

IN THE CALIFORNIA COURT OF APPEAL  
FOR THE FOURTH APPELLATE DISTRICT, DIVISION ONE

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**FAYROUZ SULEIMAN,**

Petitioner/Respondent,

V.

**EIAD SULEIMAN,**

Respondent/Appellant

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On Appeal from the Superior Court of the  
State of California for the County of San Diego  
Trial Judge: The Honorable Christine Goldsmith

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Court of Appeal No. D062527  
Trial Court Case No. DV035158

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RESPONDENT'S BRIEF

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## **I. INTRODUCTION**

Respondent-Mother Fayrouz Suleiman (“Respondent”), respectfully seeks to uphold the trial court's ruling entered on June 11, 2012, restraining Appellant from coming within 100 yards of Respondent and her two children for three years. The parties submitted fourteen declarations regarding Appellant’s abuse and violent behavior, and the trial court heard testimony from four live witnesses regarding the same. Appellant alleges the trial court abused its discretion granting the restraining order due to a complete lack of evidence; Respondent submits there was more than enough evidence to support the trial court’s finding.

## **II. ISSUES ON APPEAL**

1. Whether the trial court abused its discretion in issuing a permanent restraining order protecting Respondent’s two daughters from Appellant, based on the substantial evidence presented to the trial court.
2. Whether the Court of Appeal can consider if there is adequate evidence to support the lower court’s ruling without the entire record.

## **III. STATEMENT OF THE CASE**

### **A. STATEMENT OF FACTS**

#### **1. Appellant’s Depression**

Respondent, Appellant, and their two children (one four months old and another 4 years old) lived in a two-bedroom apartment in a low-income housing unit. (RT at 4:7-10, CT at 1). Appellant and Respondent received help from the government which was due to run out in December, 2012. (RT at 4:18-23). Appellant was never able to gain employment during the entire seven-year marriage. (RT at 4:11-15).

Appellant started talking about suicide and death because he had no life, no friends, and nobody to care about him. (RT at 11:22-25). Appellant

said many times he would like Respondent to commit suicide with him, and they would bring their kids with them as well. (RT at 11:26-12:6). Appellant admitted to seeing a therapist and taking medication for depression. (RT at 38:20-25). Appellant's psychiatrist informed Respondent that Appellant was hopeless and would never change. (RT at 16:12-18).

## 2. Appellant's History Of Violence

Respondent often witnessed Appellant hitting himself in the head, hitting his head against a wall, or hitting inanimate objects, including breaking a chair on the floor and punching the ceiling of a car. (RT at 12:12-21). Appellant stalked a restaurant owner and threatened to break the owner's arms and legs with a baseball bat because Appellant was unable to get a job. (RT at 16:23-24, 21:11-13). Appellant attempted to hit Respondent many times but luckily, Respondent was able to escape Appellant every time. (RT at 13:26-28). On several occasions, Appellant told Respondent she should be thankful Appellant does not beat her every day. (RT at 13:21-24). Respondent did not previously obtain a restraining order because she was scared of Appellant. (RT 15:27-16:1).

## 3. The Incident Which Prompted the Restraining Order

The incident which prompted Respondent to file a restraining order took place on May 21, 2012. (RT at 5:15-28). The incident started because Appellant was angry with Respondent for leaving home for nine hours and putting her family before her husband. (RT 8:26-28, 24:27-28, 35:3-5, 40:25-28). Appellant attempted to punch Respondent but missed. (RT at 9:8-10). Appellant then ripped his shirt and threw it in Respondent's face, resulting in an injury to Respondent's eye. (RT at 9:19-21). When Respondent called her brothers to ask them to come get her, Appellant went

to the kitchen to grab a knife, which he then placed on the coffee table. (RT at 10:1-3). Appellant stated “If your brothers come here, I’m going to kill them.” (RT at 10:3-4).

Respondent’s brothers arrived and called the police when they witnessed Appellant’s violent behavior. (RT at 10:25-28, 19:16-18, 20:20-23). Respondent left with the youngest daughter, leaving the five year old for the night because she was already sleeping. (RT at 11:9-16).

## **B. PROCEDURE**

Respondent petitioned for a temporary restraining order against Appellant on May 23, 2012. (CT at 1). Respondent named herself and her two daughters in the application. (*Id.*). On June 11, 2012, The Honorable Christine Goldsmith, who has sat on the bench for over 25 years, considered all the evidence presented including live testimony from four witnesses, fourteen declarations, and Respondent’s eye injury. (RT at 46:24-26). The Court found based on the evidence there were “***more than adequate grounds*** for a restraining order.” (RT at 46:22-24, emphasis added).

## **IV. STANDARD OF REVIEW**

The standard of review in an appeal to dissolve a restraining order is abuse of discretion. (*Loeffler v. Medina* (2009) 174 Cal.App.4th 1495, 1505 [quoting *Salazar v. Eastin* (1995) 9 Cal.4th 836, 850]). To the extent Appellant requests this Court to review the trial court's factual findings, the Court shall apply a substantial evidence standard of review. (*Loeffler v. Medina, supra*; *Sabbah v. Sabbah* (2007) 151 Cal.App.4th 818, 822, 60 Cal.Rptr.3d 175; *Cochran v. Rubens* (1996) 42 Cal.App.4th 481, 486, 49 Cal.Rptr.2d 672).

As the Court held in *Church of Christ in Hollywood v. Superior Court* (2002) 99 Cal.App.4th 1244, “A trial court will be found to have abused its discretion only when it has exceeded the bounds of reason or contravened the uncontradicted evidence.[citations] Further, the burden rests with the party challenging the trial court's order to make a clear showing of an abuse of discretion.” (*Id.* at 1251-1252.)

With regard to the substantial evidence standard of review, The Court’s sole inquiry is “whether, on the entire record, there is any substantial evidence, contradicted or uncontradicted,” supporting the court's finding. (*Sabbah v. Sabbah* (2007), *supra*, at 822 [quoting *Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 631]). The Court must accept as true all evidence tending to establish the correctness of the trial court's findings, resolving every conflict in favor of the judgment.” (*Sabbah v. Sabbah, supra*).

Appellant alleges there was no evidence submitted to the trial court supporting abuse or apprehension of injury to Respondent’s children. Appellant states “since there was no substantial evidence to support the inclusion of the children...it was and abuse of discretion to include the children.” This sounds very similar to the substantial evidence standard of review, however the law cited by Appellant uses the abuse of discretion standard. In order to resolve these two standards Respondent looks to *Sanchez .v Sanchez* (1961) 55 Cal.2d 118. In *Sanchez*, the court equated the abuse of discretion standard of review with the nonexistence of substantial evidence to support the order of the lower court. The court concluded:

“There were, as is not unusual in a proceeding of this nature, conflicts both as to probative facts and as to the proper inferences to be drawn from such facts. But, as is true in all appellate reviews, and most emphatically in this type of controversy, it is not the function of this court to reweigh conflicting evidence and redetermine

findings; neither is this court vested with discretion to be exercised in the premises. Our function has been fully performed when we find in the record substantial evidence which supports the essential findings of the trial court. [Citations.]” (*Id.* at p. 126).

In this present case there was conflicting testimony both as to the probative facts and as to the proper inferences to be drawn from such facts, including whether Respondent was hit, whether Respondent feared for her four-year-old daughter, and how serious Respondent’s injury was. Both parties already argued all of these facts and inferences on June 11, 2012. (RT at 45:4 – 46:21). It is not the function of this Court to reweigh conflicting evidence and re-determine findings; neither is this Court vested with discretion to be exercised in the premises. The Court of Appeal’s function has been fully performed when The Court of Appeal finds in the record substantial evidence which supports the essential findings of the trial court.

Therefore, in order for the Court of Appeal to find an abuse of discretion in the present case, the Court of Appeal must find based on all the evidence presented to the trial court, the trial court went beyond the bound of reason by granting a restraining order because no evidence existed to support a restraining order. Even with an incomplete record, there is still substantial evidence to support a permanent restraining order, as discussed below.

Respondent submits under either standard, substantial evidence supports the essential findings of the trial court within the bounds of reason.



## **V. ARGUMENT**

### **A. SUBSTANTIAL EVIDENCE SUPPORTS THE TRIAL COURT'S ORDER**

Appellant states the trial court abused its discretion in granting the permanent restraining order because there was no evidence of abuse to Appellant's children, or evidence of apprehension of bodily injury to the children. Abuse of discretion equates to the lack of evidence to support the trial court's finding. (*Sanchez .v Sanchez* (1961) 55 Cal.2d 118, 126). In the present case, there is ample evidence supporting the restraining order protecting Respondent's children.

The Honorable Christine Goldsmith heard over an hour of testimony from four separate witnesses. Both Appellant and Respondent testified, as well as Respondent's brother Ragai Saadh, and Appellant's sister, Lona Suleiman. All of these witnesses were available for cross examination, and three of them were cross-examined. The Honorable Christine Goldsmith also had several pleadings presented to her, including fourteen declarations from both party and non-party witnesses, some with exhibits attached. Furthermore, the Honorable Christine Goldsmith had physical evidence of Respondent's domestic abuse injury, and made note of this when she stated there were "more than adequate grounds" to granting a restraining order.

Although not all of this evidence is available for the Court of Appeal due to an incomplete record, the testimony in the Reporter's Transcript alone is substantial evidence supporting a restraining order protecting Respondent and her two children.

#### **1. The Testimony Shows Respondent Wanted to Commit A Family Murder-Suicide, Killing Respondent's Children**

The first piece of evidence supporting a restraining order protecting the children is the suicidal statements including the murder of the entire

family. Respondent testified Appellant started talking about suicide and death because he had no life, no friends, and nobody to care about him. (RT at 11:22-25). Appellant said many times he would like Respondent to commit suicide with him, and he would bring the kids with him as well. (RT at 11:26 – 12:6). Appellant admitted to seeing a therapist and taking medication for depression. (RT at 38:20-25). Appellant's psychiatrist informed Respondent Appellant was hopeless and would never change. (RT at 16:12-18).

Although Appellant states this murder-suicide would require Respondent's 'cooperation' in order to 'prove her love to Appellant' and thus cannot be threatening, these statements alone show Appellant is not thinking rationally due to his depression. Furthermore, A mother can reasonably feel her children's lives are threatened when someone has 'fantasies' about killing her children.

This evidence, based on testimony alone, shows Appellant was depressed, wanted to commit suicide, and wanted his family to come with him; this meant killing the children. Based on these statements alone, a trial court can easily infer, within reason, Appellant is a threat to Respondent's children.

## 2. The Testimony Shows Appellant Violently Injured Respondent

Another factor supporting the restraining order protecting Respondent's children from Appellant is the actual physical injury Appellant inflicted upon Respondent. Domestic violence in the same household where children are living is a failure to protect the children from the substantial risk of encountering the violence and suffering serious physical harm or illness from it. (*In re R.C.* (2012) 210 Cal.App.4th 930, 941 [quoting *In re Heather A.*(1996) 52 Cal.App.4th 183, 194]).

Children can be put in a position of physical danger from spousal violence because, for example, they could wander into the room where it was occurring and be accidentally hit by a thrown object, by a fist, arm, foot or leg. (*In re R.C.*, *supra*, 210 Ca.App.4th at 942). Past violent behavior in a relationship is “the best predictor of future violence.” (*In re R.C.*, *supra*). Children of these relationships are more likely to experience physical harm from both parents than children of relationships without woman abuse. (*In re R.C.*, *supra*, [quoting CAHN, Civil Images of Battered Women: The Impact of Domestic Violence on Child Custody Decisions (1991) 44 Vand.L.Rev. 1041, 1055–1056]).

In this case, there is testimony by Respondent regarding Appellant’s violent behavior and Appellant causing her injury. There is also testimony from Respondent’s brother who witnessed Appellant’s behavior that night, as well as previous violent behavior. The trial court also had several declarations stating Appellant was violent. Furthermore, the Court notes Respondent’s actual eye injury, stating it was “puffy and red.” (RT at 46:24-25).

The Honorable Christine Goldsmith found domestic violence occurred. Domestic violence against Respondent alone is enough evidence for the trial court to grant a restraining order protecting the children, without taking into account the threats of murder-suicide, previous acts of violence, and all other evidence which was presented on June 11, 2012.

### 3. The Testimony Supports An Apprehension Of Bodily Injury

Under the Domestic Violence Prevention Act (Cal. Fam. Code § 6200 et seq.), the trial court may issue a Restraining Order at a hearing when there is the potential for abuse. (Cal. Fam. Code § 6340(a)). In considering whether to issue the Restraining Order the court shall consider whether failure to make any of these orders may jeopardize the safety of the

petitioner and the children for whom the custody or visitation orders are sought. (Cal. Fam. Code § 6340(a)).

Appellant states there is no evidence of abuse to the children and then draws a conclusion ‘Respondent was [not] in reasonable apprehension of imminent serious bodily injury to her children’ because she left her daughter with Appellant overnight. Appellant already argued this inference to the trial court and the trial court rejected the inference. It is not the role of Appellate Court to reweigh evidence, re-determine issues of credibility, or resolve conflicts in the evidence. (*Reichardt v. Hoffman* (1997) 52 Cal.App. 4th 754, 766). The decision to issue the restraining order “is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness.” (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133).

As stated above, under the Domestic Violence Prevention Act, the trial court may issue a Restraining Order at a hearing when there is *the potential* for abuse. (Cal. Fam. Code § 6340(a), italics added). The trial court has already heard Appellant’s inference regarding why Respondent left her child and has rejected it. The trial court issued the restraining order protecting the two children because there was a potential for abuse, not because Appellant abused the children. The court found a potential for injury to the children based on the testimony showing a reasonable apprehension Appellant might attempt to murder his children and kill himself.

#### 4. The Trial Court Made a Reasonable Inference of Apprehension of Bodily Harm

Appellant attempts to re-argue the inference Respondent was not worried about her daughter because she left her with Appellant for one night. The trial court did not accept Appellant’s inference; instead the trial

court made its own inference. Respondent already explained why she left her daughter with Appellant for the night. The five-year-old was already asleep and Respondent stated she did not want to bother her. Appellant's sister was also staying at the apartment that night. (RT at 23:7-23).

If Appellant wanted to commit family murder-suicide, the trial court might have inferred he would want his entire family there. The trial court might have also inferred Respondent trusted Appellant's sister would protect her daughter that night. The trial court can make many reasonable inferences as to why Respondent left her daughter for one night. What is certain is the trial court rejected Appellant's argument stating Respondent felt her daughter was safe with Appellant. Instead, the trial court made a reasonable inference there was an apprehension of bodily injury to the children by granting the restraining order protecting them.

Although Appellant does not agree with this inference, the Appellate Court must indulge all reasonable inferences that may be deduced from the facts in support of the party who prevailed in the proceedings below. (*Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1632–1633; see *County of Kern v. Jadwin* (2011) 197 Cal.App.4th 65, 72 - 73).

Here, the trial court easily could have inferred Respondent believed the child was safe for one night because Appellant's sister was there. The trial court made a reasonable inference bodily injury is likely occur to the children with testimony regarding Appellant's desire to kill himself, his wife, and their two children, an increase in Appellant's violent outbursts and threats of violence, and the actual violence which occurred between Appellant and Respondent. These facts are more than enough evidence to support an apprehension of serious bodily injury to Respondent's daughters.

**B. THE COURT OF APPEAL CANNOT PRESUME ERROR  
FROM AN INCOMPLETE RECORD; APPELLANT FAILED  
TO MEET HIS BURDEN**

Appellant states there was insufficient evidence to support a permanent restraining order thus resulting in an abuse of discretion, however Appellant failed to establish a complete record for the Court of Appeal. The Court of Appeal cannot presume error from an incomplete record. (*Christie v. Kimball* (2012) 202 Cal.App.4th 1407, 1412). The burden rests with the party challenging the trial court's order to make a clear showing of an abuse of discretion. (*Church of Christ in Hollywood v. Superior Court* (2002) 99 Cal.App.4th 1244, 1251-1252). It is the duty of an appellant to provide an adequate record to the court establishing error. (*Hotels Nevada v. L.A. Pacific Center, Inc.* (2012) 203 Cal.App.4th 336, 348). Failure to provide an adequate record on an issue requires that the issue be resolved against appellant. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295; *Barak v. Quisenberry Law Firm* (2006) 135 Cal.App.4th 654, 660).

In reviewing any order or judgment The Court of Appeal starts with the presumption that the judgment or order is correct, and if the record is silent The Court may indulge all reasonable inferences in support of the judgment or order. (*Chalmers v. Hirschkop* (2013) 213 Cal.App.4th 289, 297). By failing to provide an adequate record, appellant cannot meet his burden to show abuse of discretion and the Court must resolve any challenge to the order against him. (*Hotels Nevada v. L.A. Pacific Center, Inc.* (2012) 203 Cal.App.4th 336, 348).

Here, Appellant failed to provide an adequate record on the issue. As Appellant states, the issue is whether there is adequate evidence to support a restraining order. Appellant has failed to submit all of the evidence in front of the trial court, including the 14 declarations submitted by both

parties. Thus, it is impossible for the Court of Appeal to decide the issue whether there was sufficient evidence in front of the trial court if Appellant fails to present the Court of Appeal with all the evidence that was considered by the trial court. Thus, the issue should be resolved against Appellant. It is impossible to find an abuse of discretion by the trial court, and the Court of Appeal must assume the evidence was sufficient to support a permanent restraining order.

## **VI. CONCLUSION**

Respondent contends substantial evidence exists to support the trial court was within the bounds of reason in granting a restraining order protecting the Respondent's children. Furthermore, Appellant failed in meeting his burden, as the Court of Appeal cannot find an abuse of discretion or lack of evidence without the entire record of evidence in front of it. Therefore, Respondent respectfully requests the Court to deny Appellant's appeal.

Dated: March 14, 2013

Respectfully Submitted,

By: \_\_\_\_\_  
Joseph Samo,  
Attorney for Respondent

**CERTIFICATE OF COMPLIANCE**

Pursuant to rule 8.204(c) of the California Rules of Court, I hereby certify this brief is 3,213 words, including footnotes. In making this certification, I have relied on the word count of the computer program used to prepare the brief.

Dated: March 14, 2013

Respectfully Submitted,

By: \_\_\_\_\_  
Joseph Z. Samo



**PROOF OF SERVICE**

Case Name: ***Suleiman v. Suleiman***  
Court of Appeal Case #: **D062527**  
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I am over 18 years of age and not a party to this action. I am a resident of the county where the mailing described herein took place. My business address is 2221 Camino Del Rio South, Suite 207, San Diego, CA 92108.

On March 14, 2013, I sent from San Diego, California, the following Document:

**RESPONDENT'S BRIEF**

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I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Dated: March 14, 2013

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