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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

JADE BIANCA KWAN,

Plaintiff and Respondent,

v.

ROBERT MURCIA,

Defendant and Appellant.

A141183

(City & County of San Francisco  
Super. Ct. No. CCH-13-575219)

Defendant Robert Murcia appeals a civil harassment restraining order prohibiting him from harassing his former coworker, plaintiff Jade Bianca Kwan.<sup>1</sup> He claims there is no substantial evidence to support the court's order. We shall affirm.

**Factual and Procedural Background**

Murcia is presently employed as a store manager at a CVS Caremark, Inc. (CVS) store in San Francisco. Kwan was employed as a store manager at a different CVS store in San Francisco until her termination in October or November of 2013.

On December 2, 2013, Kwan filed a request for a civil harassment restraining order against Murcia. The application states under oath that Kwan needs protection because Murcia was "cyber harassing" her and continuing to text her after she repeatedly asked him to stop. She claimed that he put her LinkedIn profile on his Instagram page with the following comments beside her picture: "#blackbitch, #joblessbitch, #bootedout,

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<sup>1</sup> Kwan appeared in propria persona in the trial court and has not filed a respondent's brief on appeal. Murcia has been represented by counsel in both the trial court and on appeal.

#kickedout, #gokillyourself.” She also claimed that while she and Murcia were working together at CVS she experienced workplace harassment. He called her a bitch and “bad mouthed” her to her coworkers.

On December 3, a temporary restraining order was issued prohibiting Murcia from contacting Kwan, “either directly or indirectly, in any way, including, but not limited to, in person, by telephone, in writing, by public or private mail, by interoffice mail, by e-mail, by text message, by fax, or by other electronic means.” A hearing on Kwan’s request for a permanent restraining order was set for December 27, 2013.

On December 26, Murcia submitted his opposition. He argued that (1) Kwan failed to present sufficient evidence of “unlawful violence” or a “credible threat of violence” as is required for issuance of a civil restraining order; (2) Kwan failed to present sufficient evidence that she suffered substantial emotional distress as a result of any alleged harassment; and (3) Kwan failed to present independent corroborating evidence of stalking as is required by statute. Murcia also submitted a declaration disputing Kwan’s factual claims. Specifically, he claimed that following Kwan’s termination, he and his girlfriend began receiving offensive posts on their Instagram accounts from an anonymous user. At the same time he also received numerous harassing calls on his phone from blocked phone numbers. Murcia suspected that the calls and Instagram comments were made by Kwan. Murcia submitted evidence of phone calls and Instagram comments with his opposition.

Murcia also explained that it was Murcia’s girlfriend, not him, that posted Kwan’s LinkedIn profile on her Instagram page and identified her as the person who had been posting the anonymous comments. Immediately thereafter, Kwan and Murcia exchanged a series of text messages. He acknowledge calling her a bitch and telling her to “fuck off” but denies that he ever threatened her. Murcia submitted copies of his and Kwan’s text messages with his opposition.

At the December 27 hearing, Kwan argued that throughout the time she has known Murcia, he has harassed her numerous times through third-parties and that use of his girlfriend’s Instagram account to harass her was typical of his conduct. She believed that

he would continue to harass her without a restraining order. She also claimed that since the temporary restraining order was issued, she had “heard through third-party people that he was not sweating the small stuff, that he really didn’t think that this was justified; through a third-party source at his location, that he did not sweat the small stuff, that CVS will back him no matter what. And that really I was just a cast-out-never-good-enough manager to make it in San Francisco anyway.” When asked directly by the court whether Murcia had done any of the things prohibited by the temporary restraining order, Kwan said “Yes, indirectly.” She explained, “He kept talking about me . . . through the guise of a third-party person harassing me. [¶] . . . [¶] Indirectly through a third-party source from his location, they were telling me that he was not going to sweat the small stuff, that I was just a manager . . . that was not good enough.”

Following the hearing, the court granted the civil restraining order. The court explained, “[T]he only thing that I am concerned about is that the respondent indirectly did contact the petitioner. And that part – that is the reason that I’m making it permanent for a period of three years.”

Murcia timely filed a notice of appeal.

### **Discussion**

Code of Civil Procedure section 527.6, subdivision (a) authorizes a court to issue an injunction or protective order prohibiting harassment. “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 person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner.” (*Id.*, subd. (b)(3).) A “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 . . . 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.” (*Id.*, subd. (b)(1).) In addition, consistent with principles governing injunctions generally, an injunction

under Code of Civil Procedure section 527.6 “is authorized only when it appears that wrongful acts are likely to recur.” (*Russell v. Douvan* (2003) 112 Cal.App.4th 399, 402.)

For a section 527.6 protective order to be issued, the trial court must find unlawful harassment by clear and convincing evidence. (Code Civ. Proc., § 527.6, subd. (i).) On appeal, when considering a claim that the evidence is insufficient to support the court’s issuance of a section 527.6 restraining order, “[w]e resolve all factual conflicts and questions of credibility in favor of the prevailing party and indulge in all legitimate and reasonable inferences to uphold the finding of the trial court if it is supported by substantial evidence which is reasonable, credible and of solid value.” (*Schild v. Rubin* (1991) 232 Cal.App.3d 755, 762.) The substantial evidence rule applies without regard to the standard of proof required at trial. In other words, 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; *In re Mark L.* (2001) 94 Cal.App.4th 573, 580–581.)

In this case, substantial evidence supports a finding that Murcia engaged in a course of conduct directed at Kwan rather than a single incident of harassment as Murcia contends. Kwan testified that Murcia has previously called her names and insulted her work performance in conversations with her former co-workers. Her claims were corroborated to a degree by her witness who testified at the hearing that Murcia had previously attempted to undermine Kwan’s authority with her coworkers. Insofar as this testimony suggests a pattern in which Murcia used third-parties to harass Kwan, it is reasonable to conclude that Murcia was responsible for the offensive Instagram post and that it was part of an ongoing course of conduct designed to harass Kwan.

There is also substantial evidence that Kwan actually and reasonably suffered substantial emotional distress as a result of Murcia’s conduct. Although section 527.6 does not define the phrase “substantial emotional distress,” courts have held that it means highly unpleasant mental suffering or anguish “ ‘from socially unacceptable conduct,’ ” which entails such intense, enduring and nontrivial emotional distress that “ ‘no reasonable [person] in a civilized society should be expected to endure it.’ ” (*Schild v.*

*Rubin, supra*, 232 Cal.App.3d at pp. 762–763; *Thing v. La Chusa* (1989) 48 Cal.3d 644, 648–649 [Emotional distress is generally understood to include, among other emotions, fright, nervousness, anxiety, humiliation and worry.]

In her petition, Kwan claimed that her reputation and professional relationships were harmed by Murcia’s conduct. She claimed that she “worked hard [and] struggled through UC Davis” and that “for him to do this puts [her] name and degrees at stake.” Kwan testified at the hearing that she believed Murcia will continue to say negative things about her and CVS will continue to support him if she does not make “a stand.” She expressed her desire to have “a fresh and clean start” and noted that posting her “LinkedIn profile with those types of comments [was] . . . a way of backdoor referencing [her].” Although Kwan did not testify directly to the anxiety and humiliation caused by Murcia’s conduct, direct testimony is not required to establish that a plaintiff actually suffered substantial emotional distress. (*Ensworth v. Mullvain* (1990) 224 Cal.App.3d 1105, 1110–1111.) The circumstantial evidence amply establishes that Kwan was actually and reasonably humiliated by the Instagram posting and actually and reasonably worried about the impact Murcia’s conduct would have on her professional reputation.

Finally, the record supports the court’s conclusion that the restraining order was necessary to prevent this type of conduct in the future. Kwan testified that Murcia continued to discuss Kwan to co-workers even after the temporary restraining order was issued. Although it is questionable whether the conduct that Kwan considers offensive falls within the literal scope of the restraining order, the trial court could reasonably conclude that Murcia’s disparaging statements were intended as indirect means of communicating with and harassing Kwan, and that they did in fact have that effect. The fact that Murcia continued to remark on her prior performance at work to current employees suggests that he failed to appreciate the significance of the temporary restraining order and thus, that the permanent order is necessary to prevent future harassment.

**Disposition**

The order is affirmed.

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Pollak, J.

We concur:

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McGuinness, P. J.

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Jenkins, J.