

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION ONE

ADMINISTRATIVE OFFICE OF THE  
COURTS,

Plaintiff and Respondent,

v.

NORMAN VALDEZ, JR.,

Defendant and Appellant.

A136735

(Lake County  
Super. Ct. No. CV 406727)

Norman Valdez, Jr., appeals from a trial court order renewing a workplace violence restraining order entered for the protection of Lake County Superior Court Commissioner Vincent Lechowick. He contends the trial court never obtained personal jurisdiction over him, and improperly conducted the hearing by telephone over Valdez's objection. We agree with the latter contention, and will reverse and remand the matter for a new hearing at which the judge assigned to hear the case must be present in person.

**I. BACKGROUND**

Over a two-year period from 2005 to 2007, Valdez was involved in a marital dissolution/child support matter assigned to Lechowick. He appeared before Lechowick approximately 12 times. During that time Valdez filed a number of motions, all of which Valdez believed were decided adversely to him. Valdez unsuccessfully appealed two of these rulings. The second appellate ruling, issued on March 28, 2008, affirmed Lechowick's denial of Valdez's motion to reduce his child support obligations. On the day Valdez learned of the ruling, he made repeated threats to kill Lechowick. The

circumstances, evidence, and details of these threats are described in this court's nonpublished opinion in *Administrative Office of the Courts v. Valdez* (Dec. 27, 2010, A127094; mod. Jan. 19, 2011) (*Valdez I*).<sup>1</sup>

On August 12, 2009,<sup>2</sup> the Administrative Office of the Courts (AOC) filed a petition under Code of Civil Procedure<sup>3</sup> section 527.8 seeking a permanent injunction prohibiting Valdez from (1) engaging in violence or threats of violence against Lake County Superior Court Commissioner Vincent Lechowick, and (2) coming within 50 yards of Lechowick or his residence or place of employment. A temporary restraining order (TRO) was issued and the matter was set for an order to show cause (OSC) hearing. The case was specially assigned to Judge Mark Tansil of the Sonoma County Superior Court,<sup>4</sup> who heard the matter and granted a three-year injunction on October 6, 2009, providing Valdez could not contact Lechowick or come within 50 yards of Lechowick or the courthouse unless "he or his wife have a scheduled hearing or official business, but will identify himself and this order to security and will not approach Commissioner Lechowick or enter his courtroom." The injunction order also permitted Valdez to visit the offices of his attorney, his wife's attorney, and the Veterans Administration office, which were all located near the courthouse. The order was affirmed by this court in *Valdez I*.

The injunction was set to expire on October 6, 2012. On July 17, 2012 the AOC filed a Judicial Council form entitled "Request to Renew Restraining Order" seeking to extend the injunction order for a further three-year period. The renewal request was

---

<sup>1</sup> We take judicial notice of our prior opinion and the appellate record in *Valdez I* on our own motion. (Evid. Code, § 452, subd. (d).)

<sup>2</sup> Lechowick testified he did not seek a civil injunction immediately because he wanted to see what was going to happen in a criminal case that had been brought against Valdez, which he expected would result in a restraining order related to probation or parole. He sought a civil injunction when the criminal case proceeded too slowly.

<sup>3</sup> All further statutory references are to the Code of Civil Procedure.

<sup>4</sup> The matter was specially assigned to Judge Tansil after all of the Lake County judges recused themselves.

personally served on Valdez on July 20, 2012, including notice of a court hearing on the request to be held at 8:30 a.m. on July 30, 2012 at the Lake County courthouse in Lakeport. The Judicial Council form notice stated, “At the hearing, you can tell the judge if you do not want the order against you renewed,” and a form was provided for Valdez to make a written response to the request to renew the restraining order. Valdez submitted a seven-page, typewritten response, and appeared in person for the hearing on the morning of July 30. Judge Tansil and counsel for the AOC were not present, and participated in the hearing by telephone.<sup>5</sup>

Valdez objected and stated he had not been notified by Judge Tansil or opposing counsel they would be appearing telephonically. He further stated he was entitled to an evidentiary hearing, had witnesses he wanted to call, and did not believe telephonic appearances were allowed in that type of hearing. Judge Tansil explained he had a trial later that day in Sonoma County, was “really busy,” and decided he could not take the long drive to be present in Lake County. After listening to argument, Judge Tansil ruled as follows: “[B]ased on the statute, I don’t think any further hearing is relevant or required. I think that the Court has a full understanding of the positions on both sides and that the court should exercise its discretion to extend this for up to three years, which I will do.” An order extending the injunction through October 5, 2015 was entered the next day, and Valdez timely appealed.

## **II. DISCUSSION**

Valdez contends the order must be reversed because (1) he was never properly served with moving papers and therefore the court lacked personal jurisdiction over him, and (2) the trial court denied him due process by the manner in which it conducted the hearing on the AOC’s motion. We agree with the latter contention and will reverse the subject order on that basis, and remand it to the trial court for further proceedings on the AOC’s motion.

---

<sup>5</sup> The trial court apparently notified the AOC’s counsel, but not Valdez that it would be conducting the hearing by telephone.

### **A. Personal Jurisdiction**

In his response to the AOC's moving papers, Valdez stated he was served by the AOC with incorrect and incomplete Judicial Council forms, and then served with corrected forms that were not "still not formatted correctly per California Rules of Court." At the hearing, he reiterated he had not been properly served with notice of the proceedings, and in a postjudgment filing claimed service was ineffective to obtain personal jurisdiction over him. He renews the jurisdictional argument here.

Valdez fails to specify the particular respects in which the papers served on him were incorrect, incomplete, or not formatted correctly, and how these asserted deficiencies resulted in the service being ineffective to obtain personal jurisdiction. He cites *American Express Centurion Bank v. Zara* (2011) 199 Cal.App.4th 383, but in that case the proof of service showed on its face that the process server did not comply with the rules governing service. (*Id.* at p. 390.) Here, the proof of service filed with the court, which was executed by the Lake County Sheriff's Civil Bureau, shows on its face that Valdez was personally served with all required documents. This creates a rebuttable presumption of proper service which was Valdez's burden to overcome. (Evid. Code, § 647; *Floveyor Internat., Ltd. v. Superior Court* (1997) 59 Cal.App.4th 789, 795.) Valdez fails to overcome that presumption.

Further, Valdez brought no motion to quash service, and he responded to the AOC's motion on the merits in writing and at the hearing. This constituted a general appearance waiving any jurisdictional objection Valdez might otherwise have had. (*Alioto Fish Co. v. Alioto* (1994) 27 Cal.App.4th 1669, 1688.) The trial court did not lack personal jurisdiction over Valdez.

### **B. Telephonic Hearing**

We find no statutory authorization for a trial judge to appear telephonically at a hearing over the objection of one of the parties. Section 367.5 provides authorization for telephonic appearances *by parties* at certain types of court proceedings in civil matters: "It is the intent of this section to promote uniformity in the procedures and practices relating to telephone appearances in civil cases. *To improve access to the courts and*

*reduce litigation costs, courts should, to the extent feasible, permit parties to appear by telephone at appropriate conferences, hearings, and proceedings in civil cases.”*

(§ 367.5, subd (a), italics added.) Allowing judicial officers to participate by telephone in civil hearings and proceedings does not improve access to the courts or reduce litigation costs. Pursuant to section 367.5, the Judicial Council adopted California Rules of Court, rule 3.670, which implements uniform procedures for allowing telephone appearances. This rule does not mention or provide a procedure for telephonic appearances by judicial officers.

Most importantly, neither the statute nor the court rule authorizes the court to *require* a party to appear by telephone in any type of civil conference, hearing, or proceeding. That is effectively what the trial court did in this case. Although Valdez was allowed to show up in person to an empty Lake County courtroom in this case, the trial court’s decision to proceed with the hearing over Valdez’s objection was tantamount to compelling Valdez to make a telephonic appearance before the court. No statute or court rule permits such a procedure.<sup>6</sup> For the reasons that follow, we find the procedure violated Valdez’s due process rights and compromised his ability to fully defend against renewal of the protective order.

Section 527.8, subdivision (k)(1) provides that a workplace violence restraining order “may be renewed, upon the request of a party, for a duration of not more than three years, without a showing of any further violence or threats of violence since the issuance of the original order, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party.” The statute does not specify a standard for renewal, and the courts have not yet addressed that issue. There is case law, however, addressing the standard for renewing domestic violence restraining orders issued pursuant to Family Code section 6345, which contains language

---

<sup>6</sup> Courts do have discretion to require parties who are incarcerated to appear by telephone in certain civil proceedings. (See, e.g., *In re Jesusa V.* (2004) 32 Cal.4th 588, 599.) However, such a procedure would violate due process if the party was not represented by counsel present at the hearing. (*Id.* at pp. 601–602.)

similar to Code of Civil Procedure section 527.8, subdivision (k)(1). (See *Ritchie v. Konrad* (2004) 115 Cal.App.4th 1275, 1283–1292 (*Ritchie*); *Lister v. Bowen* (2013) 215 Cal.App.4th 319, 331–334.)

Like section 527.8, the domestic violence statute specifies that no further violence or threats of violence since the issuance of the original order need be shown in order to obtain a protective order extension. However, *Ritchie* makes clear the Legislature did not thereby intend to relieve the party seeking extension of a domestic violence protective order from any evidentiary burden whatsoever if the extension is contested. (*Ritchie, supra*, 115 Cal.App.4th at p. 1279.) *Ritchie* held the trial court must determine whether the protected party entertains a reasonable apprehension of future abusive conduct. (*Ibid.*) This was consistent with the statutory definition of abuse in Family Code section 6203, subdivision (c), which includes placing a person “in *reasonable apprehension* of imminent serious bodily injury to that person or another.” (Italics added.) This definition is similar to the definition of “ ‘Credible threat of violence’ ” in section 527.8 (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 family”). (*Id.*, subd. (b)(2), italics added.) We find *Ritchie*’s analysis fully applicable to the extension of workplace violence protective orders under section 527.8.

Under *Ritchie*, the protected party’s subjective fear of the other party is insufficient. (*Ritchie, supra*, 115 Cal.App.4th at p. 1288.) The protected party must prove both that he or she entertains a genuine *subjective* apprehension that future violence will occur as well as the *reasonableness* of that fear, that is, that a reasonable person in the protected party’s position would feel such apprehension. As stated in *Ritchie*: “A trial court should renew the protective order, if, and only if, it finds by a preponderance of the evidence that the protected party entertains a ‘reasonable apprehension’ of future abuse. . . . [T]his does not mean the court must find it is more likely than not future abuse will occur if the protective order is not renewed. It . . . means the evidence demonstrates *it is more probable than not there is a sufficient risk of future*

*abuse to find the protected party's apprehension is genuine and reasonable.” (Id. at p. 1290, italics added.)*

In making this determination, the trial court can consider the underlying findings and facts supporting the original order, although these “seldom if ever will provide *conclusive* evidence . . . .” (*Ritchie, supra*, 115 Cal.App.4th at p. 1291.) The court should also consider changed circumstances: “For instance, have the restrained and protected parties moved on with their lives so far that the opportunity and likelihood of future abuse has diminished to the degree they no longer support a renewal of the order?” (*Ibid.*) In the end, the court must determine whether there remains a sufficient risk of future misconduct by the restrained person—threats, stalking, harassment, or violence—to make the protected person’s fear reasonable.

In this case, Valdez acknowledged the *Ritchie* standard and sought to present evidence the circumstances had changed significantly since the original incident in March 2008 that led to entry of the protective order. He wished to present testimony that on three occasions since the order issued in 2009, Commissioner Lechowick had entered a public setting where Valdez was present, and nothing had happened between the parties. He wished to testify about changes in his life since 2009, including his involvement with his children, his progress in dealing with posttraumatic stress disorder stemming from military service, and his immersion in volunteer and hobby activities. He stated in his declaration that he could “present evidence and witness testimony that he has, since the Injunction issued, tried to put this behind him,” and that “the circumstances surrounding issuance of the October 2009 . . . Injunction have changed such that there no longer exists sufficient grounds to renew or extend the Injunction.” Regarding the declaration Valdez submitted to the court before the hearing, Judge Tansil commented, “I was very encouraged to see that he was saying things are better in his situation, so I appreciate that as well.”

When asked to explain the reason for its request for an extension at the hearing, AOC’s counsel pointed to the seriousness of the original threats and stated Commissioner Lechowick had told her that according to a call he had received from the Mendocino

County Superior Court that in October 2010—a year after the protective order issued—Valdez had come in to look at the commissioner’s old marital dissolution file.

Commissioner Lechowick was very concerned that Valdez was seeking information on his family, his home address, and other highly personal information after the protective order was in place. AOC’s counsel argued this “indicates that Mr. Valdez is still focused on Commissioner Lechowick and that an injunction is necessary for his protection.”

Counsel also cited the fact Valdez continued litigating the matter in the Court of Appeal and petitioned for review in the California Supreme Court, showing “he is not one to simply let things go [and] this is still very much on his mind.” Valdez stated it was his wife who had sought Lechowick’s marital dissolution file, in connection with a complaint she was making to the Commission on Judicial Performance about Lechowick.

Simply put, the issue before the trial court was whether Valdez’s state of mind toward Lechowick at the time of the hearing was such that a reasonable person would still be apprehensive about Valdez’s intention to harm him. Assuming a good faith reason to oppose renewal of the protective order, it is not hard to imagine why someone in Valdez’s position would want to make his case personally to the court. His demeanor and credibility are central to determining whether the restraining order is still justified. A personal appearance was Valdez’s best opportunity, possibly his only opportunity, to convince the court he no longer harbored the emotions or posed the threat to Commissioner Lechowick that led to the protective order. “[T]he right of a party to have the trier of fact observe his demeanor, and that of his adversary and other witnesses, during examination and cross-examination is . . . crucial to a party’s cause of action.” (*Linsk v. Linsk* (1969) 70 Cal.2d 272, 278–279 [reversing judgment in divorce proceeding decided based on record made in earlier proceeding].) That was particularly true in this case, where the AOC relied on double or triple hearsay evidence that Valdez had been seeking personal information about Lechowick from court files to show the reasonableness of Lechowick’s continued apprehensions about him. Valdez should have been afforded a full and fair opportunity to deny or explain that evidence, which at a minimum required the opportunity to make a personal appearance before the fact finder.

“The fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’ ” (*Mathews v. Eldridge* (1976) 424 U.S. 319, 333.) While we are not prepared to say that a full-blown evidentiary hearing is always required in contested proceedings under section 527.8, subdivision (k), we believe the right of the parties affected by the protective order to appear before the court, either personally or through counsel, is so fundamental that it cannot be abridged by a court’s unilateral decision to hear the matter by telephone. We will therefore remand the matter to the trial court for a proceeding in which both parties have the right to personally appear before the court.<sup>7</sup> We imply no judgment about the appropriate disposition of the AOC’s renewal request.

### **III. DISPOSITION**

The July 31, 2012 restraining order is reversed. Upon issuance of the remittitur, the trial court shall enter a temporary restraining order with the same personal conduct and stay-away provisions as the July 31, 2012 order, pending (1) a new hearing on the AOC’s renewal request conducted in a manner consistent with the views expressed in this opinion, and (2) entry of a new order granting or denying the request.

---

<sup>7</sup> We do not reach Valdez’s other procedural objections to the trial court’s decision.

---

Margulies, Acting P.J.

We concur:

---

Dondero, J.

---

Banke, J.