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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

ROBERT B. KORY, as Trustee, etc.,

Plaintiff and Respondent,

v.

KELLEY A. LYNCH,

Defendant and Appellant.

B267409

(Los Angeles County Super. Ct. No. BQ033717)

APPEAL from an order of the Superior Court of Los Angeles County, B. Scott Silverman, Judge, and Anthony S. Jones, Commissioner. Affirmed.

Kelley A. Lynch, in pro. per., for Defendant and Appellant.

Kory & Rice, Michelle L. Rice; Ferguson Case Orr Paterson and Wendy C. Lascher for Plaintiff and Respondent.

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Kelley A. Lynch appeals from an order denying her motion to set aside an order registering a Colorado restraining order in California. Lynch contends the trial court, by registering the Colorado restraining order, created a new California domestic violence restraining order without due process. She contends the new order is void because the trial court issued the order without prior notice and hearing, the trial court lacked jurisdiction to alter the Colorado order, and Lynch did not consent to proceedings before a commissioner. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Lynch is a former employee of Leonard Cohen,[1] a well-known singer and songwriter. Lynch worked for Cohen in California for about 17 years. A falling out between the two spawned a number of judicial proceedings.

A. *The 2008 Colorado Civil Protection Order*

In 2008 Lynch was living in Colorado. On August 19, 2008 Cohen filed a motion in the Boulder County Court in Colorado for a "civil protection order" against Lynch (County Ct. Boulder County, No. 2008 C 000776). Cohen alleged he was a victim of "[s]talking" and "[p]hysical [a]ssault, [t]hreat or other situation."

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[1] Cohen died on November 7, 2016. After Cohen's death, Robert B. Kory, as trustee of the Leonard Cohen Family Trust, substituted in this appeal as the respondent. For ease of reference, we use the name Cohen to refer to both Cohen individually and Kory as trustee.

On the same day the Colorado court issued a temporary civil protection order restraining Lynch.

On September 2, 2008 the Colorado court held a hearing on whether to issue a permanent civil protection order. Lynch was present and testified at the hearing. After a brief examination, Lynch stated, "I can't have this hearing. Just go ahead and make the restraining order permanent, okay?" The court then issued a permanent civil protection order restraining Lynch and served the order on Lynch in open court. The order prohibited Lynch from contacting, harassing, injuring, intimidating, threatening, molesting, or approaching within 100 yards of Cohen, or attempting to contact him through any third person. The order specifically prohibited Lynch from contacting Cohen by phone, e-mail, or text message. The order stated, "This Protection Order DOES NOT EXPIRE and only the Court can change this Order." (Boldface omitted.) The order also noted that it "shall be accorded full faith and credit and be enforced in every civil or criminal court of the United States . . . pursuant to 18 U.S.C. §2265." Lynch signed the permanent civil protection order, acknowledging her receipt of the order.

B. *Cohen's 2011 Registration of the Colorado Civil Protection Order in California*

On May 24, 2011 Cohen initiated the present action by filing an ex parte application to register the Colorado civil protection order in California, using Judicial Council form DV-600, then entitled "Register Out-of-State Restraining Order." (Boldface omitted.) Cohen attached a copy of the Colorado order. On May 25, 2011 the trial court (Commissioner Anthony S. Jones) granted the application and issued an order stating, "The

attached out-of-state restraining order is registered, valid, and enforceable in California, and can be entered into CLETS [(California Law Enforcement Telecommunications System)], unless it ends or is changed by the court that made it."

C. *Lynch's 2012 Convictions for Violating the Civil Protection Order*

On April 12, 2012 a Los Angeles jury convicted Lynch of five counts of intentionally violating a protective order (Pen. Code, § 273.6, subd. (a)) and two counts of making repeated phone calls or electronic communications with the intent to annoy or harass (§ 653m, subd. (b)). (*In re Lynch* (Super. Ct. L.A. County, 2013, No. BX001309).) Cohen testified at trial that Lynch had sent him thousands of e-mails and made hundreds of phone calls to him over a six-year period, including after the Colorado restraining order was registered in California. The trial court placed Lynch on five years' summary probation and sentenced her to an aggregate term of 18 months in county jail. The court issued criminal protective orders requiring Lynch to stay away from Cohen's attorneys Kory and Michelle L. Rice, as well as from Bruce Cutler, an attorney who claimed Lynch had contacted him repeatedly. The court further prohibited Lynch from owning or possessing any dangerous or deadly weapons, including firearms, for 10 years.

On May 29, 2013 the Los Angeles Superior Court Appellate Division affirmed the convictions. (*People v. Lynch* (Super. Ct. L.A. County, 2013, BR050096).) The appellate division denied Lynch's petition for writ of habeas corpus on the same date. (*In re Lynch, supra*, No. BX001309.)

D. *Lynch's Motion To Set Aside the Registration Order*

On July 28, 2015 Lynch filed a "motion to set aside domestic violence order" under Code of Civil Procedure section 473, subdivision (d). Lynch argued that the Colorado restraining order was a "non-domestic violence civil harassment order," and that by using Judicial Council form DV-600 Cohen "wrongfully modified and transformed the Colorado order into a domestic violence order." Lynch contended that, by issuing a new domestic violence restraining order, the trial court acted without jurisdiction and denied her due process. Lynch argued the registration order was therefore void, such that the court may vacate it at any time. On September 1, 2015 the trial court conducted a hearing, at which it denied Lynch's motion.[2]

On October 6, 2015 Lynch timely appealed.[3]

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[2] We grant Lynch's unopposed November 29, 2016 motion to augment the record on appeal with the reporter's transcript of the September 1, 2015 hearing. However, we deny Cohen's August 25, 2017 request for judicial notice. The Colorado permanent civil protection order (exhibit 1) is in the record. The remaining documents are not relevant to disposition of this appeal. (See *Coyne v. City and County of San Francisco* (2017) 9 Cal.App.5th 1215, 1223, fn. 3 [denying judicial notice as to documents that were not relevant to court's analysis]; *Arce v. Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 482 ["We also may decline to take judicial notice of matters that are not relevant to dispositive issues on appeal."].)

[3] An order denying a motion to vacate a judgment under Code of Civil Procedure section 473 is appealable as an order after a judgment. (Code Civ. Proc., § 904.1, subd. (a)(2); see *Austin v. Los Angeles Unified School Dist.* (2016) 244 Cal.App.4th 918, 927, fn. 6 ["An order denying relief from a judgment under [Code of Civil Procedure] section 473[, subd. (b),] is a separately

DISCUSSION

A. *Governing Law on Registration of Foreign Protection Orders*

The Uniform Interstate Enforcement of Domestic Violence Protection Orders Act (Fam. Code, §§ 6400-6409),[4] part of the Domestic Violence Prevention Act (§ 6200 et seq.), provides for the registration and enforcement of foreign protection orders. A "foreign protection order" is defined as an order issued by another state of the United States under the state's domestic violence, family violence, or antistalking laws to prevent an individual from threatening, harassing, or entering into close physical proximity to another individual. (§ 6401, subds. (1), (5), (7).)

"Any foreign protection order shall, upon request of the person in possession of the order, be registered with a court of this state in order to be entered in the Domestic Violence Restraining Order System established under Section 6380."[5]

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appealable postjudgment order . . . ."]; *Burnete v. La Casa Dana Apartments* (2007) 148 Cal.App.4th 1262, 1265-1266 [same].)

[4] All further statutory references are to the Family Code, unless otherwise noted.

[5] Section 6380 requires the Department of Justice to maintain a Domestic Violence Restraining Order System with information regarding protective and restraining orders and injunctions issued by California courts, and foreign protection orders that are registered in California. (*Id.*, subds. (b), (e).) The information must be electronically transmitted through the CLETS database. (*Id.*, subd. (a).) A foreign protection order does not need to be registered or filed in California to be enforced in

(§ 6404, subd. (a).) Consistent with the authority in section 6404, subdivision (a)(1), the Judicial Council has adopted mandatory form DV-600 for use in registering out-of-state protection orders.

B. *Standard of Review*

Code of Civil Procedure section 473, subdivision (d), provides a trial court "may, on motion of either party after notice to the other party, set aside any void judgment or order." "The trial court's determination whether an order is void is reviewed de novo; its decision whether to set aside a void order is reviewed for abuse of discretion." (*Pittman v. Beck Park Apartments Ltd.* (2018) 20 Cal.App.5th 1009, 1020 (*Pittman*); accord, *Nixon Peabody LLP v. Superior Court* (2014) 230 Cal.App.4th 818, 822.) We review the trial court's ruling, not its reasoning, and may affirm a ruling on any ground supported by the record. (*Sviridov v. City of San Diego* (2017) 14 Cal.App.5th 514, 519; *Lunada Biomedical v. Nunez* (2014) 230 Cal.App.4th 459, 479.)

C. *Lynch's Motion To Vacate Was Timely*

The trial court ruled that Lynch's motion was untimely because it was not brought within six months of the issuance of the order. (See Code Civ. Proc., § 473, subd. (b).) But Lynch sought to vacate the May 25, 2011 California registration order as void pursuant to Code of Civil Procedure section 473, subdivision (d), which allows a trial court to set aside a void judgment or order. The six-month time limit provided by Code of Civil Procedure section 473, subdivision (b), does not apply to a

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California. (§ 6403, subd. (d).) However, by registering the order, it is entered into the California database.

motion to set aside an order as void on its face. (*Pittman, supra*, 20 Cal.App.5th at p. 1021 ["There is no time limit to attack a judgment void on its face."]; *OC Interior Services, LLC v. Nationstar Mortgage, LLC* (2017) 7 Cal.App.5th 1318, 1327 ["A judgment that is void on the face of the record is subject to either direct or collateral attack at any time."].)

If a court "lack[s] fundamental authority over the subject matter, question presented, or party," its judgment is void. (*In re Marriage of Goddard* (2004) 33 Cal.4th 49, 56; accord, *Vitatech Internat., Inc. v. Sporn* (2017) 16 Cal.App.5th 796, 807 [concluding stipulated judgment that included unlawful liquidated damages provision was void]; *Ramos v. Homeward Residential, Inc.* (2014) 223 Cal.App.4th 1434, 1442 [concluding default judgment void for lack of proper service].) "An order is considered void on its face only when the invalidity is apparent from an inspection of the judgment roll or court record without consideration of extrinsic evidence." (*Pittman, supra*, 20 Cal.App.5th at p. 1021; accord, *OC Interior Services, LLC v. Nationstar Mortgage, LLC, supra*, 7 Cal.App.5th at p. 1327.)

Although Lynch brought her motion to set aside the registration order over four years after it was entered by the trial court, her motion can be fairly categorized as challenging the order as void on its face for lack of fundamental jurisdiction. She contends the lack of proof of service attached to the registration order, the Colorado order's statement that "only the [Colorado] Court can change this Order," and the signature of the commissioner on the registration order demonstrate that the registration order is void. Therefore, Lynch's motion was not untimely. (*Pittman, supra*, 20 Cal.App.5th at p. 1021 [challenge to vexatious litigant order entered after voluntary dismissal was

timely although brought nearly five years after entry where appellant argued trial court lacked jurisdiction to issue order and jurisdictional facts were ascertainable from the record]; *Ramos v. Homeward Residential, Inc., supra*, 223 Cal.App.4th at p. 1442 [challenge to default judgment timely brought more than six months after entry].)

D. *The Registration Order Is Not Void*

1. *The registration order did not alter the Colorado order or create a new domestic violence restraining order.*

The registration order did not alter the scope or terms of the Colorado permanent civil protection order. Instead, the registration order attaches the Colorado order and states, "The attached out-of-state restraining order is registered, valid, and enforceable in California, and can be entered into CLETS, unless it ends or is changed by the court that made it." Thus, the registration order does no more than register the Colorado order, declare it valid and enforceable in California, and provide for its entry into the CLETS database. The registration order expressly acknowledges that only the Colorado court that issued the order may terminate or change it.

The trial court validly registered the order pursuant to the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act (§ 6400 et seq.). Section 6404, subdivision (a), requires that a foreign protection order be registered upon request of the protected party. For purposes of section 6404, a foreign protection order includes an "order, issued by a tribunal under the domestic violence, family violence, or *antistalking* laws of the issuing state," to restrain contact with another individual.

(§ 6401, subd. (5), italics added.) Lynch does not dispute that the Colorado order was issued pursuant to Colorado's antistalking laws or that Cohen's 2008 application for the Colorado order based the request on alleged "stalking" and "physical assault."

Lynch contends that the language at the bottom of the registration order, "Domestic Violence Prevention," improperly transformed the Colorado civil protection order into a California domestic violence restraining order. However, those words do not add to the substance of the order or change its nature. Rather, they refer to the order's entry into the Domestic Violence Restraining Order System, which was required by section 6380, subdivisions (b) and (e). Section 6380, subdivision (b), includes a "restraining order issued by the tribunal of another state, as defined in [s]ection 6401," which in turn includes a foreign state's antistalking laws. Thus, the Colorado civil protection order was properly registered and entered into the Domestic Violence Restraining Order System—the registration order's reference to "domestic violence prevention" does not in any way modify the Colorado civil protection order.

Lynch also contends the registration order was void because she had no notice of the order or an opportunity to be heard. However, Lynch has not identified any basis for requiring notice of registration of an out-of-state restraining order. Indeed, federal law bars notice of registration, absent the express request of the protected individual. (See 18 U.S.C. § 2265(d)(1) ["A State . . . according full faith and credit to an order by a court of another State . . . shall not notify or require notification of the party against whom a protection order has been issued that the protection order has been registered or filed in that enforcing State . . . unless requested to do so by the party protected under

such order."].) Lynch's contention that title 18 United States Code section 2265 applies only to domestic violence protection orders is without merit. Nowhere in the statute is its scope so limited.[6]

2. *The commissioner's registration of the Colorado order without Lynch's consent was valid.*

Lynch argues for the first time on appeal that the registration order is void because she never consented to a commissioner ruling on Cohen's request for a new domestic violence restraining order. Because Lynch did not assert this argument as a basis for vacating the registration order, she has forfeited it on appeal. (*Cornell v. Berkeley Tennis Club* (2017) 18 Cal.App.5th 908, 944 ["'A party may not for the first time on appeal change its theory of relief.'"]; *Vallejo Police Officers Assn. v. City of Vallejo* (2017) 15 Cal.App.5th 601, 621 ["'it would be unfair, both to the trial court and the opposing litigants, to permit a change of theory on appeal'"].)

Even if Lynch had not forfeited this argument, it lacks merit. Lynch is correct that a commissioner generally does not have authority to hear a matter absent a stipulation by the parties granting the commissioner such authority. (Cal. Const., art. VI, § 21 ["On stipulation of the parties litigant the court may order a cause to be tried by a temporary judge . . . ."]; Code Civ.

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[6] Because we conclude the California registration order did not transform the Colorado order into a domestic violence restraining order, we do not address Lynch's additional contention that she and Cohen lacked the requisite relationship under section 6211 for the trial court to issue a domestic violence restraining order under section 6300.

Proc., § 259, subd. (d) [authorizing commissioners to "[a]ct as temporary judge when otherwise qualified so to act and when appointed for that purpose, on stipulation of the parties litigant"]; *In re Marriage of Djulus* (2017) 10 Cal.App.5th 1042, 1048-1049 ["[W]hile the 'jurisdiction of a court commissioner, or any other temporary judge, to try a cause derives from the parties' stipulation' [citation], absent a proper stipulation the judgment or order entered by a court commissioner is *void*."].)

However, Code of Civil Procedure section 259, subdivision (a), authorizes commissioners to "[h]ear and determine ex parte motions for orders and alternative writs and writs of habeas corpus in the superior court for which the court commissioner is appointed." (See Cal. Const., art. VI, § 22 ["The Legislature may provide for the appointment by trial courts of record of officers such as commissioners to perform subordinate judicial duties."]; *Gomez v. Superior Court* (2012) 54 Cal.4th 293, 297-298 [concluding Code Civ. Proc., § 259, subd. (a), authorized commissioner to summarily deny petition for writ of habeas corpus and rejecting constitutional challenge to the provision].)

Here, the commissioner registered the Colorado permanent protection order following an ex parte application filed by Cohen pursuant to section 6404, subdivision (a). The commissioner's registration of the order was a ministerial act within the commissioner's authority. (See *Conseco Marketing, LLC v. IFA & Ins. Services, Inc.* (2013) 221 Cal.App.4th 831, 838 [entry of sister state money judgment by clerk is ministerial, not judicial, act].) Accordingly, the commissioner had the authority to issue the registration order, and the order is not void.[7]

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[7] Lynch also challenges the 10-year prohibition on her owning or possessing any firearm and the three criminal

DISPOSITION

The order denying Lynch's motion to set aside the registration order is affirmed. Cohen is awarded his costs on appeal.

FEUER , J.

WE CONCUR:

PERLUSS, P. J.

SEGAL, J.

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protective orders imposed as part of the criminal sentence for her 2012 conviction for violating the restraining order, arguing the orders are void because they arose from the void registration order. Lynch unsuccessfully challenged her 2012 judgment of conviction on direct appeal and by petition for writ of habeas corpus, and her sentence is not properly before us. In any event, her challenge lacks merit because the registration order is not void.