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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

LUIS CHAN,

Plaintiff and Respondent,

v.

GUSTAVO HERNANDEZ RIOS,

Defendant and Appellant.

A135942

**(San Francisco County
Super. Ct. No. CCH12573473)**

Gustavo Hernandez Rios appeals from an injunction issued under Code of Civil Procedure section 527.6,¹ which directs him to stay away from Luis Chan. He contends the injunction must be reversed because it was based on hearsay evidence and the testimony of a biased, non-certified interpreter (a friend of Chan's who was assisting him at the hearing). We affirm, because hearsay evidence is permitted in proceedings under section 527.6 and Rios has failed to demonstrate that the translator's participation in the hearing was prejudicial.

BACKGROUND

Chan filed a request for a temporary restraining order and injunction against Rios (form CH-100). In his request, Chan alleged that Rios "threatened to kill me. My friend told me that the individual would pay friend to kill me for \$100.00 dollars. He also keeps stalking almost daily and also follow me around almost every day. He has never stop[p]ed stalking me since both incidences, from the first incident and the second he

¹ Further statutory references are to the Code of Civil Procedure unless otherwise indicated.

follows me with his car and also calls the police and falsely accuses me of having drugs in my car. . . . [¶] . . . I went to the hospital because my face swelled up and became purple after he punched me.” The court issued a temporary restraining order, set the matter for a hearing on the injunction, and reissued the temporary restraining order after the hearing was continued.

At the hearing on the injunction, Chan, representing himself, appeared with one Abigail Hernandez, who indicated that she was speaking for Chan because while he understood English, he could not speak it well. Hernandez started to give her version of the assault that led Chan to seek the restraining order, but at the court’s direction began translating Chan’s own remarks from Spanish to English: “He² would like a restraining order set on this person because he usually stalks him and follows him all over the city sometimes. A lot of times he stalks Mr. Luis Chan, and he follows him all over the city. He follows his car. He follows him all around. And he also paid an acquaintance of Mr. Luis Chan. He offered to pay him a hundred dollars to kill him, and he told that person that he – that he had the – the arms and the ammunition if he needed the arms or ammunition to get rid of Mr. Chan, Luis Chan.”

Asked about the assault that was mentioned in the request for an injunction, Hernandez translated the following description by Chan: “He was on 14th and Folsom at the Food Co’s yard, and he was just standing there, and [Rios] went up to him and punched him in the face – in the – in the eye. And – and he punched him so hard that the police took pictures of all his injuries, and he went to the hospital for one day. And that’s the bill from the hospital. [¶] And he tried to beat him up again. He tried, but Mr. Chan called the officers. And – and – and he has both reports from the police here; and from the hospital, yes, too. He has all the reports.”

² Although this translation is couched in the third person, in context it is clear that Hernandez is conveying Chan’s own remarks rather than offering her own testimony. The reporter’s transcript differentiates between remarks made by “the Petitioner” (Chan, using Hernandez as an interpreter) and comments made by “the Interpreter” (Hernandez herself).

Rios, who was also representing himself, objected to Hernandez acting as Chan's interpreter, advising the court that her translation of what Chan had said was "totally off." The court overruled the objection and asked Rios to respond to Chan's allegations. Rios claimed that Chan and some other people were in the business of selling green cards, social security cards and driver's licenses and had had tried to sell him a driver's license. After Rios refused, telling them that he was an American citizen and could get his own driver's license, the group would taunt him when they saw him by saying, "Oh, you stupid American citizen. You in America. You cannot have a driver's license." Rios told the court he had confronted Chan to ask why he had been making fun of Rios for being an American, and Chan "lunge at me. I just extend my hand, and he hit his face into my hand." Rios noted that the charges against him for battering Chan had been dismissed in the interest of justice.

The court asked Rios about Chan's allegation that Rios had been contacting the police with false reports that Chan was dealing drugs. Rios responded, "Sir, the way these people operate, they're a member of a Mexican cartel. They always trying to do Green Cards, drugs, everything they can. And I inviting you to walk by the store and see them seven days, 24 hours a day doing illegal business and activities in the place. They always go one step ahead [of] the police. They changing cars. They have different cars. They put it in different grocery bags."

At this point, Hernandez, speaking for herself, advised the court, "I also wanted to add that this person usually when he went to beat him, to hit him, he told him, 'You people are here just taking our jobs.' And he has time to spend a lot of time at the grocery store, and – and he claims that – that the people that are from out of the country that live here are taking his jobs. He has a lot of time to stalk people and drive around and follow people around, but he can't find a job." When Rios protested Hernandez's effort to speak on Chan's behalf, the court advised her it would be better if she translated what Chan had to say. Hernandez translated the following remarks by Chan: "This – this person keeps calling him ^(see footnote 2) on the phone, 10 times yesterday. And he keeps calling him, and – and calling him names just to – just to pester him constantly, and he

has to call the officers all the time because he constantly calls him. [¶] And – and also, he makes false reports about Mr. Chan, that he – that he has drugs in his car.”

Hernandez then offered more of her own comments about the situation: “And it’s the same car he’s had. And I’ve known him seven to nine months. He takes me home from the – from the store ‘cause I . . .” Rios asked the court to strike these comments and was granted permission to question Hernandez. He established that she spent about an hour and a half to two hours with Chan each day, and she sometimes asked him to take her home. Finally, Hernandez resumed her translation of Chan’s comments: “If anything happens to him,^(see footnote 2) he wants you to know that it would be because of him. Yes. And – and he usually takes pictures of him just because he’s there at the store. He followed him from – 15 days ago, he followed him from 14th Street to all the way through the Van Ness Street. He stalks him. And he says that he’s afraid for him and his family, that he might harm them or pay some other person to do the – whatever injury he intends for his family, ‘cause he has young children.”

The court found by clear and convincing evidence that relief was warranted and issued a two-year injunction prohibiting Rios from harassing or having any contact with Chan and requiring Rios to stay at least 50 yards away from Chan. The injunction also precluded Rios from buying or possessing any firearms or ammunition. Rios appeals.

DISCUSSION

Section 527.6, subdivision (a)³ provides that “[a] person who has suffered harassment . . . may seek a temporary restraining order and an injunction prohibiting harassment as provided in this section.” “Harassment” is defined 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. The course of conduct must be such as would cause a reasonable

³ The proceedings in this case were held in 2012. Section 527.6 was amended effective 2013, but the provisions cited in this appeal were not altered. (Stats. 2012, ch. 162, § 12; compare Stats. 2010, ch. 178, § 20, operative January 1, 2012; Stats. 2010, ch. 572, § 1, operative January 1, 2012.)

person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner.” (§ 527.6, subd. (b)(3).) The showing of harassment must be made by clear and convincing evidence. (§ 527.6, subd. (i).)

I.

Rios argues that the injunction must be reversed because the court improperly considered hearsay evidence, including hospital bills, police reports, and Chan’s testimony that Rios had offered an acquaintance of Chan’s \$100 to kill Chan. We disagree.

Preliminarily, it is not clear whether the hospital bills and police reports were even considered by the court. Although Chan indicated at the hearing that he had the bill from the hospital and police reports from two incidents involving Rios, those items were not admitted into evidence as exhibits. Rios cannot carry his burden of establishing prejudicial error with respect to these items, even if we assume they were inadmissible. (See *Fergus v. Songer* (2007) 150 Cal.App.4th 552, 578 [burden of affirmatively demonstrating error is on appellant].)

Second, Rios has forfeited his hearsay objection to the evidence now challenged on appeal because he did not object on that ground during the hearing. (*Duronslet v. Kamps* (2012) 203 Cal.App.4th 717, 725 (*Duronslet*).) He did lodge a hearsay objection when Hernandez started to explain to the court that she had known Chan for seven to nine months and that he would take her home from the store in his car, but the admissibility of that statement is not challenged on appeal and was not prejudicial because Rios himself elicited similar testimony from Hernandez to establish her relationship with Chan. (See *People v. Reed* (1996) 13 Cal.4th 217, 230-231 [introduction of inadmissible evidence was not prejudicial where it merely duplicated other evidence].)

Finally, even if we assume the issue was not forfeited, the court did not err in allowing the challenged items because hearsay is admissible in a hearing on an injunction under section 527.6. (*Duronslet, supra*, 203 Cal.App.4th at pp. 728-730; see also *Kaiser Foundation Hospitals v. Wilson* (2011) 201 Cal.App.4th 550, 556-557 (*Kaiser*).)

Subdivision (i) of section 527.6 specifically requires the court to “receive any testimony that is relevant” and authorizes it to “make an independent inquiry.” This language “would seem to authorize the court to admit hearsay evidence during hearings conducted pursuant to section 527.6.” (*Duronslet, supra*, 203 Cal.App.4th at pp. 729; see also *Schraer v. Berkeley Property Owners’ Assn.* (1989) 207 Cal.App.3d 719, 733, fn. 6.)

II.

Rios argues that Hernandez’s participation in the hearing requires reversal because (1) she was not a certified court interpreter; (2) she was biased in favor of Chan; and (3) she interjected her own statements about the underlying facts. We reject the claim.

More than three decades ago, our Supreme Court held that there is no constitutional right to a court-appointed interpreter in a civil case. (*Jara v. Municipal Court* (1978) 21 Cal.3d 181, 185-186.) In reaching this conclusion, the court observed, “In contemporary urban society, the non-English speaking individual has access to a variety of sources for language assistance. Members of his family, friends, or neighbors—born or schooled here—may provide aid. Private organizations also exist to aid immigrants.” (*Id.* at p. 184.) Chan, a Spanish-speaker who believed his English-speaking skills were less than adequate, availed himself of his friend Hernandez’s assistance in translating his testimony from Spanish to English.

Under Government Code section 68561, subdivision (a), “Except for good cause as provided in subdivision (c), any person who interprets in a court proceeding using a language designated by the Judicial Council under subdivision (a) of Section 68562 shall be a certified court interpreter” Rios argues that this statute required the use of a certified interpreter in this proceeding, because Spanish is one of the designated languages referred to in Government Code section 68562. (See Gov. Code, § 68562, subd. (b).) There is no showing in the record that Hernandez was a certified court interpreter, and her use of the third person while translating Chan’s remarks strongly suggests she was not.

Government Code section 68561, subdivision (c) allows the court to appoint a noncertified interpreter for good cause. Though the court did not formally appoint

Hernandez as an interpreter, an appointment upon a finding of good cause can be inferred. (See *Hall-Villareal v. City of Fresno* (2011) 196 Cal.App.4th 24, 35 [good cause finding may be implied].) Proceedings under section 527.6 are “truncated, expedited, and intended to provide quick relief to victims of civil harassment.” (*Kaiser, supra*, 201 Cal.App.4th at p. 557.) Given that Chan was unrepresented by counsel and had obtained a waiver of fees and costs, the court could reasonably conclude that he lacked the resources to hire a certified interpreter, and that the hearing should go forward with Hernandez’s assistance so that future incidents of violence could be averted.

Rios complains that Hernandez was biased in favor of Chan because they were friends. He notes that in addition to translating Chan’s testimony, she made several comments about the case and effectively acted as a character witness for Chan. Rios argues that in light of her relationship with Chan, Hernandez’s participation in the proceedings violated California Rule of Court, rule 2.893, which governs the standards to be applied when appointing noncertified court interpreters, and rule 2.890(c), which governs the professional conduct of court interpreters.

Rule 2.893 applies only to criminal and juvenile delinquency proceedings and is not controlling. (Cal. Rules of Ct., rule 2.893(a).) Rule 2.890 would seem to have limited application given the informal nature of Hernandez’s participation in the hearing. In any event, reversal is required only if Rios can establish that he was prejudiced, which, in the case of civil state law error, requires a showing of a miscarriage of justice, i.e., “ ‘a reasonable probability that in the absence of the error, a result more favorable to the appealing party would have been reached.’ ” (*Elsner v. Uveges* (2004) 34 Cal.4th 915, 939.)

No prejudice appears on this record. Although Rios complained at the hearing that Hernandez’s translation of Chan’s testimony was “totally off,” he did not cite specifics. Chan’s description of events at the hearing (as conveyed through Hernandez) was consistent with his written application for a temporary restraining order and injunction. When Hernandez offered her own comments about the case, the court directed her to translate for Chan instead of speaking on his behalf. The court was well aware of the

difference between Chan’s testimony and Hernandez’s comments and we presume it differentiated between the two when weighing the evidence. Rios’s testimony about the prior assault, in which he claimed that Chan “hit his face into my hand” was simply not believable, and he did not seek to cross-examine Chan about his version of events. It is not reasonably probable that Hernandez’s lack of official certification as an interpreter, or her direct comments to the court, changed the outcome of this proceeding.

DISPOSITION

The order granting the injunction under section 527.6 is affirmed. Chan is entitled to costs on appeal.

NEEDHAM, J.

We concur.

JONES, P. J.

BRUINIERS, J.