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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

MARIO CAIMOTTO,
Plaintiff and Respondent,

v.

SARAH GARCIA,
Defendant and Appellant.

A134521

(San Mateo County
Super. Ct. No. CIV509017)

I.

INTRODUCTION

Appellant Sarah Garcia appeals from a civil harassment injunction issued pursuant to Code of Civil Procedure section 527.6.¹ She claims the issuance of the injunction was not supported by substantial evidence. Specifically, she argues there was no basis in fact for the injunction because the record showed the parties engaged in only a single incident of physical contact, and there was no “course of conduct” as defined under section 527.6. In addition, she contends that there was no likelihood of future harm justifying the injunction.

We conclude that a civil harassment injunction may issue based on a single incident of violence between the parties. We further conclude the record contains substantial evidence to support the trial court’s finding that there existed a threat of future harm. Accordingly, we affirm.

¹ All further statutory references are to the Code of Civil Procedure.

II.

PROCEDURAL AND FACTUAL BACKGROUNDS

On October 13, 2011,² respondent Mario Caimotto³ filed a request for a temporary restraining order (TRO) against Garcia. The petition alleged that Garcia and Jennifer Smith are the owners of Pacific Produce, a company that buys produce at the Golden Gate Produce Terminal (GGPT) where Caimotto is employed as an assistant manager. Caimotto stated that several Pacific Produce trucks had been improperly exiting the GGPT through the entrance gate. On October 5, Caimotto ordered at least one Pacific Produce truck excluded from the GGPT, and requested that the driver's superior be contacted. Caimotto then went into a closed meeting with Primo Repetto, the 90-year-old founder and manager of the GGPT, concerning an unrelated matter.

Within five minutes, Garcia and Smith arrived. Garcia entered the administration area where the meeting was being held and demanded to see Repetto. Caimotto told Garcia that Repetto was in a closed meeting, and she would have to wait. Garcia tried to push her way past Caimotto into Repetto's office, and Caimotto pushed her back. Garcia then struck Caimotto on the side of the head, ripping off his glasses in the process. She threw the glasses onto the floor, and began pounding on Caimotto's chest, all the while screaming that she was going to sue Caimotto for assaulting her. Caimotto pushed Garcia out of the office and closed the door. Garcia opened the door, threw Caimotto's glasses at the people attending the meeting, and screamed she was going to sue. Caimotto managed to close and lock the office door, and was bleeding from his right temple.

² All further dates are in the 2011 calendar year unless otherwise indicated.

³ The correct spelling of respondent's name is "Caimotto." However, in various pleadings filed in the trial court, and in appellant's briefs filed in this court, he is referred to as "Caimoto." For accuracy, we have corrected the spelling of respondent's last name to "Caimotto" throughout this opinion. In order to prevent confusion and to ensure conformity with this correction in all future proceedings, if any, we direct that the trial court also correct the spelling of respondent's last name to "Caimotto."

Caimotto's TRO request also alleged that he knew there had been several other complaints from others about Garcia's "erratic and unpredictable behavior." As a result, Caimotto was "extremely worried" about future contact with her.

A TRO was signed by the trial court ordering Garcia to stay at least three yards away from Caimotto. A hearing on a permanent injunction was set for November 3.

Prior to the hearing, Garcia filed an ex parte motion to vacate the TRO. Her motion contended that Caimotto's showing in support of his request failed to demonstrate a pattern of conduct justifying the TRO under section 527.6, and that the TRO unjustly deprived her of her livelihood. In response to the motion, the court advanced the hearing on the permanent injunction from November 3 to October 27.

On the day before the newly scheduled hearing, Garcia filed an answer. In her answer, she acknowledged pushing Caimotto, but only after he "attacked [her] by grabbing [her] and simultaneously pushing [her] away, and shaking [her], causing [her] to injure [her] back." She claimed that this was her first encounter with Caimotto although she had been working at the terminal since 2009. She further accused Caimotto of provoking a confrontation with her, claimed she had tried to avoid confrontation, and stated she would "never voluntarily interact with [Caimotto] again."

The hearing on the petition commenced on October 27, and continued into November 1. Caimotto was the first witness. He testified that on October 5, he had been in a closed door meeting with Repetto when a guard called on the office intercom and said there was a problem at the guard shack. Caimotto left Repetto's office and saw Garcia approaching. He told her that Repetto was in a closed-door meeting, but that the meeting should not last long and Repetto would be out to discuss her trucks with her when it ended. Garcia started screaming at Caimotto, stating she was going to sue for discrimination. She then reached around Caimotto, grabbed the office doorknob, opened the door, and pushed Caimotto into Repetto's office. Caimotto pushed Garcia back outside into the hall and told another employee to call the police.

Garcia then struck Caimotto on the side of his face, ripped off his glasses and threw them on the floor. She opened the door again and hit Caimotto on his chest. When

she opened the door, she threw Caimotto's glasses at the people inside the office. Caimotto managed to close the door again and lock it. The side of his head was bleeding. Police and paramedics then arrived.

Caimotto had worked at the GGPT since 1974, and had never had an altercation there before with anyone. He had problems sleeping after the incident, and was concerned for his safety. He testified that he was 60 years-old, six feet three inches tall, and weighed 270 pounds.

Caimotto testified that there were past incidents at the GGPT involving Garcia that affected his emotional state. Three separate incidents were related to him. In one, a produce seller refused to sell to Garcia; in response, she overturned a crate of lettuce and started throwing jalapeno peppers at him. In another incident, Garcia got into a dispute with a bookkeeper. Garcia "stuck her finger in [the bookkeeper's] face and told [the bookkeeper] to leave her alone." In the last incident, when told by a produce seller that he had no stem berries for sale, Garcia "had a fit" with the seller.

Caimotto testified that his job duties included managing the 18-acre complex including the stalls at the GGPT and interacting with the tenants on a regular basis. During the two years preceding the incident, Caimotto had talked on the telephone about six times with Garcia concerning her drivers, and he had one face-to-face meeting with her on October 5. However, from the date of the hearing onward, Caimotto claimed that he had no intention of interacting with Garcia.

William Strong next testified for Caimotto. Strong is the head of security at the GGPT, and has been so employed since 1981. Strong repeated the events he witnessed on October 5 inside the administrative area of the GGPT between Caimotto and Garcia. His testimony corroborated Caimotto's narrative of events. Strong added that he called the police because Pacific Produce's trucks were exiting the GGPT improperly, and later because Garcia and her partner were physically blocking the gate entry.

The flow of traffic into and out of the GGPT has been designed with the assistance of traffic experts in order to achieve optimal flow. Strong stated that there were two

incidents that morning when Pacific Produce trucks had been going out the entrance gate. His contact with Garcia was simply an attempt to sort out the problem with these drivers.

Before any additional witnesses were called, counsel for Garcia offered to stipulate that they would support Caimotto's version of what happened on October 5. Having offered that, counsel made a motion for a "nonsuit." The basis for the dismissal motion was that Caimotto had failed to show a "pattern of conduct" as required by section 527.6. In addition, counsel argued that there was no evidence that there was any threat of future harm, because this was a single incident not likely to be repeated. The motion was denied.

In light of the court's ruling, Garcia testified next. She noted that since the October 5 incident, there had been a change in the route her trucks take so they no longer have to go through the GGPT's gates. The exception is if a truck is coming to deliver goods to Pacific Produce; in that case, they still had to use the GGPT gates.

Despite the change in routing, Garcia still needs to be on the GGPT property on a regular basis in order to conduct business. Therefore, if the injunction were to be granted, it would severely restrict her ability to conduct business. Garcia is the chief buyer for Pacific Produce at the terminal. Garcia's place of business is adjacent to the GGPT, and she can come and go without entering the terminal. However, her trucks must enter the GGPT to deliver produce.

Garcia recalled there were about six prior incidents where her trucks were stopped while entering and exiting the GGPT. She had always worked out any problems with her drivers with Caimotto by telephone, although he was "extremely belligerent" during these calls.

On October 5, Garcia received a frantic call from one of her drivers who was not allowed to enter the GGPT. She went to the terminal to try to sort it out "as adults." When she entered the administrative building, Caimotto stuck his head out of the office and yelled at her twice to go away because he was in a meeting. She became desperate, and pounded on the door, turning the handle to open it. At this point Caimotto "launched" himself at her, grabbing her by the arms and shaking her. Garcia pushed him

away as hard as she could, and in the process Caimotto's glasses fell off. The interaction hurt her back, and she retreated back into the hall and asked her partner to call the police.

Garcia stated that she had no intention of ever interacting with Caimotto again in the future, as the incident was terrifying to her and she could not afford to reinjure her back. Garcia denied grabbing Caimotto's face. She added that she could not even reach his face as she is only five feet three inches tall and weighs 115 pounds. She denied having any anger management problems.

While Garcia's trucks no longer have to go through the GGPT's gates, some of her drivers park there. She did not mention feeling discriminated against to anyone on October 5, although her business partner Smith did.

Smith testified next. Her recollection of what happened outside Repetto's office corroborated Garcia's testimony. Upon later being recalled as a witness, Smith added that Bruno Adrighetto was laughing as events unfolded like it was some form of entertainment.

Bruno Adrighetto testified that he is a part owner and board member of the GGPT. He was present on October 5, and came into the administrative area just behind Garcia. When Caimotto opened the door to Repetto's office and told Garcia that he was in a closed meeting, Garcia suddenly sprang up and jumped on Caimotto, pushing him back about three feet. Caimotto had not acted aggressively towards Garcia before this, and he seemed shocked at her reaction. She was mad when she lunged at him. Caimotto's glasses flew off when he was pushed. Adrighetto could not say if Garcia pulled Caimotto's glasses off of him.

Patrick Murphy testified that he was in Repetto's office at the meeting when the altercation took place. He could only see through a two-foot wide space when the office door was open. However, he did see Garcia grab at Caimotto, and throw his glasses to the floor. Caimotto backed up into the office and then closed the door. Murphy did not hear anyone screaming, but he heard loud, muffled noises outside the office.

At the conclusion of the evidence, the trial court commented that it had briefly reviewed a motion to dismiss that had been filed by Garcia before the hearing on

November 1. The court then invited counsel to offer their closing arguments in the matter. After hearing from counsel, the court took a short recess to read one or more of the authorities referred to by counsel in the motion and during argument.

Following the recess, the court articulated the applicable legal standard under section 527.6, and the factual findings the court must make in order for Caimotto to prevail. The court then found that Garcia was the aggressor during the altercation, and that by clear and convincing evidence she had committed an unlawful action of violence, a battery, on Caimotto. Having made that finding, the court then turned to the question of whether a permanent injunction was necessary to prevent future harm. As to that second question, the court found it was likely that, given their respective professions, the two parties will come into contact with each other “in some fashion” at the GGPT. The court noted it sensed some residual anger in both parties as a result of the October 5 incident, and there was clear potential for future harm given these circumstances.⁴ The court issued a restraining order for a period of three years that requires Garcia to stay 20 feet away from Caimotto. This appeal followed.⁵

III.

LEGAL DISCUSSION

A. Standard of Review

We review the issuance of an injunction under section 527.6 for substantial evidence. (*Schild v. Rubin* (1991) 232 Cal.App.3d 755, 762.) “We resolve all factual conflicts and questions of credibility in favor of the prevailing party and indulge in all legitimate and reasonable inferences to uphold the finding of the trial court if it is supported by substantial evidence which is reasonable, credible and of solid value. [Citations.]” (*Id.* at p. 762.) This standard applies despite the legal requirement that the

⁴ The balance of the hearing concerning the scope and details of a proposed permanent injunction, which was finally entered as a judgment on December 8, and filed on December 14. The scope and terms of that injunction have not been challenged in this appeal.

⁵ The order is appealable as an appeal from an order granting an injunction. (§ 904.1, subd. (a)(6).)

trial court must find clear and convincing evidence of harassment to issue the permanent restraining order or injunction (§ 527.6, subd. (d)). (*Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1633; *Schild v. Rubin*, at p. 762.)

Section 527.6 establishes a procedure for expedited injunctive relief to persons suffering harassment. (*Schraer v. Berkeley Property Owners' Assn.* (1989) 207 Cal.App.3d 719, 730.) A temporary restraining order may be obtained, with or without notice, upon an affidavit showing reasonable proof of harassment and that great or irreparable harm would result to the plaintiff. (§ 527.6, subd. (d).) The temporary restraining order generally lasts for not more than 21 or 25 days, within which time a hearing must be held on the petition for a permanent injunction. (*Id.* at subd. (g).) The injunction shall issue, for a term of not more than three years, if the judge finds unlawful harassment by clear and convincing evidence. (*Id.* at subd. (j)(2).)

B. Garcia's Arguments on Appeal

Garcia makes two challenges to the permanent injunction issued in favor of Caimotto. First, she claims that the injunction was improper because the court did not find that Garcia had engaged in a "pattern of conduct" required for a civil harassment injunction under section 527.6. Secondly, she asserts that the court erred in issuing the injunction without a finding that there existed a threat of future harm warranting the injunction.

Important to Garcia's first assertion, "harassment" is defined in the statute as "unlawful violence, a credible threat of violence, *or* a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. . . ." (§ 527.6, subd. (b)(3), italics added.)

Under the clear language of the statute, an injunction may be issued upon a finding by clear and convincing evidence of any one of three circumstances: (1) an act of unlawful violence; (2) a credible threat of violence; *or* (3) a course of conduct.

Here, the court determined that the evidence supported a finding that Garcia had engaged in an act of unlawful violence by committing a battery upon Caimotto: "So I do find by clear and convincing evidence that there was an act of unlawful violence of

battery that occurred.”⁶ This finding mirrors section 527.6, which defines “unlawful violence” as “any assault or battery, or stalking as prohibited in Section 646.9 of the Penal Code, but shall not include lawful acts of self-defense or defense of others.” (§ 527.6, subd. (b)(7).)

Appellant’s reliance on this division’s decision *Leydon v. Alexander* (1989) 212 Cal.App.3d 1, for the proposition that a single act cannot justify the issuance of an injunction under section 527.6 is misplaced. In *Leydon*, the single incident underlying the issuance of the injunction was a five-minute rant by a former employee made in the presence of his former supervisor eight years after his termination. There was no physical contact. (*Leydon v. Alexander*, at p. 3.) Thus, the trial court necessarily could not rely on the “act of unlawful violence” prong of the statute in issuing the injunction. Because the appellate panel found no harassing “course of conduct” justifying the injunction, it was set aside; an unremarkable holding. (*Id.* at p. 5.)

The two other decisions discussed in detail in Garcia’s briefs, *Scripps Health v. Marin* (1999) 72 Cal.App.4th 324 (*Scripps*) and Division Three’s opinion in *Russell v. Douvan* (2003) 112 Cal.App.4th 399 (*Russell*), do not hold that a single act of unlawful violence, as found by the trial court here, cannot support the issuance of a permanent injunction under section 527.6. Instead, these cases are largely limited to a discussion of Garcia’s second argument: that there must also be evidence of a future threat of harm before an injunction may issue. We now turn to this issue and those decisions.

In *Scripps*, the son of a patient at Scripps Health got into a verbal and physical altercation with a Scripps employee while the two were discussing his mother’s care. (*Scripps, supra*, 72 Cal.App.4th at pp. 327-328.) Scripps filed for a civil harassment injunction under section 527.8, a statute analogous to section 527.6, which allows employers to seek an injunction on behalf of their employees.

⁶ Garcia does not contend that this factual finding is unsupported by substantial evidence in the record.

Scripps argued that an injunction is proper simply based on a finding that an unlawful act of violence had occurred. (*Scripps, supra*, 72 Cal.App.4th at pp. 330-332.) The appellate court disagreed, and held that a finding of future threat of harm also was required. It found no such evidence in the record of any future threat of harm to any employees of Scripps from the defendant. The court noted that since the time of the initial TRO, the mother had transferred her health care insurance to another company, and it was “unlikely she would have to return as a patient to a Scripps Health facility.” (*Id.* at p. 336.)

Similarly, in *Russell*, the single incident that led to the issuance of an injunction under section 527.6 was a battery that took place between two attorneys in a courthouse elevator following a hearing. Based on that finding alone, the trial court issued the injunction. The Court of Appeal overturned the injunction entered under section 527.6 based on a single act of unlawful violence that was unlikely to be repeated. (*Russell, supra*, 112 Cal.App.4th at pp. 400-401.) By the time of the hearing on the permanent injunction, the two attorneys were no longer adversaries in the underlying litigation and they did not otherwise regularly do business with or oppose each other. (*Id.* at p. 400.)

We agree that the law is quite clear that, in addition to a finding that a defendant has engaged in an unlawful act of violence, there must also be a finding that there exists a reasonable probability of future harm absent the injunction. (See, e.g., *R.D. v. P.M.* (2011) 202 Cal.App.4th 181, 189 [“an injunction restraining future conduct is authorized by section 527.6 only when it appears from the evidence that the harassment is likely to recur in the future”].) However, unlike *Scripps* and *Russell*, the evidence here showed that there was a likelihood of continued contact between the parties; and the trial court

found that it was reasonably probable the circumstances that precipitated the unlawful act of violence would recur in the future.⁷

The trial court offered the following comments and made findings: “So the question then becomes is an injunction needed to prevent future harm? And obviously, that varies from situation to situation. . . . [T]he issue is[,] is there a reasonable probability that the act will be repeated in the future? And so that’s of course the difficult part. And again, I have to rely on the observations that I made of the evidence that I heard. And I would like to believe that Mr. Caimotto and Ms. Garcia are going to do everything possible to avoid interacting with each other But in this case, we have a situation where Mr. Caimotto and Ms. Garcia it would appear will come into contact with each other in some fashion at the [GGPT] so I can’t rely on the fact that it’s not going to occur in the future and that Mr. Caimotto isn’t in reasonable fear it will happen again. So I think there is residual anger . . . on both parties’ part. And I think there’s clear potential for future harm, unfortunately, as much as I would like to not believe that.”

Garcia disputes the evidentiary basis for these factual conclusions noting several times in her briefs on appeal that both parties disavowed any intention of interacting again, and emphasizing that the October 5 incident was the single time the two had a face-to-face encounter during the preceding two years.

But, Garcia’s arguments about the force of the evidence ignores the standard of review we must apply to the trial court’s factual findings. When considering a claim that the evidence does not support the court’s ruling, “[w]e resolve all factual conflicts and questions of credibility in favor of the prevailing party and indulge in all legitimate and

⁷ The *Scripps* court used a “reasonable probability” standard in deciding this factual issue (*Scripps, supra*, 72 Cal.App.4th at p. 335), and that standard is quoted in the *Russell* decision (*Russell, supra*, 112 Cal.App.4th at p. 403). The *Russell* court went on to refer to this standard as one where wrongful acts are “likely” to recur (*id.* at p. 402), or conversely, where “there is no likelihood of future harm” (*id.* at p. 403). Inexplicably, the court concluded ultimately that a finding must be made that a threat of future harm is “highly probable” before an injunction may issue. (*Id.* at p. 404.) We conclude that the proper standard is “reasonable probability.”

reasonable inferences to uphold the finding of the trial court if it is supported by substantial evidence which is reasonable, credible and of solid value. [Citations.]” (*Schild v. Rubin, supra*, 232 Cal.App.3d at p. 762.) Even if the evidence is subject to more than one reasonable interpretation, we may not reweigh the evidence or choose among alternative permissible inferences. (*Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 630-631.) We, as the reviewing court, have no power to consider the credibility of the witness, weigh the evidence, or resolve conflicts in the evidence. (*Navarro v. Perron* (2004) 122 Cal.App.4th 797, 803.)

The trial court was convinced that, despite the stated intentions not to interact, there was a reasonable probability of continuing contact given that both parties continued to work in or near the GGPT. The record supports this conclusion by revealing that while this was the first face-to-face meeting between Garcia and Caimotto, there had been multiple contacts in the past concerning Garcia’s drivers not following the GGPT rules. The court also noted that it sensed residual anger in both parties, emotions that would likely resurface in the event of another encounter at the terminal to deal with drivers not following the GGPT traffic rules, or for any other reason. Indeed, Caimotto testified about three other incidents reported to him where Garcia lost her temper in connection with work-related incidents. Thus, substantial evidence supports the court’s conclusion that it was reasonably probable that another encounter between Garcia and Caimotto might trigger residual anger over the October 5 incident, which could lead to wrongful acts in the future.

IV.
DISPOSITION

The judgment is affirmed. Costs on appeal are awarded to Caimotto.

RUVOLO, P. J.

We concur:

REARDON, J.

SEPULVEDA, J.*

* Retired Associate Justice of the Court of Appeal, First Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.