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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

COURT OF APPEAL – SECOND DIST.

DIVISION FIVE

FILED

Dec 19, 2024

EVA McCLINTOCK, Clerk

[kdominguez](#) Deputy Clerk

TAYLOR BRITTANY
CORDOVA,

Plaintiff and Appellant,

v.

ANDREW MICHAEL
MORONEZ,

Defendant and
Respondent.

B334531

(Los Angeles County
Super. Ct. No.
23STRO03500)

APPEAL from an order of the Superior Court of the County of Los Angeles, Jeffery W. Korn, Judge Pro Tempore. Reversed and remanded with instructions.

Gibson, Dunn & Crutcher, Ryan Azad and Michael J. Holecek; Family Violence Appellate Project, Cory D. Hernandez, Shuray Ghorishi, and Jennafer Dorfman Wagner, for Plaintiff and Appellant.

Distinguished Legal Group, Beatriz A. Pelayo-Garcia, Michael Kang, and Suzel Gonzalez, for Defendant and Respondent.

I. INTRODUCTION

Plaintiff Taylor Cordova appeals from the trial court's order denying her request for a protective order under the Domestic Violence Prevention Act (DVPA; Fam. Code, section 6300 et seq.)¹. According to plaintiff, the court erred by, among other things, concluding that it lacked the discretion to continue the evidentiary hearing on the protective order.

Because it appears from the record that the trial court misunderstood the proper scope of its discretion to continue the hearing upon the request of either party, we reverse and remand with instructions.

II. BACKGROUND

A. *TRO and Request for Restraining Order*

On May 31, 2023, plaintiff filed requests for: (1) a temporary restraining order (TRO); (2) a domestic violence restraining order (restraining order); and (3) among others, custody and visitation orders (custody order) granting her sole custody of her then 11-year-old daughter, P.M.

¹ All further statutory references are to the Family Code.

In support of her requests, plaintiff provided a sworn declaration explaining that she and defendant had previously dated, cohabitated, and had one daughter together, P.M., born in February 2012. Plaintiff then detailed multiple incidents between 2011 and 2015 during which defendant verbally and physically abused her, culminating in his September 2015 conviction for domestic violence and a three-year term of probation.

Plaintiff also described other, more recent incidents beginning in December 2021, during which defendant harassed her, including several disputes arising from defendant's visitation with their daughter.

Finally, plaintiff declared that she was fearful of defendant. She did not feel safe at home, but was also afraid to leave her home.

On May 31, 2023, the trial court issued the requested TRO and set the matter for hearing on the request for a restraining order for June 20, 2023.²

B. *Defendant's Response*

On July 7, 2023, defendant filed his response to plaintiff's requests for orders. He supported his response with his declaration and several exhibits. Defendant's declaration denied all of plaintiff's allegations of domestic violence.

² At defendant's request, the trial court continued the hearing on the restraining order to July 11, 2023.

C. *Hearing*

1. Request for Continuance

On July 11, 2023, the trial court held a hearing on plaintiff's request for a restraining order at which she was self-represented, and defendant was represented by counsel. At the start of the hearing, plaintiff asked for a continuance, explaining: "I am not represented. And I was actually submitting a request to continue the hearing as I just received yesterday [defendant's] response to [my] request for order, and it's quite lengthy, and it looks like there is some information about trying to combine another case in which I have not been served. [¶] So I would like an opportunity to seek legal counsel, or at least get some further guidance because this is a little out of my wheelhouse."

Defense counsel stated that defendant opposed the request: "[A]s a result of this restraining order, my client has not been able to have time with their daughter; . . . he used to have every single Thursday overnight and also on alternating weekends from Thursday to Sunday. [¶] As the court can see, the majority of these allegations are from 2015. . . . [¶] And I'm going to tell you how dramatic this is. Just last night my client was contacted by the police department because he logged onto the child's school portal. The school portal, Your Honor. No contact with [plaintiff]. [¶] And . . . his concerns have been repeatedly that the child is not going to school, the child is late, the child can't get to school, the child has 38 absences. . . . And when he logs onto the school portal, [plaintiff] calls the police. That is his concern. [¶] That he is . . . not being able to have any contact with his child"

The trial court then asked plaintiff if she was ready to proceed with the hearing, and she responded, “Well, I actually would like—there was a court order for us to complete mediation within the order that was made, and that was not done by [defendant]. . . . [A]nd he did not sign up for it. [¶] [A]nd he is requesting in his response that I just received and really am trying to have an opportunity to go over and provide documentation for because that is a very different—he’s arguing specifically for custody, and I have major concerns in regards to the—”

At that point the trial court interjected, “Let me stop you there,” The court then explained plaintiff’s rights and burden of proof and continued, “[Defendant] has certain rights to have this heard in a timely fashion. And he is represented by counsel, and counsel is indicating, no, they’re not going to agree to a continuance. [¶] So, really, I don’t really have much choice except to go forward with the hearing, if that’s what you want to do. . . . [¶] So the question is, do you want to go forward today? That’s just a yes or no. And if you want to go forward, I presume you’ll be taking the oath and testifying. And, again, if you have witnesses, I’m going to ask you about that in a minute. [¶] That’s where we are right now If you decide not to go forward, the court will dissolve the temporary restraining order, and then there won’t be a hearing.”

Plaintiff responded, “[M]y major concern is that there have been violations of the orders that were issued, and I really am just trying to navigate legally what this means, especially with [defense counsel] saying that it’s vindictive on my end.” As plaintiff continued to speak, the trial court interjected again and

said, “I am going to take that as you would like to go forward.” The court conducted the hearing later on that day.

2. Ruling on Protective Order

Following the testimony of plaintiff and her two witnesses, and prior to presenting defendant’s case, his counsel asked the trial court if it would “entertain a motion for directed verdict at this time?” The court then granted the motion and denied plaintiff’s request for a protective order.

III. DISCUSSION

A. *Denial of Continuance*

Plaintiff contends, among other things, that the trial court abused its discretion when it denied her request for a continuance because it misapprehended that it was required to deny the request in light of defendant’s objection.

1. Legal Principles

“Under the DVPA, a court may issue a protective order “to restrain any person for the purpose of preventing a recurrence of domestic violence and ensuring a period of separation of the persons involved” upon “reasonable proof of a past act or acts of abuse.” [Citation.]” (*In re Marriage of F.M. & M.M.* (2021) 65 Cal.App.5th 106, 115.) “The trial court’s issuance of a restraining order under [DVPA] is a discretionary matter. [Citations.]” (*McCord v. Smith* (2020) 51 Cal.App.5th 358, 364.)

“Subdivision (b) of section 245 separately authorizes the trial court to grant a request for continuance ‘on a showing of good cause.’ [Citation.] Such a continuance is discretionary rather than mandatory. [Citation.]” (*N.M. v. W.K.* (2024) 100 Cal.App.5th 978, 983.)

“[I]f a trial court’s decision is influenced by an erroneous understanding of applicable law or reflects an unawareness of the full scope of its discretion, it cannot be said the court has properly exercised its discretion under the law. [Citations.] Therefore, a discretionary order based on the application of improper criteria or incorrect legal assumptions is *not* an exercise of *informed* discretion and is subject to reversal even though there may be substantial evidence to support that order. [Citations.] If the record affirmatively shows the trial court misunderstood the proper scope of its discretion, remand to the trial court is required to permit that court to exercise *informed* discretion with awareness of the full scope of its discretion and applicable law.’ [Citation.]” (*Barriaga v. 99 Cents Only Stores LLC* (2020) 51 Cal.App.5th 299, 334.)

“The question of whether a trial court applied the correct legal standard to an issue in exercising its discretion is a question of law [citation] requiring de novo review [citation].’ [Citation.]” (*Rodriguez v. Menjivar* (2015) 243 Cal.App.4th 816, 821.)

2. Analysis


Here, plaintiff requested a continuance on, among other grounds, the late service of defendant’s lengthy opposition just one day prior to the hearing and her need to seek counsel or obtain further guidance. The court, however, did not address

whether plaintiff's request was supported by good cause. Instead, it stated that because defendant objected to the continuance, it did not "really have much choice except to go forward with the hearing," which suggests that the court mistakenly believed an objection to a continuance prevented the court from granting the request. It then gave plaintiff the choice of either going forward with her proof that day or having no hearing. The record therefore supports a finding that the court did not exercise its informed discretion with awareness of the full scope of its discretion under section 245. We therefore reverse the matter with directions to consider the continuance request under the good cause standard in section 245, considering all relevant circumstances. (*Laraway v. Sutro & Co.* (2002) 96 Cal.App.4th 266, 274.)

IV. DISPOSITION


The order denying the request for a continuance of the hearing on plaintiff's petition for a domestic violence restraining order is reversed and remanded with instructions to consider the request under the good cause standard in section 245. Plaintiff is awarded costs on appeal.

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KIM (D.), J.

We concur:


BAKER, Acting P. J.


MOOR, J.