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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

SONOMA COUNTY JUNIOR COLLEGE
DISTRICT,

Plaintiff and Respondent,

v.

ALEJANDRO FUENTES,

Defendants and Appellant.

A132782

(Sonoma County
Super. Ct. No. SCV-249545)

The Sonoma County Superior Court issued a workplace violence restraining order (Code Civ. Proc., § 527.8)¹ against appellant Alejandro Fuentes and in favor of certain employees of respondent Sonoma County Junior College District (the District). On appeal, Fuentes contends: (1) there was no substantial evidence of a likelihood of future harm if the injunction was not issued; (2) the trial court erred by not reading Fuentes’s amended response at a May 25, 2011 evidentiary hearing; (3) the trial court made discriminatory remarks about Fuentes’s psychiatric disability; and (4) the trial court

¹ All further statutory references are to the Code of Civil Procedure, unless otherwise stated. Section 527.8, subdivision (a), provides: “Any employer, whose employee has suffered *unlawful violence or a credible threat of violence* from any individual, that can reasonably be construed to be carried out or to have been carried out at the workplace, may seek a temporary restraining order and an injunction on behalf of the employee and, at the discretion of the court, any number of other employees at the workplace, and, if appropriate, other employees at other workplaces of the employer.” (Italics added.)

violated Fuentes's civil rights by preventing him from obtaining an education at any District campus.

I. FACTUAL AND PROCEDURAL BACKGROUND

The District operates Santa Rosa Junior College, where Fuentes sought to enroll in classes. Following an incident on April 12, 2011, on the Santa Rosa Junior College campus between Fuentes and District employees Juan Arias, Luz Navarrette, Denise Blabon, Mayra Gudiño, and Maria Aviña, the District obtained a temporary restraining order, which ordered Fuentes to stay at least 100 yards away from those employees.

In May 2011, the trial court held an evidentiary hearing to consider whether a permanent restraining order should be issued. Blabon testified that she worked for Santa Rosa Junior College, as the HOPE Center program coordinator. The HOPE Center offers support to students working toward careers in health care. On April 12, 2011, Fuentes came into the Center for a 2:30 p.m. appointment with Navarrette. Blabon informed Fuentes that Navarrette was running behind schedule. After a while, Fuentes told Blabon that he was going to move his car and left the office. When Fuentes returned, around 3:00 p.m., he walked straight up to Navarrette's door and started pounding on it. Several minutes after Navarrette invited Fuentes into her office, Blabon found Navarrette talking to Arias, the HOPE Center manager, about Fuentes.

Blabon testified: "While we were having this conversation . . . [Fuentes] came out of [Navarrette's] office just screaming that he was still waiting to be seen and was going on that he couldn't be seen. At that point, our manager, Arias, stepped up and walked over to him and told him he couldn't talk like that, and he started screaming profanities at both [Navarrette] and [Arias.] His behavior was very aggressive. [¶] . . . [¶] He called [Navarrette] a fucking bitch. And it was at the top of his lungs. . . . He called [Arias] a fucking punk. He said that it wasn't okay for them to make him wait. At that point, my adrenaline kicked in. I realized things had kicked into the next level. I turned around and sat down at the phone and called the campus police . . . [¶] . . . [¶] . . . I could hear him yelling. The campus police officer that I was talking to, she told me she could hear him

through the phone.” Blabon saw Fuentes throw his bag to the floor. Fuentes’s body language was aggressive. Blabon was fearful for the safety of everyone in the office.

Navarrette testified that she could tell that Fuentes was agitated from the moment he entered her office. He threw his bag on the floor. Navarrette testified that she tried to calm Fuentes down, but then told him that he would need to reschedule his appointment with her, since he had another 3:30 p.m. appointment that he needed to keep. She left to talk to Arias, and then Fuentes began yelling. Navarrette said: “We went into a larger room, and that is when [Fuentes] was upset that I had left him waiting again . . . and start[ed] yelling at me, ‘You fucking bitch.’ . . . His body came towards me, and the bag that was on his shoulder, I felt it could have been moved towards me. It might hit me.” Fuentes was close enough to Navarrette that she had to back away. She was afraid someone in the room was going to get hurt.

Arias testified to a similar version of events. Arias said that Fuentes was “mov[ing] left and right, waving his arms, yelling, screaming.” Arias was afraid Fuentes was going to punch him. Arias told Fuentes to leave and then followed him outside. After Fuentes and Arias were outside, Fuentes began following Arias and yelled “ ‘Come here. I want to talk to you.’ ” All three employees later told campus police that they felt threatened by Fuentes’s behavior.

Fuentes testified at the hearing. He testified that he had been referred to Navarrette by the Disability Resources Department and that he had previously spoken with her about submitting transcripts to the admissions office. When he entered Navarrette’s office, Navarrette did not offer any apology for being late but told him, upon seeing his agitation, “[b]reathing helps.” Fuentes responded: “ ‘The anti-anxiety pills help, pain pills help, and being courteous, punctual and getting shit done helps.’”² Fuentes admitted that, after Navarrette left the office, he followed her, that he yelled, and that he used profanity. He denied throwing or swinging his bag. He stated that when

² Fuentes represents that he has a psychiatric disability and takes prescription medications because of this disability.

Arias approached and asked him to leave the Center, he had held his hands up and told Arias to “[s]tep back, Bitch.”³ He also denied following Arias outside the Center.

After hearing the evidence, the trial court concluded: “[T]here’s clear and convincing evidence that the totality of the conduct and [Fuentes’s] statements . . . constituted a credible threat of violence to the . . . staff members at the junior college and the HOPE Center. [¶] . . . [¶] I also believe there’s clear and convincing evidence that if the Court did not intervene and order a three-year prohibition for entering onto the campus, that this would probably happen again.” The trial court issued an order requiring Fuentes to stay away from Arias, Navarrette, Blabon, Gudiño, and Aviña.

Fuentes filed a timely notice of appeal.⁴

II. DISCUSSION

Fuentes contends that there was no substantial evidence of a likelihood of future harm which would justify a restraining order. Preliminarily, we note that Fuentes has forfeited his substantial evidence argument by presenting a deficient opening brief. “An appellant asserting lack of substantial evidence must fairly state all the evidence, not just the evidence favorable to the appellant. [Citation.]” (*Chicago Title Ins. Co. v. AMZ Ins. Services, Inc.* (2010) 188 Cal.App.4th 401, 415.) Fuentes has made no attempt to fairly state all the evidence before the trial court, including the evidence supporting the

³ Fuentes explained: “I felt him approaching me from behind. An alarm went off because I had been assaulted, I have had people come up on me from behind and pulled a .22 automatic on me. There’s a police report with the Oakland Police Department documenting this. [¶] . . . [¶] Obviously, I knew [Arias] wasn’t coming at me with a gun. But, I mean, if you’ve ever been assaulted before or if you’ve ever had a gun pulled on you, an alarm goes off in your mind. [¶] I mean, if you’ve ever seen that famous basketball fight . . . it’s from the ‘70s, but Rudy Tomjanovich comes up on Kermit Washington. And he doesn’t mean any harm, but Kermit Washington just turns around and punches him as hard as he can in the face.”

⁴ The notice of appeal was filed on July 29, 2011. The District moved to dismiss the appeal, contending that it was five days late, since the order was entered and personally served on May 25, 2011. We denied the motion by order of November 14, 2011, finding the appeal timely under California Rules of Court, rule 8.104(a)(3).

judgment. Rather, he has focused solely on the evidence that supports his position. By failing to fairly state the evidence before the trial court, Fuentes has forfeited his substantial evidence argument. (See *Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881; *Chicago Title Ins. Co. v. AMZ Ins. Services, Inc.*, at p. 415; *Doe v. Roman Catholic Archbishop of Cashel & Emly* (2009) 177 Cal.App.4th 209, 218.)

Fuentes is not exempt from the rules because he has chosen to represent himself on appeal in propria persona. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246; *McComber v. Wells* (1999) 72 Cal.App.4th 512, 522–523.) “[S]uch a party is to be treated like any other party and is entitled to the same, but no greater consideration than other litigants and attorneys. [Citation.]” (*Barton v. New United Motor Manufacturing, Inc.* (1996) 43 Cal.App.4th 1200, 1210.)

In any event, the trial court’s findings are supported by substantial evidence. Section 527.8, subdivision (j), provides: “At the hearing, the judge shall receive any testimony that is relevant and may make an independent inquiry. . . . If the judge finds by clear and convincing evidence that the respondent engaged in unlawful violence or made a credible threat of violence, an injunction shall issue prohibiting further unlawful violence or threats of violence.” Section 527.8, subdivision (b)(2), provides: “ ‘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.” “To obtain a permanent injunction under section 527.8 . . . a plaintiff must also establish great or irreparable harm would result to an employee without issuance of the prohibitory injunction because of the reasonable probability the wrongful acts will be repeated in the future.” (*Scripps Health v. Marin* (1999) 72 Cal.App.4th 324, 331 (*Scripps*)). On appeal, “[w]e apply the substantial evidence test, resolving all factual conflicts and questions of credibility in favor of . . . the prevailing party, and drawing all reasonable inferences in support of the trial court’s findings. [Citation.]” (*USS-Posco Industries v. Edwards* (2003) 111 Cal.App.4th 436, 444.)

Although this case involves an altercation on a single day and there was no actual violence or express verbal threat, a reasonable fact finder could conclude that Fuentes's behavior constitutes a course of conduct that would place a reasonable person in fear for his or her safety. " 'Course of conduct' is a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose" (§ 527.8, subd. (b)(1).) The District's employees testified that they feared for their safety after Fuentes pounded on Navarette's door, displayed aggressive body language, screamed profanities, threw a messenger bag, and then followed Arias. This series of acts evidenced Fuentes's intent to physically intimidate the District's employees. And, Fuentes continued to suggest that he wanted to begin a course of study at Santa Rosa Junior College. Thus, substantial evidence supported the court's finding that the threats were reasonably likely to be made again. It is the exclusive province of the trier of fact to determine the credibility of a witness and to resolve evidentiary inconsistencies, and we must defer to the factfinder's credibility resolutions. (*People v. Young* (2005) 34 Cal.4th 1149, 1181.) " 'It is blackletter law that any conflict or contradiction in the evidence, or any inconsistency in the testimony of witnesses must be resolved by the trier of fact who is the sole judge of the credibility of the witnesses.' " (*People v. Watts* (1999) 76 Cal.App.4th 1250, 1258–1259.) Substantial evidence supports the trial court's factual findings.

Fuentes's reliance on *Scripps, supra*, 72 Cal.App.4th 324, is misplaced. In *Scripps*, the son of a hospital patient met with a hospital administrator to discuss his mother's care. When the son tried to leave the meeting, he pulled a door open, hitting the administrator, and pushing her into a wall. (*Id.* at p. 328.) Thereafter, his mother transferred her health insurance, which rendered it unlikely she would return as a patient to a Scripps Health facility. The son had also voluntarily stayed away from the hospital. The reviewing court concluded: "[G]iven the circumstances surrounding this single incident, the evidentiary record does not establish the likelihood Marin would repeat any violent acts against Scripps Health employees. Accordingly, the order granting the permanent injunction must be reversed." (*Id.* at p. 336.) In this case, not only had

Fuentes not disavowed any intent to return to the campus, he continued to express his desire to take classes at Santa Rosa Junior College.

Fuentes's remaining arguments have no basis in the record. Contrary to Fuentes's assertion, the trial court indicated that it had reviewed the filed pleadings, including Fuentes's amended response. The campus police report, which is attached as an exhibit to Fuentes's amended response, does not exonerate Fuentes. It indicates that Arias told the responding officer that he felt threatened by Fuentes. Similarly, there is no evidence in the record that the trial court made discriminatory remarks about Fuentes's psychiatric disability. In announcing its ruling, the trial court stated: "[Fuentes] vacillates. Sometimes he's saying, 'Well, you know, I have disabilities and I take medications or drugs and maybe that affected my behavior.' But, on the other hand, he's saying, 'These people are conspiring, they're lying. I didn't really act in such a threatening manner and they're just out to get me, discriminate against me,' with no evidence of that whatsoever. [¶] So I think it's an irrational understanding of what happened on the date of the incident, and I think it continues as an irrational understanding of reality today." The court's comments do not evidence any bias or discrimination. The comments merely indicate that the trial court did not find Fuentes's version of events to be believable.

Finally, the record does not support Fuentes's assertion that the restraining order prevents him from pursuing an education on any campus within the District. The restraining order protects five specific employees and orders Fuentes to stay at least 100 yards away from their "workplaces." Fuentes hypothesizes that, since the District employs the protected individuals, the entire district is their "workplace." We decline to join in this speculation, particularly since the only evidence in the record is that the named individuals work at the HOPE Center on the Santa Rosa Junior College Campus. There is therefore no evidence that Fuentes is precluded from entering any campus other than Santa Rosa Junior College. "We may not presume error. In this court, all intendments must be indulged to support the trial court's judgment. [Citation.]" (*In re Marriage of Behrens* (1982) 137 Cal.App.3d 562, 575.) In any event, Fuentes may move

to modify the section 527.8 injunction if he believes it is ambiguous in this respect, or if he seeks to enroll on a different campus. (See § 527.8, subd. (k)(1); § 533.)

III. DISPOSITION

The judgment is affirmed.

Bruiniers, J.

We concur:

Jones, P. J.

Simons, J.