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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

HEATHER KIMBERLY WREGE,

Plaintiff and Respondent,

v.

SMILEY JAMES HARRIS,

Defendant and Appellant.

A135398

(Lake County  
Super. Ct. No. CV411185)

SMILEY JAMES HARRIS,

Plaintiff and Appellant,

v.

JOSEPH DINGESS,

Defendant and Respondent.

(Lake County  
Super. Ct. No. CV411502)

Smiley James Harris appeals from an order (1) granting a permanent injunction against harassment in favor of his next-door neighbors and (2) dissolving a temporary restraining order (TRO) against the neighbors granted in his favor. We affirm.

**I. BACKGROUND**

Heather Kimberly Wrege lives with her husband, Joseph Dingess, and their three sons next door to Harris in Clearlake. On February 10, 2012, Wrege filed a request for civil harassment restraining orders against Harris on behalf of herself and her family (case No. CV411185). She alleged Harris had threatened their lives the previous night, and had harassed them repeatedly going back to 2010, by coming up to the fence between their properties and yelling at and threatening them. He would yell about the number of

people visiting the Wrege home, the number of cars parked in the vicinity, and people parking in front of his mailbox, among other things. Wrege alleged her husband suffered from severe, stress-induced seizures that could be triggered by Harris's conduct. Harris responded to Wrege's petition with his own request for a restraining order filed on February 16, 2012. He alleged Dingess and his son had attacked and beaten him on February 9, causing him to fear for his health and safety (case No. CV411502).

The court granted both sides' TRO's against further harassment as well as stay-away orders against each other, pending a hearing on their cross-requests for permanent restraining orders. At the hearing, Wrege described an ongoing dispute with Harris going back to 2010 and 2011, which started with his complaint that people he believed were visiting Wrege's family were parking in front of his mailbox. According to Wrege, Harris would yell at them across the fence line between their properties at least once per week during certain periods of time, and then would cease that activity only to begin doing it again a few months later. He would yell about various things including people parking in front of Wrege's house, or parking too close to the mailbox, or too many people visiting the house, or music being played too loud. She further testified about the effect Harris's yelling was having on her husband: "He has epilepsy, severe. And he has two different types of seizures. And one of them is brought on by stress. And so [Mr. Harris] coming out to the fence line, yelling and screaming all the time, causes him to have seizures. And because of that he's having to up his medication. And so the fluctuation in medication is causing a problem with his quality of life." Hand-drawn diagrams of the two properties placed in evidence showed that Wrege's front door and part of the sidewalk leading to it from her driveway were near the fence separating the two properties.

A friend of Wrege's family testified he had seen Harris come to the fence and yell at family members four or five times about different things, including about his mailbox. A neighbor who lived across the street from Harris testified he had heard Harris "hollering and screaming" over the fence numerous times, and the sound would start the neighbor's dogs barking. Wrege's 16-year-old son testified the yelling would happen at

least once a week, and once he started yelling, Harris would “keep dragging it on and dragging it on.”

Harris testified there was a dispute on February 9 about one of Wrege’s guests parking in front of his mailbox. When the guest decided to move her car, Wrege told her she did not have to move it. This angered Harris and he said, “[F]uck you.” At that, Wrege’s husband and son “jumped” Harris in his yard. The son held him from behind while the father punched him. Harris testified there had been an earlier altercation between him and one of Wrege’s sons over loud music being “blast[ed]” on a car stereo at 11:00 p.m. He stated Wrege’s other claims were groundless and he had only had problems with them over the mailbox. Harris admitted he did not seek hospital care on the 9th and had no bruises or other visible signs of injury on his person.

Dingess testified he exchanged words with Harris over the fence on the 9th but neither he nor his son approached Harris or touched him in any way. Dingess denied his son was even present at the time.

Wrege told the court in summation: “[H]e just makes life for us very, very uncomfortable and very stressful. And I’m just very worried that he’s going to cause my husband, Joe, to have more seizures and end up in the hospital.” Harris denied yelling excessively and stated: “[T]he continuing lying of these arguments against me . . . has been that I continue to yell at these people, if the Court accepts that I continue to yell at these people, then I ask the Court to note that it’s because they block my mailbox. And that at no time have I threatened them or provided them with any basis for needing a restraining order against me.”

The court took the matter under submission and entered a written ruling on the cross-requests after the hearing. The court found Harris had engaged in a pattern of conduct that “seriously alarms, annoys, or harasses” Wrege and her family for purposes of Code of Civil Procedure section 527.6,<sup>1</sup> and that Wrege and her household had not

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<sup>1</sup> Code of Civil Procedure section 527.6 authorizes injunctive relief against harassment and defines harassment to include “a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and

engaged in such conduct. The court ordered the TRO in case No. CV411502 immediately dissolved, and made the TRO in case No. CV411185 permanent (as modified by the court) for a period of three years from the date of the hearing.

Harris timely appealed.

## II. DISCUSSION

Harris argues the trial court erred in denying his request for a permanent injunction because the conflict between the parties was based predominantly on the “persistent and aggressive blocking of [his] mailbox,” which he contends was a trespass and a nuisance that should have been enjoined.<sup>2</sup> He further contends the TRO granted to Wrege and the ensuing permanent injunction were obtained by fraud—Wrege’s false allegation Harris had threatened the lives of family members— and therefore the judgment was void.

Harris’s argument with respect to his own petition is wide of the mark. He did not seek an injunction against the alleged blocking of his mailbox. He sought to enjoin Dingess and his son from physically assaulting him. The TRO he obtained and sought to make permanent enjoined Dingess from coming within five yards of Harris or his home or vehicle. It alleged no facts pertaining to the alleged blocking of Harris’s mailbox and provided no relief from that alleged wrong. To the extent Harris is claiming he had a “legitimate purpose” in yelling at Wrege and her family for purposes of Code of Civil Procedure section 527.6, the evidence was insufficient to establish they were guilty of any trespass or nuisance. In any event, as the trial court recognized, even assuming for the sake of analysis that Harris’s statements and complaints were factually valid, his manner of communicating them “is not privileged conduct when it goes to these extremes of deliberate and continuing annoyance of others. . . . Shouting to the extent of repeated

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that serves no legitimate purpose,” if the conduct “would cause a reasonable person to suffer substantial emotional distress,” and “actually cause[s] substantial emotional distress to the petitioner.” (*Id.*, subds. (a)(1), (b)(3).)

<sup>2</sup> Harris cites Civil Code section 3479, which defines a nuisance to include “[a]nything which is . . . an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property . . . .”

disturbances of the peace is not a proper method of enforcement of legal rights.” We agree.

Harris’s claim of fraud also provides no basis for overturning the injunction granted in favor of Wrege. At the hearing, the court questioned Wrege about whether Harris had threatened her or her family. She admitted he mainly “just threatened to call the cops.” There is no suggestion in the court’s written ruling that it granted a permanent injunction because it believed Harris had threatened anyone’s life. The ruling was based solely on the court’s findings that Harris’s frequent shouting and complaints went to an unacceptable extreme of deliberately annoying his neighbors, and served no legitimate purpose. Substantial evidence in the record, summarized above, supported those findings.

Wrege’s TRO application contained sufficient other allegations, supported by evidence at the hearing, to support the TRO originally granted to her. To the extent Harris is claiming he is entitled to actual or punitive damages as a result of a false or exaggerated assertion made in Wrege’s original TRO application, that issue is outside the scope of this appeal. The issue was not timely raised in the trial court and was not in any event within the scope of the pleadings in this case which consisted of cross-petitions seeking injunctive relief only. Moreover, although Harris claimed he suffered two arrests as a result of the TRO, there was no evidence in the record to show the arrests resulted from the TRO or Wrege obtained it under false pretenses.

### **III. DISPOSITION**

The April 3, 2012 order dissolving the injunction in case No. CV411502 and granting a permanent, three-year injunction in case No. CV411185 is affirmed.

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Margulies, J.

We concur:

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Marchiano, P.J.

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Banke, J.