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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

KATHERINE ALDEN,
Plaintiff and Respondent,

v.

ELLIS J. ALDEN,
Defendant Appellant.

A140462

(San Mateo County
Super. Ct. No. CIV 524269)

Seventy-five-year-old Ellis Alden appeals from a civil harassment restraining order issued in favor of his 69-year-old ex-wife Katherine Alden. The order was based on Ellis's conduct on the ranch property that had been awarded to Katherine as part of a marital settlement agreement, which property was adjacent to the ranch property that had been awarded to Ellis.¹

Ellis makes four arguments on appeal, the first of which contends that the trial court erred as a matter of law, as the setting involved nothing more than a real estate dispute. The second and third arguments contend that the trial court erred as a matter of fact, as there was no evidence to support the harassment order and it was overbroad. The fourth argument contends that the trial court erred in denying Ellis's Code of Civil Procedure section 473² motion to set aside the harassment order, as the order was entered

¹ For clarity, we refer to the parties by their first names.

² All subsequent statutory references are to the Code of Civil Procedure, unless otherwise indicated.

following a hearing at which he did not appear, a nonappearance due to the fault of his attorney. We conclude that none of Ellis's arguments has merit, and we affirm.

BACKGROUND

The General Setting

In June 2002, Ellis and Katherine executed a comprehensive marital settlement agreement (MSA) that resolved a lengthy, and contentious, dissolution proceeding. As Ellis himself described it in 2013, "Katherine . . . and I have been engaged in an extremely contentious dissolution of marriage action since 2000." Or, as the trial court itself remarked in an order made below, "This Court is well aware of the history and level of acrimony between the parties . . . as [the Court] was serving as Supervising Judge of the Family Law Court when their dissolution action was first filed in September 2000."

The MSA, signed almost two years after the September 2000 petition for dissolution, was obviously the result of significant negotiations and advice, both parties represented by able counsel. The MSA divided the couple's significant assets, including over 10 hotels, four residences, a venture fund, several automobiles, an executive jet, and numerous other items of property. The MSA came to be supplemented twice, first in February 2005 and again in November of that year.

Particularly pertinent here is one property addressed in the MSA and its supplements: approximately 1,387 acres of property referred to as the Alden Geyserville Ranch, and described in the MSA as the "Old Ranch." The Old Ranch was divided into two parts, designated Ranch A and Ranch B. Ranch A was to be owned by a partnership controlled by Katherine, Ranch B by a partnership controlled by Ellis. Ranch A and Ranch B are adjacent.

In 2008, Katherine and Ellis recorded nonexclusive mutual easements burdening their respective ranches for each other's benefit. But the benefit was for a specific purpose, the easements expressly stating they were "for recreation," which was specifically defined in the easement: "4. Definition of 'For Recreation'. As used herein, the term 'for recreation' means only walking, hiking, bicycling, fishing, sports, boating, swimming, riding all-terrain vehicles, and similar reasonable and customary recreational

uses consistent with the types of uses enjoyed by Ellis J. Alden and Katherine H. Alden prior to the dissolution of their marriage.”

Katherine and Ellis also recorded nonexclusive easements covering the roads on the ranches. As pertinent here, as part of his easement Ellis could access a road that traverses Katherine’s Ranch A to reach his Ranch B. Ellis also has an access road to Ranch B that does not cross Ranch A.

Katherine Contracts with Kendall-Jackson, and Ellis Reacts

The MSA anticipated that Ellis and Katherine could improve their respective ranches, including any preexisting vineyard operations. Thus, for example, the MSA provided in pertinent part that “[a]t the expense of the respective owners of the property benefited, improvements shall be installed to make ‘Ranch A’ and ‘Ranch B’ . . . independent and fully self-contained in terms of roads, utilities, and irrigation systems to the degree required to maintain the existing and planned future . . . vineyard operations on both ranches.”

In August 2012, Katherine entered into a vineyard lease for a portion of Ranch A. As she described it, the lease agreement “provided that Jackson Family Wines, Inc. (commonly referred to as Kendall-Jackson) could plant vines on 23.34 acres of undeveloped land.” In return, Kendall-Jackson agreed to pay annual rent of \$2,000 per acre after the vines matured.

In 2013, Kendall-Jackson began preparing an approximately three-acre site for planting. When Ellis learned of this, he complained and, in Katherine’s words, he “continued to object, and in early July 2013, [Katherine] began receiving threatening demands from him.” The evidence concerning those complaints and those threats, and the conduct that followed, are what led to the order Katherine obtained. And as much of Ellis’s appeal addresses that evidence, it will be set forth in detail below, in connection with discussion of the issue to which it pertains. Suffice to say here that in September 2013 Ellis and his employees entered onto Ranch A and removed Kendall-Jackson’s grape stakes and some of Katherine’s property—this despite correspondence from Katherine’s counsel (and others) that Ellis would be acting improperly.

The Civil Harassment Proceeding

On September 20, 2013, Katherine filed a request for civil harassment restraining order. (Code Civ. Proc., § 527.6.) The court issued a notice of hearing, setting the hearing on Katherine's request for October 10. On September 23, Ellis was served with the notice of hearing.

In preparation for that hearing, Katherine filed a trial brief and three declarations, her own and those of Greg Estrada, her ranch manager, and Rafael Valdez, a ranch assistant. Katherine hired a process server to serve these papers on Ellis, and on October 2 and 3, the process server attempted such service, at Ellis's residence and his place of business. He was unsuccessful, as Ellis was absent. The process server then attempted to serve Ellis at his residence on October 4 and 9, again without success.

Katherine's request came on for hearing on October 10, the date set, before the Honorable Stephen Hall. Katherine and her counsel appeared, along with Estrada and Valdez. There was no appearance by Ellis or any counsel on his behalf. The claimed reason for the nonappearance was the subject of Ellis's motion to set aside the order, denial of which is another issue in this appeal, and the underlying facts will be discussed in detail below in connection with that issue.

Judge Hall had read Katherine's submissions and, it is fair to say, began the hearing skeptical of her position, at least to the extent of the relief she was seeking, as he began the hearing with this observation: "I have taken the time to read all of the pleadings which you have submitted here in the course of this. There was filed on the 20th of September of this year an action under the Civil Harassment Protection Act, petitioner being Katherine Alden, respondent being Ellis Alden, and there is evidence of proof of service of the underlying action that was filed with the Court on the 27th of September indicating that Ellis Alden was served within the statutory period. [¶] The question I have for you counsel is even if I were to take everything set forth in these declarations as being true, do you folks believe that this is the appropriate remedy, and if so, your reasons for that."

Then, after hearing from Katherine's counsel, Judge Hall responded with this:

“[I]t’s not that I am not in any way, shape or form not sympathetic to what Ms. Alden is subjected to. It’s obviously something that is very concerning to her and understandably so. Having been sitting here for almost 17 years and having supervised our Family Court for four years, and being Presiding Judge and handling just about everything else here a couple, three times, these are the types of things sadly I have to see a lot of. The problem is, and this may be one of the reasons why Mr. Alden isn’t here, the way the Legislature crafted [section] 527.6 there are very specific requirements that have to be met to fit within the ambit of that section for relief.

“Obviously the petitioner can’t be an artificial person like a corporation, partnership or association. It has to be based upon something on which they have personally suffered and they are not seeking relief on behalf of somebody else. And all those things I don’t have a problem with.

“The issue here is there’s a case that came out of Santa Clara County, the case of *Marquez-Luque v. Marquez*. It’s a 1987 case, and I believe the citation is 192 Cal.App.3d 1513. That has very much the same tenor and issues here, and the Court of Appeals reversed the trial court for even issuing the requested relief under this procedure, and in many ways the facts mirror what we have here.

“They said that the proper relief would be to pursue something by way of a normal injunctive relief, that this was not the type of procedure designed for this.

“In other words, the three primary tenets of focus of this act are to stop unlawful violence, which we don’t have here, the credible threat of violence, certainly sounds like there’s some degrading of some of the employees, and then the other is the willful course of conduct directed at the petitioner that would alarm, annoy, harass her. It serves no legitimate purpose.

“I am sure I am not trying to speak for Mr. Alden, but my guess is his position is I have a right to this or there’s a disagreement of that. My concern is even if I were to issue an injunction here, it would likely be spun in a heart beat by the folks in San Francisco, then you will be back not only having to litigate this, but also running the risk of having an unenforceable order, and I don’t want to put you folks in that position.

“That to me, that case is about as clear as it can be, in terms of what you are seeking here. You are asking me to interpret conditions of marital settlement agreement, and what does or doesn’t apply, and that was almost directly the *Marquez* case. They said that’s not what you are here to do judge, you shouldn’t do that.”

Counsel for Katherine responded, ending his response with this: “So, I don’t think this is a matter of a civil dispute where there are horrible [*sic*] arguments that he is within some right that he has. I don’t see that at all. He is acting completely lawless. He even refers to in his e-mails to engaging in self help, and that’s exactly what this is, unlawful self help that will continue unless enjoined.”

Against that background, the hearing proceeded.

Katherine testified, as did Valdez and Estrada. Judge Hall admitted various exhibits, including a map of the properties and photographs of what Katherine’s counsel called Ellis’s vandalism. Judge Hall asked some questions of Katherine’s counsel and examined Katherine.

After the hearing, Judge Hall found that Katherine had offered sufficient evidence to support a civil harassment injunction, and issued personal conduct and stay away orders (collectively, civil harassment order or order). The civil harassment order prohibited Ellis from harassing, intimidating, molesting, attacking, striking, stalking, threatening, assaulting, hitting, abusing, destroying personal property of, or disturbing the peace of, Katherine. Ellis was also enjoined from entering Ranch A, interfering with the operations of Ranch A, or communicating with the employees of Ranch A or the lessee. The order also required Ellis to stay at least 20 yards from Katherine, her home and vehicle, and Ranch A.

The Motion to Set Aside

On November 5, 2013, Ellis filed a motion to set aside the order. As pertinent here, the motion argued that Ellis was entitled to relief under Code of Civil Procedure section 473, subdivision (b), because his failure to appear at the hearing was due to his counsel. More specifically, the motion was premised on two bases: (1) Ellis was entitled to mandatory relief as the civil harassment order amounted to a default entered as a result

of attorney mistake, inadvertence, or neglect; and 2) Ellis was entitled to discretionary relief because his failure to appear at the hearing was the result of his counsel's excusable neglect.

Katherine filed opposition, and the motion came on for hearing on December 5. Because Ellis's counsel had raised issues at the hearing with more specificity than in the written papers, Judge Hall took the matter under submission. Then, in a four-page order, detailing all that happened, Judge Hall denied Ellis's motion finding that Ellis "is not entitled to either mandatory or discretionary relief."

Ellis filed a timely appeal from both orders.

DISCUSSION

Summary of Ellis's Contentions

Ellis's brief describes that "[t]his appeal presents the following issues:

"(1) Did the lower court have the power to enter the [civil harassment order] based upon disputes arising from the parties' use of easement rights?

"(2) Did the lower court err by granting the [civil harassment order] in the absence of any violence, credible threat of violence, or a course of conduct directed at Katherine which seriously alarmed, annoyed or harassed her?

"(3) Did the lower court abuse its discretion by restraining Ellis from using any of his vested easement rights regarding Katherine's property, which resulted in an order which was far broader than was warranted by any of Katherine's evidence?

"(4) Did the lower court err by refusing to vacate the [civil harassment order] upon an attorney's declaration that she had mistakenly, but in good faith, relied upon the court's own record showing that the hearing had been vacated?"

Since the last issue goes to the very existence of the order, we begin with analysis of that issue.

The Motion to Set Aside the Civil Harassment Order Was Properly Denied

Background

As indicated above, Ellis filed what he called a "motion to set aside civil harassment restraining order and dismiss action." It was filed on Ellis's behalf by

Redwood City attorney Vivian Kral. The motion was accompanied by objections to the notice of hearing on the civil harassment restraining order; a memorandum of points and authorities; and two declarations, those of Ellis and Ms. Kral. Both declarations had exhibits attached, Ellis's attaching a page from a supplement to the MSA, Ms. Kral's attaching two pieces of correspondence with one of Katherine's attorneys.

Ellis's declaration totaled 19 paragraphs, most of which testified to his claimed relationship with Katherine, the MSA, and what he was (and was not) served with in connection with the civil harassment action.

As pertinent to the substance of Katherine's and her witnesses' testimony—as apparently learned from their declarations—Ellis's declaration said this:

“10. It is not true that I have done anything inappropriate at any time to harass Katherine or any of her employees. At no time did I ever ‘refuse’ to respect Katherine's property rights. We both have rights of easement for recreational purposes on each other's adjacent parcels.

“11. At no time did I ever ‘trespass’ on Katherine's property as I have a perpetual easement right to be on her property, as she does on mine.

“12. At no time did I ever stand in the way of any bulldozer.

“13. I did remove several end stakes that were interfering with my easement rights as I had informed Katherine.

“14. At no time did I verbally abuse Katherine's employees.

“15. At no time did I steal any ‘expensive items.’ I did remove a piece of brass shaped like a pig that was awarded to me in the dissolution, after reminding Katherine that it was mine and that I wanted it back. I also obtained a block and tackle that was given to me by my vineyard foreman for my birthday about 12 years ago. The total value of both items is about \$115.00.

“16. I have not ever, ever threatened Katherine with any form of physical violence.

“17. I have never owned a gun in my life, so Katherine's declaration to the contrary is pure speculation.”

Ms. Kral's declaration testified essentially to her involvement prior to the October 10 hearing, which was the factual basis for Ellis's motion. Her testimony was as follows:

"2. On or about October 7, 2013, I received a telephone call from attorney David M. McKim regarding this case. We discussed the fact that this purported request for a civil harassment restraining order was defective in several respects, including but not limited to: (1) this was the improper forum to resolve this dispute as it was a continuing family law matter, regarding an easement specifically set forth in the parties' family law Judgment (*Alden v. Alden*, San Mateo County Action No. F 062144), (2) there was another action pending between the same parties regarding the same conduct in Sonoma County (*Alden v. Alden*, Sonoma County Action No. SW 254320—See Request for Judicial Notice filed herewith), (3) that this was an attempt to make an improper collateral attack on the family law judgment and the easement set forth therein, and (4) that, under the Code of Civil Procedure Section 527.6, Katherine Alden was not entitled to a civil harassment restraining order as a matter of law.

"3. I then checked the court's docket to see the status of the matter, while I was still on the telephone with Mr. McKim. At the time I checked the docket, there was an entry showing that the October 10, 2013 **hearing on the Order to Show Case [sic] re: Temporary Restraining Order (Harassment) was VACATED**. That was the last and only entry at that time. [Note that there are now additional entries in the docket that did not appear at the time I checked it and it indicated that the hearing was vacated.]

"4. I then connected Mr. Alden to my telephone call with Mr. McKim and I informed him that the hearing had been vacated, so there would not be any hearing on October 10th.

"5. At the time, I assumed that the hearing had been vacated due to the multiple procedural and substantive defects in the Request for Hearing. I also assumed that, perhaps, Mrs. Alden might seek her requested relief either in the San Mateo County family law action or the pending Sonoma County Action.

"6. I then went out of the country and did not return until October 17, 2013."

With the above by way of factual background, as pertinent to the issue here the first argument in Ellis’s points and authorities below asserted that “the court should exercise its discretion to set aside the default.” The sum total of that argument—an argument all of 20 lines in length—was this:

“Code of Civil Procedure Section 473 [subdivision] (b) provides that on a party’s motion the court may relieve the party or counsel from a judgment, dismissal, order or other proceeding taken against that party through his or her ‘mistake, inadvertence, surprise, or excusable neglect.’

“This motion is brought almost immediately after entry of the order. Respondent’s counsel sought a stipulation to set it aside based upon the docket entry indicating that the matter had been vacated the day after service of the order. This is well within any deemed ‘reasonable time,’ and, of course, well within the six month outside time limit.

“Alternatively, the court is required to vacate the default if accompanied by a sworn affidavit of the attorney attesting to his or her mistake, inadvertence or excusable neglect. However, if the court declines to set aside the order in its discretion, and in the alternative sets that order aside on a mandatory basis due to the attorney’s affidavit, then the court must direct the attorney to pay the opposing attorney reasonable compensatory legal fees and costs. I submit that given the circumstances of this case such an order would be grossly unjust and the court should set aside the default order in its discretion due to mistake, inadvertence or excusable neglect.

“Public policy favors C.C.P. Section 473 relief and any doubts regarding its application to this case should be resolved in favor of the moving party. Rutter Group, *Civil Procedure Before Trial*, Section 5:401, citing *Elston v. City of Turlock* (1985) 38 Cal.3d 227. In this case, the mistake, if any, was due to the docket incorrectly showing that the October 10, 2013 hearing had been vacated and it was reasonable to rely on the docket. Respondent has moved swiftly to correct the default, with no prejudice to Petitioner.”

Mandatory Relief Is Not Available

Despite the title of the argument, Ellis first argued below, and first argues here, that he was entitled to mandatory relief based on that portion of section 473, subdivision (b), which provides as follows: “the court shall, whenever an application for relief . . . is in proper form, and is accompanied by an attorney’s sworn affidavit attesting to his or her mistake, inadvertence, surprise, or neglect, vacate any (1) resulting default entered by the clerk against his or her client, and which will result in entry of a default judgment, or (2) resulting default judgment or dismissal entered against his or her client, unless the court finds that the default or dismissal was not in fact caused by the attorney’s mistake, inadvertence, surprise, or neglect.”

As noted, Judge Hall concluded that Ellis was not entitled to mandatory relief. Judge Hall was correct.

By its terms, the mandatory relief portion of section 473, subdivision (b), applies only where attorney error results in a “default,” a “default judgment,” or a “dismissal.” Plainly there was no “dismissal” here: nothing was dismissed. Nor was there a “default” or “default judgment.”

Ellis asserts that “[n]o explanation of the term ‘default judgment’ is provided in Section 473 itself,” and goes on to cite three cases where the court granted mandatory relief in the absence of a default or default judgment, cases he describes as “similar” to what occurred here: *In re Marriage of Hock and Gordon-Hock* (2000) 80 Cal.App.4th 1438 [non-appearance at trial]; *Avila v. Chua* (1997) 57 Cal.App.4th 860 [no responsive papers in summary judgment]; and *Lorenz v. Commercial Acceptance Ins. Co.* (1995) 40 Cal.App.4th 981 [described by Ellis as “expansively interpreting the statutory language in order to meet its obvious purpose”]. That said, Ellis admits that “[e]ven were this not a case of a ‘pure’ default judgment, nevertheless case law in addition to *Hock* indicates that mandatory relief will apply in any proceeding where the procedural equivalent of a default” is entered. We are not persuaded—not by Ellis, and not by the cases he cites.

Discussing those cases, which Katherine’s brief describes as relatively old, and in essence as outliers, Katherine’s brief asserts that the “overwhelming majority of courts—

20 out of 23 by [Katherine’s counsel’s] count—have construed the mandatory relief portion of Section 473 [subdivision] (b) literally, so that it applies only where there has been a default, a default judgment, or a dismissal.” And, Katherine adds for good measure, two of those 20 cases refused to apply mandatory relief in settings like that here, where a party failed to appear for trial: *Vandermoon v. Sanwong* (2006) 142 Cal.App.4th 315, and *Nocerti v. Whorton* (2014) 224 Cal.App.4th 1062—cases not even mentioned in Ellis’s reply brief.

We cast our lot with these majority of cases, applying what the leading practical treatise calls “the better view.”³ (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2014) ¶ 5:300.6–5:300.8, p. 5-82.) And thus conclude that Judge Hall did not err in denying Ellis mandatory relief. Or discretionary.

³ This is how the treatise discusses the issue:

“[5:300.6] **Relief where no default or dismissal but circumstances *analogous to default*?** Courts disagree whether the mandatory relief provision applies where defendant suffers a judgment under circumstances analogous to a default but there is no actual default, default judgment or dismissal. [See *Las Vegas Land & Develop. Co., LLC v. Wilkie Way, LLC* (2013) 219 [Cal.App.4th] 1086, 1090–1091, . . . (discussing split of authority in context of summary judgment)]

“1) [5:300.7] **View allowing relief:** Several cases hold an attorney’s affidavit of fault compels relief in such cases. [See *Marriage of Hock & Gordon-Hock* (2000) 80 [Cal.App.4th] 1438, 1444, . . .—client failed to appear at trial because former attorney failed to advise new attorney of trial date, so that uncontested trial was ‘more in the nature of a default’; *Yeap v. Leake* (1997) 60 [Cal.App.4th] 591, 601, . . .—mandatory relief applied to arbitration award where client failed to appear and participate in arbitration due to attorney’s negligence; *Avila v. Chua* (1997) 57 [Cal.App.4th] 860, 868, . . .—mandatory relief applied to summary judgment granted by court after striking plaintiff’s untimely opposition papers, so that it was ‘analogous to a default judgment’]

“2) [5:300.8] **View denying relief:** However, more recent cases hold that the provision for mandatory relief does not apply absent an actual default, default judgment or dismissal. This is probably the better view, since [Code of Civil Procedure section] 473(b) refers only to ‘defaults’ and ‘dismissals.’ ” (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2014) ¶ 5:300.6–5:300.8, p. 5-82.) The authors go on to describe numerous cases where relief was denied.

Denying Discretionary Relief Was Not an Abuse of Discretion

Section 473, subdivision (b), provides that the trial court may “upon any terms as may be just, relieve a party . . . from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect.” As noted, Ellis moved below on this alternative ground based on what Ms. Kral did, and the advice she apparently gave Ellis that caused him not to appear at the October 10 hearing.

We begin by noting, as Ellis reminds us, that “[b]ecause the law strongly favors trial and disposition on the merits, any doubts in applying section 473 must be resolved in favor of the party seeking relief from default.” (*Elston v. City of Turlock* (1985) 38 Cal.3d 227, 233; see *Fasuyi v. Permatex, Inc.* (2008) 167 Cal.App.4th 681, 696.) While such principle is well established (at least if section 473 relief is sought from a default), such principle does not mean that discretionary relief is guaranteed.

We discussed the subject in *Garcia v. Hejmadi* (1997) 58 Cal.App.4th 674, 682, where we reversed the trial court’s grant of section 473, subdivision (b), discretionary relief. As we described it: “Accordingly, any neglect of the attorney is imputed to the client, who has the burden on the motion of showing this neglect was excusable. To determine whether the mistake was excusable, the court will inquire whether the same error might have been made by ‘a reasonably prudent person under the same or similar circumstances’’ [Citation.] Conduct falling below the professional standard of care . . . is not therefore excusable. To hold otherwise would be to eliminate the express statutory requirement of excusability and effectively eviscerate the concept of attorney malpractice.” Or, as another Court of Appeal put it, “Section 473, subdivision (b), was not intended to permit attorneys ‘to escape the consequences of their professional shortcomings’ [citation] or to insulate them from malpractice claims.” (*Pazderka v. Caballeros Dimas Alang, Inc.* (1998) 62 Cal.App.4th 658, 672.) In short, Ellis must show that what Ms. Kral did was “excusable.”

Judge Hall concluded that Ellis failed to make that showing, a decision we review for abuse of discretion. (*Hearn v. Howard* (2009) 177 Cal.App.4th 1193, 1200.) And find none.

Giving Ms. Kral's testimony its most favorable reading, on October 7, while on the telephone with Mr. McKim, Ellis's Santa Rosa attorney, she checked a Web site, saw an entry that the October 10 hearing had been vacated, conferenced Ellis into the call, and informed him and Mr. McKim about what she saw, apparently speculating as to two separate reasons why the matter had been vacated: (1) the "multiple procedural and substantive defects" in Katherine's request, and (2) "perhaps [Katherine] might seek her requested relief either in the San Mateo county family law action or the pending Sonoma County Action." Ms. Kral's speculative conclusions turned out to be inaccurate—and unfounded. Judge Hall apparently saw no defects in Katherine's papers. Nor do we. And the docket not only did not support the conclusion that Katherine had withdrawn her request, it affirmatively showed that Katherine had filed a trial brief and supporting declarations only days earlier.

In addition, Judge Hall did not have to accept Ms. Kral's declaration that the docket she saw contained only one entry concerning a hearing on October 10. On October 8, the day after Ms. Kral supposedly reviewed it, the docket contained two entries relevant to an October 10 hearing, the second of which indicated that it would in fact occur. Specifically, one entry was labeled "Hearing re: Temporary Restraining Order Denied"; the other was labeled "Hearing: Order to Show Cause re: Temporary Restraining Order (Harassment) Filed by Katherine H. Alden and Signed by Judge Foiles on 9/20/13." The second of these was marked "vacated," but not the first.

But even if Ms. Kral had seen only the one docket entry, to rely on it was not necessarily excusable, in light of its express warning on the Web site that it does not contain the official records of the court—and that all information is provided "as is."⁴

⁴ The Web site contains this warning: "USE OF THIS WEBSITE AMOUNTS TO EXPLICIT AGREEMENT TO ALL TERMS SPECIFIED BELOW. [¶] The documents and information available on the website are neither intended to be nor are they the

The Web site also states that, pursuant to California Rule of Court 2.503, certain records are not available through remote display, but “the physical court files may be available for viewing at our records counter located in the Hall of Justice in Redwood City or copies of documents are available by mail.” Included within these documents are “[r]ecords in a civil harassment proceeding under Code of Civil Procedure section 527.6.” Ms. Kral thus had additional notice that actual records regarding Katherine’s request would not be available through the unofficial online docket.

Ellis argues that Ms. Kral acted reasonably in relying on the court’s Web site, contending that “[t]he disclaimer is worded, and apparently intended, to relieve the court of responsibility and/or liability for errors,” and that Ellis “does not seek to hold the court responsible for his failure to appear.” But the Web site does more than protect the Superior Court: it flat out warns readers against reliance on it, that “[t]he documents and information available on the website are neither intended to be nor are they the official records of the San Mateo Superior Court” and that “[a]ll information provided on this site is provided ‘as is’ and ‘as available.’ ” At the very least, these disclaimers put Ms. Kral on notice that she could not blithely assume that the information on the Web site was correct.

But rely she did, and Ms. Kral did nothing to verify the information she obtained from the Web site. She did not contact Katherine’s attorneys. She did not contact the court. Nothing. In sum, Judge Hall did not abuse his discretion in concluding that Ms. Kral’s reliance on the Web site, and it alone, was not excusable neglect.

official records of the San Mateo Superior Court. The San Mateo Superior Court maintains this website as a public service to enhance access to public information. This service is continually under development, and it will be updated as events take place and court resources permit. [¶] . . . [¶] All information provided on this site is provided ‘as is’ and ‘as available.’ The court expressly disclaims any and all warranties, express or implied that the service provided herein will be uninterrupted, timely, or error-free or will meet requirements or expectations; and the court makes no warranties that information provided through the services will be correct, complete, or meet requirements or expectations.”

Etchepare v. Ehmke (1955) 137 Cal.App.2d 508 is persuasive. There, defendant stipulated that trial would be held on September 22. On September 17, defendant's counsel called the court clerk to determine if the case was on the master calendar for the 22nd. He was told there was no stipulation on file and that the earliest date for trial was three months later. The Court of Appeal described what then happened: "Then, without checking the file or docket in the clerk's office, without telephoning plaintiff's attorney regarding the filing of the stipulation or the chances of going to trial, and without any arrangement for trial on the 22d [sic] or for a continuance, he 'left town for two weeks.'" Plaintiff and his counsel appeared on the scheduled trial date; the court heard evidence and entered judgment for plaintiff. Defendant brought a motion under section 473, subdivision (b), to have the judgment set aside on the basis of excusable neglect. The trial court denied it, and the Court of Appeal affirmed, holding that the trial court had not abused its discretion. (*Etchepare v. Ehmke, supra*, 137 Cal.App.2d at p. 511.)

Arguing to the contrary, Ellis contends "[i]t is beyond cavil that an attorney is entitled to rely upon representations made by the court itself regarding trial dates," and then cites to what he calls "the seminal case" of *Lynch v. DeBoom* (1915) 26 Cal.App. 311 (*Lynch*), whose facts, he asserts, are "substantially indistinguishable from those at bar." We see it differently.

Plaintiff Lynch, himself an attorney, received notice for trial on July 11 and appeared on that date. Finding that the case was not in fact on the calendar, Lynch checked with the courtroom clerk, who told him that the case was not on the calendar and a trial date would be arranged in the future. Plaintiff left, to later learn that his case was in fact on the calendar, had in fact been called, and been dismissed based on plaintiff's nonappearance. (*Lynch, supra*, 26 Cal.App. at p. 313.)

Plaintiff moved for relief, which the trial court denied, and plaintiff appealed. This court reversed, holding as follows: "In view of the fact that the plaintiff was an attorney at law and for the time being in charge of his own case, it may be conceded that he was guilty of neglect in not waiting for the judge of the lower court to appear upon the bench in order to ascertain with certainty what action would be taken in the case, but the

fact was undisputed that he had in good faith endeavored to ascertain from the clerk of the court what was the condition of the cause upon the court's calendar, and was honestly misled by the information which he received. Under these circumstances the neglect of the plaintiff was excusable within the intent and meaning of the provisions of section 473 of the Code of Civil Procedure.” (*Lynch, supra*, 26 Cal.App. at p. 314.)

The facts here are a far cry. Plaintiff Lynch reviewed the *official* court records to see if trial was scheduled for that day and discovered it was not. He then talked to the clerk and was told there would be no trial on that date. Ms. Kral did neither of these things. She never looked at a single official court record, and never spoke to a single clerk. Rather, she looked only at an online docket that expressly told viewers that it did *not* contain official records.

As noted, and as Ellis emphasizes, many cases stand for the proposition that section 473 should be liberally construed in favor of deciding cases on the merits, a proposition with which we agree. But “[w]hile ‘ ‘courts are liberal in relieving parties of defaults caused by inadvertence or excusable neglect,’ ’ they ‘ ‘do not act as guardians for incompetent parties or parties who are grossly careless as to their own affairs.’ ’ ” (*Hopkins & Carley v. Gens* (2011) 200 Cal.App.4th 1401, 1415.)

We thus turn to the three substantive issues raised by Ellis's brief, arguments set forth in a brief that ignores several rules of appellate procedure, most especially in the way Ellis sets out the facts in his brief, which is to tell his story based on his version of the facts, not those found by Judge Hall. This is most improper.⁵ Such impropriety notwithstanding, we analyze those issues, and conclude that Ellis's arguments fail.

⁵ California Rules of Court, rule 8.204(a)(2)(C) provides that an appellant's opening brief shall “[p]rovide a summary of the significant facts. . . .” As to this, the leading California appellate practice guide instructs as follows: “Before addressing the legal issues, your brief should *accurately and fairly* state the critical facts (including the evidence), free of bias; and likewise as to the applicable law. [Citation.] [¶] Misstatements, misrepresentations and/or material omissions of the relevant facts or law can instantly ‘undo’ an otherwise effective brief, waiving issues and arguments; it will certainly cast doubt on your credibility, may draw sanctions [citation], and may well cause you to *lose the case!*” (Eisenberg, et al., Cal. Practice Guide: Civil Appeals and

The Civil Harassment Order Is Proper, and Supported by the Record

The Standard of Review

“The appropriate test on appeal is whether the findings (express and implied) that support the trial court’s entry of the restraining order are justified by substantial evidence in the record. (*Bookout v. Nielsen* (2007) 155 Cal.App.4th 1131, 1137–1138 [injunctions under § 527.6 are reviewed to determine whether factual findings are supported by substantial evidence; trial court’s determination of controverted facts will not be disturbed on appeal].)” (*R.D. v. P.M.* (2011) 202 Cal.App.4th 181, 188.) This principle is equally applicable to findings that may be implied on appeal to support a trial court’s order (*Michael U. v. Jamie B.* (1985) 39 Cal.3d 787, 793; *Kulko v. Superior Court* (1977) 19 Cal.3d 514, 519, fn. 1), including, as particularly apt here, appeals from injunctions issued under section 527.6. (*R.D. v. P.M., supra*, 202 Cal.App.4th at p. 188.)

Schild v. Rubin (1991) 232 Cal.App.3d 755, 762 (*Schild*), a case relied on by Ellis, described this principle in a section 527.6 case: “In assessing whether substantial evidence supports the requisite elements of willful harassment, as defined in Code of Civil Procedure section 527.6, we review the evidence before the trial court in accordance with the customary rules of appellate review. 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

Writs (The Rutter Group 2014) ¶ 9:27, p. 9-8.) Ellis’s brief ignores such instruction. And more.

“ ‘It is well established that a reviewing court starts with the presumption that the record contains evidence to sustain every finding of fact.’ [Citations.] Defendants’ contention herein ‘requires defendants to demonstrate that there is *no* substantial evidence to support the challenged findings.’ [Citations.] A recitation of only defendants’ evidence is not the ‘demonstration’ contemplated under the above rule. [Citation.] Accordingly, if, as defendants here contend, ‘some particular issue of fact is not sustained, they are required to set forth in their brief *all* the material evidence on the point and *not merely their own evidence*. Unless this is done the error is deemed to be waived.’ [Citations.]” (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881; accord, *In re Marriage of Fink* (1979) 25 Cal.3d 877, 887; see generally 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal § 365, pp. 421–423, and § 368, pp. 425–426.)

substantial evidence which is reasonable, credible and of solid value. (*Nestle v. City of Santa Monica* (1972) 6 Cal.3d 920, 925; [citations].)”

The substantial evidence rule applies without regard to the standard of proof required at trial. Put otherwise, the standard of review remains substantial evidence even if the standard below is “clear and convincing” evidence. (See *Crail v. Blakely* (1973) 8 Cal.3d 744, 750; *In re Marriage of Ruelas* (2007) 154 Cal.App.4th 339, 345.) As one Court of Appeal put it: “ ‘Thus, on appeal from a judgment required to be based upon clear and convincing evidence, “the clear and convincing test disappears . . . [and] the usual rule of conflicting evidence is applied, giving full effect to the respondent’s evidence, however slight, and disregarding the appellant’s evidence, however strong.” . . . ’ . . . ‘We have no power to judge the effect or value of the evidence, to weigh the evidence [or] to consider the credibility of witnesses’” (*In re Mark L.* (2001) 94 Cal.App.4th 573, 580–581.)

In that light, we turn to the evidence before Judge Hall.

As indicated, Kendall-Jackson was preparing to plant grape vines on a portion of Katherine’s property, and by July 2013 had in fact installed some 6,000 grape stakes in the ground. Learning of this, in Katherine’s words, Ellis “objected that some of the new planting was on his property and [he] claimed he had never been provided with a map showing the boundary between the properties.” “Ellis’s objection was false in both respects. The planting was entirely on Ranch A, and Ellis had not only been provided with a map when the property was divided but it was prepared by Ellis’s surveyor and initialed on every page by Ellis.” In fact, when Ellis signed supplement 1 to the MSA, he received a map showing the boundary between Ranch A and Ranch B, a map he in fact initialed.

Moreover, Katherine’s ranch manager Estrada testified he had walked the boundary line with Ellis’s ranch manager, who agreed that the Kendall-Jackson stakes were entirely on Katherine’s property. Estrada could not have been more emphatic, or more detailed. Estrada’s declaration testified that Kendall-Jackson’s stakes were “entirely on Ranch A.” Asked at the hearing how he knew, Estrada answered as follows:

“First of all, I got the boundaries located with the manager from Ellis Alden’s vineyard, Alex Hogstrom, as well as meeting with surveyors four, five years ago, and I also have detailed GPS maps of the property.” This testimony followed:

“Q: And did you discuss this with Mr. Alden’s manager?

“A: Yes.

“Q: Did you verify the location of planting with him?

“A: Yes.

“Q: What was his view as to whether the plan was entirely on Ranch A?

“A: Basically verbatim I have it written down. ‘It’s Kathy’s ranch you can do whatever you want there.’ ”

Ellis’s first actual entry onto Katherine’s property was on July 16 when, according to Estrada, Ellis came onto the property while Kendall-Jackson employees were there, one of whom was operating a bulldozer. Standing near the bulldozer operator, Ellis was “raising his hand in a violent manner and kind of screaming out toward the [bulldozer] operator.” The bulldozer operator shut off the bulldozer and left the area, apparently shaken. Estrada later went to talk to him, and found him “walking back and forth from his truck, shaking his head, breathing deeply, extremely agitated and upset.” Questioned by Estrada, the bulldozer operator told him that Ellis told him “to get the . . . fuck off his ranch, and get out of here.”

On July 19, Ellis sent an e-mail to Katherine (and her attorney and children), which began as follows: “I have learned that [Kendall-Jackson] has invaded our common property under your instructions and is now digging it up as we speak. Since you have not stopped work and have not agreed to arbitration or some like alternative I am left only with my right to protect my property. The grading being done now is improper and without my consent. I may put our bull dozers in to bring the contours of the land back to what it was. If grape stakes are being pounded into the ground, I will feel justified to pull them out.”

Ellis sent a similar, but briefer, e-mail on July 23, which read in its entirety as follows: “As we speak Kendal [*sic*] Jackson is ripping up the lake common area and

placing stakes in it. Kathie does not own the lake common just as she does not own the lake and the roads. She could not lease to KJ that which she does not own. [¶] This is the area where weddings, pony rides sports etc. take place. Please stop KJ now or I will have to exercise self help and pull their stakes out and then KJ will want to discuss the matter with you.”

Katherine’s counsel responded immediately, via a July 24 e-mail and letter to Ellis’s attorney Kenneth Katzoff. That correspondence confirmed that the Kendall-Jackson work was entirely on Ranch A and that there was no “common area” to which Ellis had any claim. And the correspondence ended as follows: “Ellis’s actions are improper and constitute intentional interference with a business relationship as well as a willful violation of the judgment incorporating the parties’ marital settlement agreement. This conduct may expose him to contempt sanctions and other remedies. The verbal abuse of the contractor may give rise to further liability. Please advise Ellis to immediately cease and desist from any further interference with the operations of Ranch A. Kathie and the owners of Ranch A reserve all rights.”

There is no indication Ellis received a copy of the correspondence. There is affirmative indication that he did not heed it. On July 26, Ellis again appeared on Katherine’s property and this time confronted Estrada, specifically about four items on Katherine’s property, described by Estrada as follows: “The block and tackle is attached to my office area or major barn that’s affixed to the property on the ranch. The pig is a weather vane that is on top of our main mixing shed or pump house area, the top of it is this huge crown on top of a stone structure, and the fountain is at Mrs. Alden’s home up on top of the hill that’s affixed.” These four items had been on Katherine’s property the entire time Estrada worked there, since 2008.

Ellis told Estrada the items were his. Estrada said they were not, and he could not have them. This is how Estrada described Ellis’s response: “He was very agitated sitting on his ATV shaking his fist, saying, ‘they are fucking mine,’ and ‘you don’t work 24-7, I will get them.’ ”

The situation was apparently quiescent for several weeks, until the beginning of September, when Ellis sent this September 3 e-mail to Katherine, her ranch manager, and her attorney: “I have been notified by Alex, at my request, that you have authorized KJ to continue the process to plant grapes on our joint land around the lake contrary to my wishes and with no joint consent. You have failed to accept any vehicle to settle this matter as offered by me in good faith, arbitration, etc. [¶] Therefore I will remove the stakes and plants planted in that area as KJ proceeds to plant and stake.”

Katherine’s attorney responded to Ellis’s attorney, to no avail, as on September 6, Ellis once again entered Katherine’s property. And this time, in the words of Ellis’s brief, “true to his word, Ellis caused grapestakes to be removed.” Indeed, he did, as on September 6 and 7 Ellis and his employees removed the grape stakes on Katherine’s property. And not without incident.

According to the testimony from Valdez, Ellis and his workers came to Katherine’s property on September 6 and, using a backhoe to assist them, began to pull out the stakes, Ellis instructing his employees they would be terminated if they did not comply. Valdez took photographs of this, which were introduced at the hearing. Ellis saw Valdez taking the pictures, and told him “to get out of here and [said] something bad about my mother.” Not only that, Ellis physically threatened Valdez, raising “his cane” and walking towards him “like to hit” him. All told, Ellis and his men removed or destroyed some 6,000 stakes, causing some \$30,000 in damage.

But that was not all. Ellis had his employees remove two of the four items he had discussed with Estrada, taking the block and tackle and the pig weathervane, both of which were physically attached to the structures they were on, located entirely on Katherine’s property. Ellis’s employees physically removed the block and tackle from Katherine’s barn, using a fork-lift, and climbed up on the roof of the pump house and sawed off the weathervane. Ellis personally supervised the sawing off of the pig weathervane, in the course of which he again cursed at Valdez, calling him an “asshole” and telling him to leave the ranch.

As noted, Katherine testified at the hearing. Before hearing her testimony, Judge Hall began by referring to her declaration and “to help speed this a little bit” asked her if all the information in her declaration was “true and correct.” Katherine affirmed that it was, which declaration included this: as a result of “Ellis’ intentional conduct, I have suffered substantial emotional distress.” As Katherine elaborated at the hearing, Ellis’s conduct “made me feel very unsafe and insecure going to my ranch that I need to go to oversee the ranch. Also it was supposed to be for personal enjoyment with my family. It’s affected my relationship with my lessor Kendall Jackson, the Jackson Family Wine, and also how he treats their workers and what he does, and also it affects my workers and the treatment of them.”

Based on all that, Judge Hall entered the civil harassment order.

The Law

Section 527.6 provides in pertinent part as follows:

“(a)(1) A person who has suffered harassment as defined in subdivision (b) may seek a temporary restraining order and an injunction prohibiting harassment as provided in this section. [¶] . . . [¶]

“(b) For the purposes of this section:

“(1) ‘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, including following or stalking an individual, making harassing telephone calls to an individual, or sending harassing correspondence to an individual by any means, including, but not limited to, the use of public or private mails, interoffice mail, facsimile, or computer email. Constitutionally protected activity is not included within the meaning of ‘course of conduct.’

“(2) ‘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.

“(3) ‘Harassment’ is 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 person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner.”

Section 527.6 was intended “ ‘to protect the individual’s right to pursue safety, happiness and privacy as guaranteed by the California Constitution.’ ” (*Brekke v. Wills* (2005) 125 Cal.App.4th 1400, 1412; *Huntingdon Life Sciences, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.* (2005) 129 Cal.App.4th 1228, 1250.)

This, then, was the law to be applied by Judge Hall in making his order, which order may be based on declarations as well as oral testimony. (*Duronslet v. Kamps* (2012) 203 Cal.App.4th 717, 728; *Schraer v. Berkeley Property Owners’ Assn.* (1989) 207 Cal.App.3d 719, 733, fn. 6; see generally 6 Witkin, *Cal. Procedure* (5th ed. 2008) Provisional Remedies, § 322, p. 262.)

Ellis’s Arguments Have No Merit

As quoted, Ellis asserts three separate reasons why the civil harassment order cannot stand: (1) the setting was nothing more than a “real property dispute”; (2) the order is not supported by substantial evidence; and (3) the order is overbroad.

Ellis first argues that “this dispute clearly does not fall within the type of case appropriately adjudicated” under the civil harassment statute because, at bottom, it is based on a dispute over property. As Ellis would have it, “[t]he parties’ actions, and Ellis’ claimed justification for his own, depend upon the scope and use of the easements granted to Ellis as part of the parties’ marital settlement and cannot properly be evaluated under the guise of an application for a civil harassment restraining order.” Not so.

It may be true that the parties disagree about property rights. But that was not the basis of Katherine’s request for a civil harassment order. To the contrary, it was about Ellis’s threats—indeed, threats that came to fruition—to use self-help, and Ellis’s conduct in carrying out those threats. Those threats came first in e-mails, and they escalated to include trespasses and verbal abuse—not to mention destruction of property. This was not a property dispute. It was a personal dispute.

Here, the relief Katherine obtained from Judge Hall does nothing more than enjoin conduct that Judge Hall found—found, not incidentally, despite his initial skepticism, only after seeing and hearing from Katherine—constituted harassment. The fact that there may be some related dispute about property does not displace the civil harassment statute. (See *Duronslet v. Kamps*, *supra*, 203 Cal.App.4th 717, 722–723, 737 [civil harassment injunction appropriate where defendant, who lived upstairs in a duplex, began harassing plaintiff, her downstairs neighbor, because of disputes over property owned in common]; *Elster v. Friedman* (1989) 211 Cal.App.3d 1439 [trial court enjoined harassment, even though underlying dispute concerned payment of a tax assessment on jointly owned duplex].)

The two cases relied on by Ellis—*Byers v. Cathcart* (1997) 57 Cal.App.4th 805 (*Byers*) and *Marquez-Luque v. Marquez* (1987) 192 Cal.App.3d 1513—are distinguishable. As described by the court, in *Byers* “[t]he complained of conduct which generated this appeal was parking a car along the side of a driveway” in a driveway easement. (*Byers*, *supra*, 57 Cal.App.4th at p. 807.) The trial court had enjoined the parking, but the Court of Appeal reversed, as the parking was for a legitimate purpose, which negates harassment, and there was no evidence to support a conclusion that parking on the driveway easement was for a purpose other than to meet such a legitimate need. (*Id.* at pp. 811–812.) The evidence “simply reflects a difference of opinion regarding the proper scope of the easement.” (*Id.* at p. 812.)

Marquez-Luque v. Marquez, *supra*, 192 Cal.App.3d 1513, the case cited at the start of the hearing by Judge Hall, was a section 527.6 proceeding filed by the executor of a decedent’s estate against a beneficiary who had resided in decedent’s home with decedent, and remained there after decedent’s death, making threats as he did so. The trial court enjoined the beneficiary from harassment and ordered him evicted from the home following his threats. Recognizing that the threats were perhaps actionable, the Court of Appeal nevertheless reversed on an essentially jurisdictional basis, that the eviction was improper. As the court put it, “While defendant’s threatening conduct may have, and did, justify a personal injunction prohibiting the conduct itself, removal from

the home was not a remedy authorized by the section. The limited nature of the statutory remedy aside, there was no evidence that Raymond's mere presence in the home caused plaintiffs substantial emotional distress, or that his possession of the home was intended to harass or annoy plaintiffs." (*Id.* at p. 1517.)

This was more than a property dispute. Much more, and it included harassment.

Section 527.6, subdivision (b)(3), defines harassment 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 person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner. (*Ibid.*) There was substantial evidence of that here.

Such evidence began at least by July 2013, when Ellis embarked on what Katherine rightly describes as "an escalating course of conduct directed at Katherine that served no legitimate purpose other than to alarm, annoy, and harass her." In that month, Ellis twice entered Katherine's property, verbally abused her employees, and attempted to disrupt the planting of grape vines. In September, Ellis entered Katherine's property twice more, ripped out 6,000 grape stakes, and told his employees to physically remove fixtures from her barn and her pump house. This was conduct calculated to "alarm, annoy, or harass" Katherine. And that it did.

Ellis argues that "there is no evidence of any 'course of conduct' directed at" Katherine because he confronted only Katherine's employees and those of Kendall-Jackson. This ignores that Ellis sent no fewer than three e-mails to Katherine threatening to pull up the stakes, which he then did—being "true to his word."

Finally, Ellis asserts that "Katherine failed to present any evidence of *actual, serious* emotional distress," going on to assert that "[c]ase law has implied, if not required, that medical testimony well may be required." Such argument is not supported. Not factually. Not legally.

Factually, it is enough to note that Katherine's declaration testified that as "a result of Ellis' intentional conduct, [she] suffered substantial emotional distress." This is what

the statute requires, not “actual, serious” distress. And while Katherine’s declaration is by itself sufficient (see *Ensworth v. Mullivan* (1990) 224 Cal.App.3d 1105, 1110–1111), Katherine went on to describe how Ellis’s conduct caused her to feel “very unsafe and insecure going to [her] ranch,” which property was “supposed to be for [Katherine’s] personal enjoyment with [her] family.”

Finally, and as we note again, Judge Hall’s order came against the background of his expressed skepticism at the beginning of the hearing, reaching the conclusion he did only after actually hearing from Katherine and observing her demeanor. The observation by the Court of Appeal in *Fletcher v. Western National Life Ins. Co.* (1970) 10 Cal.App.3d 376, 397 is apt: Judge Hall “observed plaintiff and heard [her] testimony and [was], as a result, in a far better position than we to judge the severity of plaintiff’s emotional distress.”

The two cases cited by Ellis—*Schild, supra*, 232 Cal.App.3d 755 and *People v. Ewing* (1999) 76 Cal.App.4th 199—do not support him. *Schild* involved a dispute between two neighbors who, as Justice Boren colorfully described, “happen to be lawyers” who “bounced their unfortunate dispute from a basketball court into the courts of law.” (*Schild, supra*, 232 Cal.App.3d at p. 757.) Specifically, the Schilds built a basketball court in their backyard, and the Rubins complained about the noise caused by the basketball games. The Schilds brought an action for assault, battery, trespass, nuisance, and infliction of emotional distress. The Rubins cross-complained, and the trial court granted their request for a temporary restraining order and an injunction under section 527.6. The Schilds appealed, and the Court of Appeal reversed and dissolved the injunction, concluding that evidence of substantial emotional distress as required by section 527.6 was lacking: “[t]he noise from a ball and the verbal chatter by several people engaged in recreational basketball play in a residential backyard . . . playing at reasonable times of the day for less than 30 minutes at a time and no more than five times

per week” did not constitute unlawful harassment under the statute. (*Id.* at p. 762.) Ellis was not engaged in a game.⁶

Ewing was not even a section 527.6 case, but a criminal conviction for stalking under Penal Code section 646.9. The Court of Appeal held that the People failed to prove the “harasser” element of the stalking statute, as the prosecution presented only “scant evidence of emotional distress.” (*People v. Ewing, supra*, 76 Cal.App.4th at p. 211.)

Ellis’s last argument is that the order is overbroad, that “[i]f an injunction were warranted at all, its scope should have been limited to the three acres [on which Ellis pulled up the grape stakes], Katherine’s home and/or outbuilding, and/or 20 yards from Katherine’s person.” We disagree.

A similar overbreadth argument was urged by the appellant in *City of San Jose v. Garbett* (2010) 190 Cal.App.4th 526. The Court of Appeal rejected the argument, in language equally applicable here: “Appellant’s view of the scope of the permissible remedy under section 527.8 is too narrow. The content of a threat does not define the scope of the injunction; it offers a ground from which future violence may be anticipated. Consequently, threatening violence does not lead to an injunction against only a similar threat; the aim of the order is to prevent harm of the nature suggested by the threat.” (*Id.* at p. 545.) Such language emanates from the language of section 527.6 itself, that the court may issue an order “enjoining a party from specified behavior that the court determines is necessary to effectuate orders described in subparagraph (A).” (§ 527.6, subd. (b)(6)(B).) That is precisely what Judge Hall’s order did here.

⁶ It is *Schild* which Ellis cites for his suggestion that “medical testimony well may be required” to support a claim for substantial emotional distress. This is a misreading of the case, as the reference to medical evidence there was nothing more than a description of the kind of evidence that might have supported the Rubin’s attempt to obtain a civil harassment injunction. The court said nothing about “requiring” medical evidence, which request, we note, would be inconsistent with the legislative purpose of creating “an expedited procedure for preventing ‘harassment.’ ” (*Byers, supra*, 57 Cal.App.4th at p. 811.)

Ellis contends that the injunction should have covered only three acres, because that is the area in which he pulled up the grape stakes. But Kendall Jackson's lease is not limited to three acres, but covers more than 23 acres. Nor did Judge Hall have to limit the injunction to Katherine's home and her outbuildings, as Ellis's actions demonstrated a willingness to destroy any property he believed interfered with his rights and physically remove any property he thinks is his. Even more to the point, the scope of the injunction was appropriate for the protection of Katherine. She did not testify that she was fearful of going onto the three acres. Or to the outbuildings. She was "very unsafe and insecure going to my ranch."

Beyond all that, Ellis apparently remains undaunted. His brief asserts that he enforced his rights by removing the grape stakes, and that "[t]he removal of personal property from Katherine's ranch" was justified because "Ellis claimed [the items] are his in any event." As Katherine's brief distills it, "Ellis has shown no compunction about vandalizing Katherine's property wherever on Ranch A it may be. An injunction prohibiting access to the ranch was therefore necessary." Indeed.

DISPOSITION

The civil harassment order and the order denying section 473 relief are affirmed. Katherine shall recover her costs on appeal.

Richman, J.

We concur:

Kline, P.J.

Stewart, J.