of fact and incorrectly considered whether husband needed to visit wife's home. We disagree and affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND[1]

After being married for approximately five years and in a relationship for 11 years, husband and wife separated in September 2008. They had intermittent contact with each other over the next six months, including multiple visits by husband to wife's Manhattan Beach home, at which both husband and wife had resided prior to their separation. Some of husband's visits were uninvited and confrontational.

On the night of February 6, 2009, wife returned home from a show and discovered husband inside her home. Husband interrogated wife about her activities that night and searched her purse. After husband refused to leave, wife tried to escape by running into her bathroom. Husband followed her into the bathroom and sexually assaulted her in an attempt to determine if she had been having sex with anyone that

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[1] The trial court made no findings of fact, so we view the facts in the light most favorable to the order and the prevailing party below (wife). (*In re Marriage of LaMusga* (2004) 32 Cal.4th 1072, 1093; *In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133-1135.)

night. Wife reported this incident to the police after husband left.

Husband also went to wife's home on February 22, 2009. When wife's minor daughter answered the door, husband forced his way into her home and refused to leave. Wife instructed her daughter to call 9-1-1, and the police responded. On February 23, 2009, wife filed a request for restraining order under the Domestic Violence Prevention Act (DVPA) (Fam. Code § 6200 et seq.). In her request, under penalty of perjury, wife alleged that husband had physically and verbally abused her over the course of their relationship, in some cases in the presence of her minor daughter, and cited the two February incidents in particular. She also wrote that she was "in panic and emotionally" distressed.

Wife was issued a temporary restraining order prohibiting husband from contacting her, harassing or otherwise abusing her, and coming within 100 yards of her, her daughter, or her home, among other things. During the hearing that followed on March 10, 2009, wife reiterated her claims that husband had abused her, and husband denied the allegations generally. He also stated that granting the restraining order would harm his business, although he failed to indicate exactly what his business was or how it would be harmed. In addition to considering the testimony of the parties, the court considered whether husband needed to visit wife's home and found that there was no such need. At the end of the hearing, the trial court issued a five-year restraining order with the same pertinent conditions as the temporary restraining order. Husband timely appealed.

Husband was subsequently convicted of violating the restraining order and is

now subject to a stay-away Criminal Protective Order prohibiting him from coming within 100 yards of wife or her daughter, contacting either of them, or visiting wife's home. While wife argues that this appeal should be dismissed as moot, the Criminal Protective Order expires before the restraining order. We therefore address husband's contentions on their merits.

CONTENTIONS ON APPEAL

On appeal, husband contends that the trial court abused its discretion when it granted the request for the restraining order because it did not make adequate findings of fact. He also contends that the court abused its discretion by considering whether husband needed to visit wife's premises. Wife contends that the trial court acted within its discretion when it granted the request for the restraining order.

DISCUSSION

1. *Standard of Review*

"A grant or denial of injunctive relief is generally reviewed for abuse of discretion. [Citation.] This standard applies to a grant or denial of a protective order under the DVPA. [Citation.] [¶] 'The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.' [Citation.]" (*Gonzalez v. Munoz* (2007) 156 Cal.App.4th 413, 420 [quoting *Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478-479]; *Nakamura v. Parker* (2007) 156 Cal.App.4th 327, 333-334; *Quintana v. Guijosa* (2003) 107 Cal.App.4th 1077, 1079 (*Quintana*).)

2. *The Trial Court Did Not Abuse Its Discretion When It Granted the Restraining Order*

Husband contends that the trial court abused its discretion when it granted the restraining order because it did not make adequate findings of fact. We disagree.

A trial court may issue a restraining order if an affidavit "shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse." (Fam. Code, § 6300.) Under Family Code section 6203, abuse includes sexual assault and harassment.

Once an affidavit has been submitted and there has been notice to the adverse party and a hearing, the court must decide whether and for what length of time, up to five years (Fam. Code, § 6345, subd. (a)), to issue the restraining order. (See Fam. Code, § 6340.) When deciding whether to issue a personal conduct or stay-away restraining order, the court must consider whether the failure to issue the order "may jeopardize the safety of the petitioner[.]" (Fam. Code, § 6340, subd. (a).)[2] The court also may issue a restraining order "excluding a person from a dwelling if the court finds

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[2] Counsel for husband mistakenly argues that Family Code section 6321 governs this case. Family Code section 6321 requires a showing of three things before a trial court can issue a restraining order excluding a person from a dwelling: (1) "[f]acts sufficient for the court to ascertain that the party who will stay in the dwelling has a right under color of law to possession of the premises[;]" (2) "[t]hat the party to be excluded has assaulted or threatens to assault the other party or any other person under the care, custody, and control of the other party, or any minor child of the parties or of the other party[;]" and (3) "[t]hat physical or emotional harm would otherwise result to the other party, to any person under the care, custody, and control of the other party, or to any minor child of the parties or of the other party." However, Family Code section 6321 applies only to *ex parte* proceedings, and here both husband and wife were present at the restraining order hearing on March 10, 2009.

that physical or emotional harm would otherwise result to the other party, . . . or to a minor child of the parties or of the other party." (Fam. Code, § 6340, subd. (b).) Family Code section 6340 does not require the trial court to state its reasons for granting or denying a request for a restraining order, although we note that such a statement is helpful on appeal. (See Code Civ. Proc. § 632 [trial court usually need not make written findings of fact or conclusions of law absent request by a party].) "Under established principles, of course, a lower court judgment is presumed correct, and when a lower court has made no specific findings of fact, it is presumed that the court made such implied findings as will support the judgment." (*Hall v. Municipal Court* (1974) 10 Cal.3d 641, 643; *In re Marriage of LaMusga, supra*, 32 Cal.4th at p. 1093.)

Here, while the trial court made no explicit findings, it had ample evidence from which to conclude that denying wife's request for the restraining order would jeopardize wife's safety and result in physical or emotional harm to either wife or her minor daughter.[3] Wife alleged in the request for the restraining order and later at the hearing, under oath at both times, that she had been physically and verbally abused throughout her relationship with husband. Some of this abuse also occurred in front of her minor daughter, potentially causing emotional harm to the daughter.

Wife further described two specific incidents in which she was physically or emotionally harmed. In the first incident, husband entered wife's home while she was away and waited for her to return, after which he refused to leave and sexually assaulted

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[3] Her daughter was 16 years old at the time of the hearing.

her. In the second incident, husband forced his way into wife's home over the protest of wife's minor daughter and refused to leave. In her request for a restraining order, which was filed the day after the second incident, wife specifically indicated that she was "in panic and emotionally" distressed as a result of husband's actions. While husband may dispute these allegations, the trial court's implied finding that wife was credible and would be physically or emotionally harmed in the absence of a restraining order is supported by the evidence. Therefore, the trial court did not abuse its discretion because it did not exceed the bounds of reason or act arbitrarily.

3. *The Trial Court Did Not Abuse Its Discretion When It Considered Whether Husband Needed to Visit Wife's Premises*

Husband also contends that the trial court abused its discretion because it considered whether husband needed to visit wife's premises. We disagree.

Husband's reliance on *Quintana, supra*, 107 Cal.App.4th 1077, is misplaced. In *Quintana*, the trial court explicitly based its decision to *deny* a restraining order entirely on its belief that the wife had abandoned her children in Mexico and that both the wife and husband should return to Mexico. (*Id.*, at pp. 1078-1079.) As this had nothing to do with wife's safety, the trial court had abused its discretion. (*Ibid.*) Here, while the trial court considered husband's need to visit wife's home, there is no indication that it based its decision to *grant* the request for the restraining order entirely on this factor.

Further, husband's need to visit wife's premises is a valid consideration in this case for two reasons. First, if husband visits wife's premises against her wishes and without a valid reason there is a greater likelihood that wife will be physically or

emotionally harmed. Husband would be going for the sole reason of meeting wife against her wishes, making a confrontation of some kind likely. This is especially true in this case, in which husband entered wife's home repeatedly without need or permission and sexually assaulted her on at least one occasion. Second, it is a consideration that is necessary for fashioning the relief that wife was to receive. If husband needed to visit wife's premises for some valid reason, the court needed to be able to consider modifying the restraining order. Therefore, the court did not abuse its discretion when it considered whether husband needed to visit wife's home.

DISPOSITION

The order is affirmed. Sandra Gil shall recover her costs on appeal.

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CROSKEY, J.

WE CONCUR:

KLEIN, P. J. KITCHING, J.