Rouse v. Rouse

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Appellant Winslow C. Rouse, representing himself, appeals from a June 11, 2003, order restraining him from having any contact with his sister, respondent Jeannine Annelle Rouse, [1] and her minor daughter for an indefinite period. He challenges the issuance of the order on numerous grounds. We affirm.

FACTS

A. Background [2]

On April 7, 2000, Judicial Officer Gerard J. Kettman of the Alameda County Superior Court issued a three-year restraining order in favor of appellant against respondent, his sister, based upon his claim she had been harassing him since 1993.

Eleven days later, on April 18, 2000, respondent applied on behalf of herself and her minor daughter for a restraining order against appellant in Contra Costa County Superior Court. Respondent averred that appellant had been stalking and harassing her and her daughter since 1992, and she detailed incidents that occurred through April 7, 2000. The court issued a temporary restraining order directing appellant to stay away from respondent and her daughter, pending a hearing set for May 12. Appellant filed a responsive declaration to respondent's petition.

On May 12, 2000, a hearing was held before Contra Costa County Commissioner Stephen F. Houghton, acting as a temporary judge. After being sworn, the parties each testified regarding respondent's allegations against appellant. At the conclusion of the hearing, the commissioner continued the matter to May 19. The court informed the parties the temporary restraining order would be extended for an additional week and it issued an order to that effect on May 12, 2000 (hereinafter May 12 order).

Three days after the May 12 hearing, appellant was arrested for violating the May 12 order. At the continued hearing on May 19, the commissioner took judicial notice that appellant was then in

custody. The court granted respondent's request for a three year restraining order against appellant and it issued an order to that effect on May 19, 2000 (hereinafter May 19 order).

On November 9, 2000, the commissioner denied appellant's motion to vacate the May 19 order. (Deer I, supra, at p. 2.) Upon appellant's appeal, we affirmed the November 9, 2000, order. (Deer I, supra, at p. 2, 5.)

On April 8 and 9, 2002, in Alameda County, appellant was tried before a jury on five misdemeanor counts of possessing weapons in violation of the firearm prohibition provision in the May 12, 2000 order. On April 11, 2002, appellant was found guilty of counts one through four of the second amended complaint; on the People's motion, the fifth count was dismissed by the court. He was sentenced on May 16, 2002, to a five-year probationary term and directed to serve 180 days in county jail as a condition of probation. Additionally, the criminal court issued a three-year protective order, expiring on May 16, 2005, directing appellant to stay away from a number of people, including respondent.

Three months after the criminal proceeding, appellant again moved to vacate the May 19 order, and he also sought to vacate the May 12 order. On August 9, 2002, Commissioner Houghton denied appellant's motion to vacate. We dismissed as untimely appellant's direct appeals of the May 12 and May 19 orders. Upon his appeal from the August 9, 2002, order, we rejected his collateral attack on the restraining orders.

On April 4, 2003, appellant filed an application to renew his expiring restraining order against respondent in Alameda County, indicating he wanted the order to be made permanent so he would not have to renew it in three years. He submitted his own declaration and exhibits, claiming respondent had violated the restraining order and an earlier temporary restraining order issued on February 9, 2000, by writing him letters and leaving him two messages on his telephone answering machine on June 4, 2000. Appellant submitted one letter purportedly written and sent by respondent in March 2000, which stated: "You perjurer [¶] You stole the property our mother left me and you sold my land without consulting me. The hell with your restraining order. I will get you anyway. [¶] Jeannine." The typewritten letter was unsigned and undated. The addresses on the envelope the letter allegedly came in were also typewritten. Appellant did not submit any other letters because they were then in the possession of the Alameda County District Attorney. Appellant also submitted a page of an affidavit purportedly prepared by Robert Conner, an investigator with the Alameda County District Attorney's office, in which the "affiant" stated: "Winslow Rouse has been using the Alameda County Social Service[s] computers to track and stalk his sister Jeannine Rouse Deer as she moves from one location to another. . . . Winslow Rouse has accumulated a series of files on Jeannine Rouse Deer, [and her daughter] . . . . The contents of these files include computer printouts which will prove that Winslow Rouse . . . has made inquires into the Social Service[s] Computers in a constant effort to track his sister Jeannine, [and] her daughter . . . . [¶] . . . [¶] Winslow Rouse has an active restraining order in place against his sister Jeannine Deer. . . . Mrs. Deer has attempted to write to

Winslow Rouse through the U.S. Mail in violation of the restraining order. . . . Ms. Jeannine Rouse Deer . . . admit[ted] that she wrote a letter telling Winslow Rouse that he was under investigation for stalking her through the use of the Social Services computer. . . . [¶] [The application and exhibits submitted in support of appellant's application for a restraining order against Deer in 2000 demonstrate] that the problem that has developed between Jeannine Deer/Winslow Rouse is extensive and probably will not disappear as a result of this investigation. . . . [A]t this point in the investigation, . . . both Jeannine Deer and Winslow Rouse are provoking each other and are engaged in a `family warfare situation' which may never be resolved." As to respondent's telephone calls, appellant claimed that on June 4, 2000, respondent left the following messages on his telephone answering machine at 6:05 and 6:10 p.m., respectively: (1)" `Why do you keep calling me? Your number is on my pager twice. Stop calling me!' " and (2) " `Leave me alone!' " According to appellant, Officer Esperson of the Hayward Police Department believed respondent had left the messages in an attempt to provoke appellant into calling her back so that she could have appellant arrested for violating her restraining order against him. However, appellant noted the Alameda County District Attorney's office dismissed his criminal complaint against respondent for violating his restraining orders.

On or about April 25, 2003, respondent filed a verified answer in opposition to appellant's request for a permanent restraining order. On her printed Judicial Council form answer, respondent checked boxes indicating her agreement with the issuance of the personal conduct and stay away orders requested by appellant. However, she attached a declaration opposing a restraining order on the ground the facts were insufficient to support the requested relief. Addressing appellant's contentions regarding her violations of the restraining orders against her, respondent averred that although appellant claimed she sent him several letters and telephoned him, he admitted all the charges against her were dismissed. She further stated that "[i]f [she] did indeed send letters, they were derog[a]tory only and not threatening." As to the March 2000, typewritten letter, respondent denied she had written or sent that letter. As to any telephone calls she made to appellant, respondent averred that "[i]f [she] called him in June, 2000, it was because he called [her] first, leaving his phone [number] on [her] pager several times. [She] felt [she] must beg him to leave [her] alone."

On April 30, 2003, after a hearing before Judge Barbara J. Miller of the Alameda County Superior Court, appellant was granted a permanent restraining order against respondent. The record does not contain a transcript of the hearing.

B. This Appeal

On May 13, 2003, respondent filed an application to renew the May 19 order against appellant in Contra Costa County Superior Court. Respondent asked the court to issue a permanent restraining order because she was afraid of appellant. Respondent attached to her Judicial Council application form several exhibits detailing, among other things, the circumstances of appellant's arrest and conviction for violating the firearm prohibition provision in the May 12 order. Appellant filed a

responsive answer and his own declaration opposing respondent's new application. He attached to his pleadings 207 pages of exhibits describing the contentious relationship between the parties dating from their childhood. Appellant submitted, among other things, (1) the trial transcripts of the hearings held on May 12 and May 19, 2000, before Commissioner Houghton; and (2) his Alameda County application for a permanent restraining order against respondent, and respondent's verified response and opposing declaration to that request.

On June 6, 2003, the parties appeared before Commissioner Houghton regarding respondent's new application for a permanent restraining order. At that time, appellant was represented by counsel and respondent appeared without counsel. The court opened the hearing by remarking: "The threshold issue that obviously jumps out at me, given the past history here, is whether counsel and/or his client have stipulated to me hearing the matter." Appellant's counsel stated his client would not like to stipulate. The court replied, "That's perfectly okay." The court then continued the matter to June 11, 2003, to be heard by Judge Joyce M. Cram

On June 11, 2003, the parties appeared before Judge Cram. At that time, appellant was represented by counsel and respondent appeared without counsel. After both parties were sworn, they testified regarding respondent's need for a permanent restraining order. Appellant's counsel argued that if the restraining order were extended, it could have collateral consequences if appellant's appeal of his criminal conviction was successful and he was granted a new trial on the charges that he violated the May 12 order. The court disagreed with counsel's argument, noting that "the basis for granting this [application] would be [respondent's] continued fear of [appellant]. [¶] And that isn't going to show propensity to an event that occurred in the year 2000. . . . [¶] . . . [¶] So I can't imagine that this [order] would be admissible at a trial if there is a retrial relating to a 2000 incident." Appellant's counsel also argued that although respondent's fear of appellant could be a sufficient basis to extend the restraining order, there was still a need to show the fear was reasonable. In response, the court heard further argument from respondent addressing appellant's allegations against her and her need for a permanent restraining order on behalf of herself and her daughter. The court granted respondent's request for a permanent restraining order, finding there was "adequate evidence including testimony under oath that . . . [respondent] does fear [appellant], and that that is a sufficient ground to grant the motion." A restraining order for an indefinite term was issued in favor of respondent and her daughter against appellant on June 11, 2003. Appellant filed a timely notice of appeal from the June 11, 2003, order.

DISCUSSION

Appellant challenges the trial court's issuance of the permanent restraining order in favor of respondent and her daughter on several grounds. We conclude that none of his contentions requires reversal of the order.

The Domestic Violence Protection Act (DVPA) (Family Code section 6200, et. seq. [3]), provides that a

trial court may issue a restraining order "if an affidavit or, if necessary, an affidavit and any additional information provided to the court . . ., shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse." (§ 6300.) [4] Section 6345 provides that an original restraining order "may have a duration of not more than three years." (§ 6345, subd. (a).) However, an order "may be renewed, upon the request of a party, either for three years or permanently, without a showing of any further abuse since the issuance of the original order." (Ibid.)

The criteria a trial court should use in deciding whether to renew a section 6345 restraining order was first addressed in Ritchie v. Konrad (2004) 115 Cal.App.4th 1275, 1279 (Ritchie), decided by Division Seven of the Second District on February 24, 2004. The court there held that "the trial court should grant a requested extension unless the request is contested and the judge determines the protected party does not entertain a `reasonable apprehension' of future abusive conduct." (Id. at p. 1279.) The Ritchie court remanded the matter before it for reconsideration of the protected party's application because it was not possible to determine whether the trial court would have renewed the restraining order had it applied the " `reasonable apprehension of future abuse' " test. (Id. at pp. 1279, 1292-1293.) Concededly, the trial court here did not have the benefit of the Ritchie decision. Nevertheless, it did, in effect, apply the proper standard by issuing the permanent restraining order after making "inquiry into the probability future abuse [would] occur unless the court renew[ed] the protective order." (Id. at p. 1287.)

Contrary to appellant's argument, the trial court's decision was not based solely upon respondent's subjective fear or apprehension that future abuse would occur should the existing order expire. After hearing the testimony of both parties, and reading the extensive pleadings, the trial court apparently believed respondent's fear of appellant was "genuine and reasonable," and that the issuance of a permanent restraining order would avoid future abuse. (Ritchie, supra, 115 Cal.App.4th at p. 1290.) "[N]either conflicts in the evidence nor ` "testimony which is subject to justifiable suspicion . . . justif[ies] the reversal of a judgment, for it is the exclusive province of the [trier of fact] to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends." ' [Citations.]" (Oldham v. Kizer (1991) 235 Cal.App.3d 1046, 1065.) Given our limited power of review, we conclude there was no abuse of discretion.

We also reject appellant's arguments that reversal is required because there was no evidence to support the original restraining order and he did not commit any abusive acts during the time the May 19 order was in place. Before granting a request to extend a restraining order, the trial court should, and in this case did, consider the circumstances that formed the basis of the original order. (Ritchie, supra, 115 Cal.App.4th at p. 1290) However, the restrained party is not permitted "to challenge the truth of the evidence and findings underlying the initial order, as [appellant] seeks to do in this case. This would contradict principles of collateral estoppel and undercut the policies supporting those principles." (Ibid.) That appellant did not commit any abusive acts after the issuance of the May 19 order is not relevant to the trial court's decision to renew the order. It is not necessary "for the protected party to introduce or the court to consider actual acts of abuse the

restrained party committed after the original order went into effect. It would be anomalous to require the protected party to prove future abuse occurred in order to justify renewal of that original order. If this were the standard, the protective party would have to demonstrate the initial order had proved ineffectual in halting the restrained party's abusive conduct just to obtain an extension of that ineffectual order. Indeed the fact a protective order has proved effective is a good reason for seeking its renewal." (Id. at p. 1284.)

We are similarly not persuaded that the trial court's order was in error because respondent violated the restraining orders issued against her. To the extent appellant contends definitive case law prohibits a court from issuing a restraining order when the requesting party comes into court with "unclean hands," he is wrong. Whether the doctrine of unclean hands should be applied in a particular case lies within the discretion of the trial court. (Health Maintenance Network v. Blue Cross of So. California (1988) 202 Cal.App.3d 1043, 1061.) Here, the trial court was aware appellant had been granted a permanent restraining order against respondent based upon his contested claims that she had violated the restraining orders against her. Further, the record shows the last allegedly abusive acts committed by respondent occurred on June 4, 2000. We see no basis for disturbing the trial court's implicit finding that respondent's past conduct did not preclude her from seeking a restraining order against appellant on a permanent basis. On this record, the trial court could reasonably conclude there was "some reasonable risk" that abuse would occur sometime in the future if the court did not renew the restraining order on a permanent basis. (Ritchie, supra, 115 Cal.App.4th at p. 1287.)

We also reject appellant's argument that the trial court acted in excess of its authority because Commissioner Houghton issued the earlier restraining orders of May 12 and May 19, without the consent of the parties. In our previous decisions, we specifically found that at the May 12, 2000, hearing, the parties had consented to having the commissioner act as temporary judge to adjudicate respondent's original application for a restraining order. We further concluded the stipulation empowered the commissioner to act until a final determination was reached in that stipulated matter, which included the issuance of the May 12 and May 19 orders, and the later orders of November 9, 2000 and August 9, 2002, in which the commissioner denied appellant's motions to vacate the May 12 and May 19 orders. (See Deer I, supra, at pp. 3-4; Deer II, supra, at pp. 5-6.) Appellant now argues that Commissioner Houghton's refusal to hear respondent's application to renew unless the parties stipulated he could hear the matter constituted "an admission and acknowledgment" that the commissioner never received any previous stipulations from the parties, and renders the May 12 and May 19 orders, and all subsequent orders, including the June 11, 2003, order by Judge Cram, null and void for lack of jurisdiction. We disagree.

Appellant's argument is premised on a misreading of the law and the record. "The power of a court commissioner to act as a temporary judge emanates solely from stipulation by the parties to the proceeding. [Citations.]" (Nierenberg v. Superior Court (1976) 59 Cal.App.3d 611, 616 (Nierenberg).) The California Constitution, article VI, section 21, provides: "On stipulation of the parties litigant

the court may order a cause to be tried by a temporary judge who is a member of the State Bar, sworn and empowered to act until final determination of the cause." Section 259, subdivision (e) of the Code of Civil Procedure, which gives a commissioner the power to "act as temporary judge when otherwise qualified so to act and when appointed for that purpose," "is subject to this constitutional provision, and accordingly a commissioner cannot act as a temporary judge except `on stipulation of the parties litigant.' [Citation.]" (Sarracino v. Superior Court (1974) 13 Cal.3d 1, 6 (Sarracino).) "The appointment of a temporary judge to hear a particular `cause' carries with it the power to act until the final determination of that proceeding. [Citation.] Such appointment does not, however, authorize the temporary judge to act in distinct proceedings, albeit ancillary to the same principal action, without being appointed and qualified for that purpose." (Id. at p. 10; see McCartney v. Superior Court (1990) 223 Cal.App.3d 1334, 1338.)

Contrary to appellant's contention, "cause" as used in section 21, article VI, of the California Constitution is defined as "the proceeding before the court." (Sarracino, supra, 13 Cal.3d at p. 9.) In this case, the proceeding or "cause" before the court in which the stipulation was entered into was respondent's original application for a restraining order filed in April 2000. Concededly, as noted, the stipulation carried with it the power to act until the final determination was reached regarding that request. (See id. at pp. 9-10.) However, respondent's application to renew the expiring restraining order, was a separate proceeding or cause, to be "heard and determined upon a record of its own. Any adjudication" would result in a separate reviewable order independent of the expiring restraining order. (Nierenberg, supra, 59 Cal.App.3d at p. 618; see In re Steven A. (1993) 15 Cal.App.4th 754, 768.) Although respondent's new application may have been ancillary to the original request for a restraining order, it was not the "direct progeny" or " a continuation of the stipulated cause." (Reisman v. Shahverdian (1984) 153 Cal.App.3d 1074, 1095.) The commissioner acting as a temporary judge had no power to hear it absent a new stipulation. (Ibid.)

Even accepting appellant's argument that the commissioner knew about our previous appellate decisions upholding his authority to adjudicate respondent's original application, we also presume the commissioner knew the stipulation was only good for that stipulated cause and the parties would have to stipulate a second time before he could adjudicate respondent's new application to extend the expiring restraining order. Commissioner Houghton's question to appellant and his counsel as to whether they had stipulated to his "hearing the matter," could only be referring to respondent's new application for a permanent restraining order and not her earlier application. When appellant's counsel stated he would not stipulate, the commissioner had no choice but to refuse to adjudicate respondent's new application. Under the circumstances, the commissioner's conduct on June 6, 2003, does not warrant reversal of the June 11, 2003, order issued by Judge Cram.

DISPOSITION

The June 11, 2003, order is affirmed.

We concur:

Corrigan, J.

Parrilli, J.

1. Respondent has legally changed her name from Jeannine Rouse Deer to Jeannine Annelle Rouse, her maiden name.

2. Some of the background facts are taken from our earlier unpublished opinions (A094288, A100121) which addressed appellant's challenges to respondent's initial request for a restraining order against him.

3. All further unspecified statutory references are to the Family Code.

4. Abuse includes "bodily injury," "sexual assault," or "[t]o place a person in reasonable apprehension of imminent serious bodily injury to that person or to another," and "any behavior that has been or could be enjoined pursuant to Section 6320." (§ 6203.) Section 6320 refers to the following enjoinable behavior: annoying telephone calls not made in good faith, and "contacting, either directly or indirectly, by mail or otherwise, coming within a specified distance of, or disturbing the peace of the other party." (See Pen. Code, § 653m.)