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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

TAMMY NICHOLAS,

Plaintiff and Respondent,

v.

JIMMY MITCHELL et al.,

Defendants and Appellants,

A132763

(San Francisco County
Super. Ct. No. CCH-11-571743)

Appellants Jimmy Mitchell, Steve Mitchell, and Christopher Mitchell appeal from a restraining order that requires them to stay away from respondent Tammy Nicholas and her son. Appellants argue that the evidence does not support the finding of harassment as the result of a single incident and in the absence of any credible threat of violence. Because the order is supported by substantial evidence, we affirm.

I. BACKGROUND

This case involves two families enduring a long-standing feud. On one side is Tammy¹, her husband, and their two children. On the other is Jimmy Mitchell, his three children, Steve Mitchell, Christopher Mitchell, and Shirley Mitchell, and Steve's wife Loretta (the Mitchells). The two families were initially connected through Jimmy Mitchell's former marriage to a relative of Tammy's husband. Their relationship was

¹ We do not intend any disrespect, but we shall refer to the parties by their first names where necessary for simplicity and to avoid confusion.

complicated when Tammy's husband and Loretta had an affair. It appears the mutual hostility began soon after.

In January 2011, Tammy petitioned for a protective order under Code of Civil Procedure section 527.6 against all five of the Mitchells.² In her request for the injunction and at the hearing, Tammy alleged several incidents of harassment by the Mitchells. First, she stated that on one occasion, Jimmy Mitchell physically beat her and her younger son. Tammy provided the court with the "tally number" for this incident. Tammy also claimed that on a separate occasion, Steve and Christopher Mitchell came over to her house and pushed her through a glass window, causing her to go to the emergency room and receive stitches. Tammy submitted copies of the police reports regarding this incident to the court.³ Finally, Tammy claimed that Shirley Mitchell and Loretta made threatening phone calls to her.

Jimmy did not file an answer to the request and did not appear at the hearing. The other four Mitchells denied the allegations in their answers and at the hearing. According to Mitchells, Loretta obtained a restraining order against Tammy's husband two weeks before Tammy's request because of a domestic violence incident. In the Mitchells' view, Tammy requested the injunction in retaliation for the affair and the prior restraining order. At the hearing, Loretta provided documentation of criminal charges pending against Tammy's husband.

² All further statutory references are to the Code of Civil Procedure.

³ Copies of the police reports were not admitted into evidence. Thus, we have no precise information of their contents. What is clear is that the trial judge read them and considered them when making her ruling. While the better practice is for the court to have it available for our review (*People v. Mulvey* (1961) 196 Cal.App.2d 714, 720), their absence does not prevent our consideration of their contents. Rather, we draw all reasonable inferences of their contents in support of the court's findings, and can do so here aided by the context of the testimony and the court's questions. (See *Searles v. Searles* (1950) 99 Cal.App.2d 869, 872).

Basing its ruling on the testimony and the paperwork, including the police reports, submitted at the hearing, the court did not find sufficient evidence to support an injunction against Shirley Mitchell and Loretta. However, the court entered an order requiring Jimmy, Steve, and Christopher Mitchell to stay 50 yards away from Tammy and her younger son for three years. Jimmy, Steve, and Christopher Mitchell timely appealed.

II. DISCUSSION

Section 527.6 allows a person who has suffered harassment to obtain a temporary restraining order and injunction against the person who caused it. (§ 527.6, subd. (a)(1).) “Harassment” is defined to include “unlawful violence, a credible threat of violence, or a knowing and willful course of conduct.” A credible threat of violence is “a knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose.” (§ 527.6, subd. (b)(1) & (2).) In turn, a “course of conduct” is defined in part as “a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose.” (§ 527.6, subd. (b)(1).) The person seeking an injunction must prove the harassment by clear and convincing evidence. (§ 527.6, subd. (d).)

In reviewing an injunction issued under section 527.6, we determine whether the trial court’s findings are supported by substantial evidence. (*R.D. v. P.M.* (2011) 202 Cal.App.4th 181, 188 (*R.D.*)) We consider all credible evidence in the light most favorable to the prevailing party, resolving all factual conflicts and indulging in all reasonable inferences to uphold the trial court’s judgment. (*Schild v. Rubin* (1991) 232 Cal.App.3d 755, 762.) Thus, the judgment will be upheld if the record contains any substantial evidence to support it, regardless of how slight it is or substantial evidence existing to the contrary. (*Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 631.)

The Mitchells rely upon *Leydon v. Alexander* (1989) 212 Cal.App.3d 1, to argue that the restraining order must be reversed because section 527.6 requires a course of conduct and a single act is insufficient to prove harassment. The Mitchells are wrong. First of all, section 527.6 has been amended since *Leydon* was decided. Harassment is no longer defined in the statute as only “a knowing and willful course of conduct.” (*Leydon v. Alexander, supra*, 212 Cal.App.3d at p. 4.) Section 527.6, subdivision (b)(3) now provides that “ ‘Harassment’ is unlawful violence, a credible threat of violence, or a knowing and willful course of conduct.” A finding of harassment no longer requires more than one act. It is now clear that a single act of violence or a threat of violence may justify issuance of a restraining order when there is a reasonable certainty that wrongful acts will continue or be repeated. (*Russell v. Douvan* (2003) 112 Cal.App.4th 399, 401–402.)

Here, there was evidence that Tammy was assaulted in her home by Steve and Christopher. There was also evidence that the parties had a long-standing dispute where, in the words of the trial court, there were “huge family dynamics going on [with] a lot of disappointments” and “emotions are running very high.” We have no difficulty concluding that the totality of the evidence was sufficient for the court to conclude there was a threat of future harm. It was not necessary for the court to determine, as appellants suggest, that there was a threat of Tammy “being thrown through another glass window.”

Moreover, the trial court did not rely on a single act of violence as the basis for the restraining order. The record shows the court issued the injunction against the Mitchells based on the testimony and paperwork submitted at the hearing, including the police reports, that described at least two confrontations between the parties. The fact that the court denied the requests as to Shirley Mitchell and Loretta because it did not find clear and convincing evidence of any harassment supports the inference that the testimony and paperwork did, in fact, meet that same burden as to the Mitchells. Additionally, the court could have reasonably concluded that the Mitchells were acting in concert as a family,

given its acknowledgement of the volatile relationship between the parties and its consideration of the testimony and police reports as a whole. Issuance of the restraining order was supported by sufficient evidence.

III. DISPOSITION

The order granting the injunction under section 527.6 is affirmed.

Siggins, J.

We concur:

McGuinness, P.J.

Jenkins, J.