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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

TASHERY DESSIRE RIZZO GARRIDO,

Plaintiff and Respondent,

v.

VINCENT WELLER,

Defendant and Appellant.

A144993

(San Francisco City & County
Super. Ct. No. CCH-14-576448)

Vincent Weller appeals from a civil harassment restraining order. The thrust of his appeal is that Tashery Dessire Rizzo Garrido, who worked as a housekeeper at the shared housing complex where he resides, was responsible for what indisputably became an abrasive situation between the two. Garrido claimed Weller harassed her while she was working. Weller, in turn, claimed Garrido's work was not satisfactory and when he complained to management her work became even less so. The trial court credited Garrido's version of events, and expressly found she suffered harassment within the meaning of Code of Civil Procedure section 527.6. It made no finding, however, that it was probable Garrido would suffer harassment in the future. Even assuming an implied finding in this regard, we conclude there is no substantial evidence in the record to support such a finding and therefore reverse the restraining order.

BACKGROUND

On December 8, 2014, Garrido, then aged 19, filed a request for a civil harassment restraining order. She alleged Weller lived where she worked as a housekeeper and he had threatened her during the preceding months, physically shoved and pushed her as she

tried to do her job, and deliberately dirtied areas she had just cleaned. The court apparently issued a temporary restraining order, although a copy of that is not in the record on appeal.

Weller filed a response, and the trial court called the matter on January 16, 2015. Counsel appeared with Weller and requested a continuance, which was granted on condition the temporary restraining order remain in effect. The court specially reset the hearing in the afternoon to accommodate Weller's claim that a disability and neck injury would prevent him from making a morning hearing. The court also allowed Weller to serve Garrido in court with a copy of his own application for a restraining order, although a copy of this application is not in the record on appeal as Weller's appeal is limited to the issuance of a restraining order against him.

Approximately one month later, on February 20, the court held an evidentiary hearing on the two applications. Both parties were represented by counsel.

Garrido testified as follows: She began working at the residential complex on August 6, 2014. That day, Weller began bothering her by moving her work items and shouting at her. She felt intimidated. She did not complain about Weller's conduct until September. Her employer told her to ignore Weller. She did, and Weller began to push her. Her employer told her they would request a restraining order, and he also disclosed to her that Weller had sent numerous emails to him asking that Garrido be fired. Learning of the e-mails, Garrido became more apprehensive. Although she took particular care around his room, Weller repeatedly complained about and interfered with her work. Weller continued to push her, including once with a door, and he also verbally harassed her, telling her she did not belong there. After he evasively tried to take photos of her on December 1 while she was sweeping in front of the residential complex, she finally sought a restraining order. Two weeks later, she quit her job because she was so anxious about encountering Weller.

Weller testified, in turn: Professional housecleaning is provided as part of his residential lease, and Garrido's work was not adequate.¹ He did not think she took sufficient care with cleanliness, particularly in comparison with the prior housekeeper. After he complained about her, she intentionally began getting in his way when he used the kitchen and bathroom facilities and repeatedly gave him glaring stares. Because of physical difficulties, he does not get up until very late in the morning or even noontime. He never had difficulties with prior housekeepers, who worked around his schedule. He also has extreme sensitivities to chemical agents and opened windows to clear the air, which Garrido would deliberately close. As for the picture taking, he was taking a picture of where his car was parked in case he got a citation for street cleaning. He denied ever pushing Garrido.

Thus, as the trial court observed, there was sharp disagreement between Garrido and Weller as to what occurred. Finding clear and convincing evidence of a "course of conduct" directed at Garrido that served no legitimate purposes and reasonably caused her substantial distress, the court granted her application and issued a civil restraining order on the standard Judicial Council Form. The order includes a 50-yard stay away order from Garrido, her home, place of employment and any childcare facility where her child is placed. It also includes the standard no firearm prohibition.

DISCUSSION

"A person who has suffered harassment . . . may seek a temporary restraining order and an order after hearing prohibiting harassment." (Code Civ. Proc., § 527.6, subd. (a)(1).)² Actionable harassment includes "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." (§ 527.6, subd. (b)(3).) Unlawful violence is further defined to include "any assault or

¹ The residential arrangement consists of bedrooms individually occupied and with individually locked doors and common kitchen and bathroom facilities.

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

battery, or stalking as prohibited in Section 646.9 of the Penal Code, but shall not include lawful acts of self-defense or defense of others.” (§ 527.6, subd. (b)(7); *Russell v. Douvan* (2003) 112 Cal.App.4th 399, 401.) If the trial court “finds by clear and convincing evidence that unlawful harassment exists, an order shall issue prohibiting the harassment.” (§ 527.6, subd. (i).)

Petitions for civil harassment restraining orders seek injunctive relief. It is well established “ ‘ “that the granting, denial, dissolving or refusing to dissolve a permanent or preliminary injunction rests in the sound discretion of the trial court upon a consideration of all the particular circumstances of each individual case” ’ and ‘will not be modified or dissolved on appeal except for an abuse of discretion.’ ” (*Salazar v. Eastin* (1995) 9 Cal.4th 836, 850; see *In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1495; *Gonzalez v. Munoz* (2007) 156 Cal.App.4th 413, 420.) Under this standard, “ ‘[t]he trial court’s findings of fact are reviewed for substantial evidence, its conclusions of law are reviewed de novo, and its application of the law to the facts is reversible only if arbitrary and capricious.’ ” (*Packer v. Superior Court* (2014) 60 Cal.4th 695, 710; see *R.D. v. P.M.* (2011) 202 Cal.App.4th 181, 188 (*R.D.*) [applying substantial evidence review in restraining order context when facts disputed]; *Loeffler v. Medina* (2009) 174 Cal.App.4th 1495, [same]; *Bookout v. Nielsen* (2007) 155 Cal.App.4th 1131, 1137 [same].) While a trial court must find harassment by clear and convincing evidence (see § 527.6, subd. (i)), that heightened trial court standard does not apply on appeal. (*In re J.S.* (2014) 228 Cal.App.4th 1483, 1493.)

As we have recounted, ample evidence supports the trial court’s finding that Garrido was subjected to harassment as defined in the statute—that is, a “willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose.” (§ 527.6, subd. (b)(3).) While Weller disputes this, he misunderstands the scope of appellate review and is asking this court to credit his version of events, rather than Garrido’s. This we cannot do. (See *Schild v. Rubin* (1991) 232 Cal.App.3d 755, 762 [“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”].)

However, in addition to a finding that a defendant has engaged in an unlawful act of harassment, there must also be a finding that there exists a reasonable probability of future harm absent the injunction. (*R.D.*, *supra*, 202 Cal.App.4th at p. 189 [“an injunction restraining future conduct is authorized by section 527.6 only when it appears from the evidence that the harassment is likely to recur in the future”]; *Russell v. Douvan* (2003) 112 Cal.App.4th 399, 402–403 [injunction restraining future conduct is only authorized when it appears that harassment is likely to recur in the future].) There need not be an express finding in this regard; we must presume the trial court followed the applicable law and understood it was required to find future harm was reasonably probable. (Evid. Code, § 664; *Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956.)

“[T]he determination of whether it is reasonably probable an unlawful act will be repeated in the future rests upon the nature of the unlawful violent act evaluated in the light of the relevant surrounding circumstances of its commission and whether precipitating circumstances continue to exist so as to establish the likelihood of future harm.” (*Scripps Health v. Marin* (1999) 72 Cal.App.4th 324, 335, fn. 9 (*Scripps Health*)).)

In *Scripps Health*, for example, the son of a patient at a hospital got into an altercation with a hospital employee over his mother’s care. (*Scripps Health, supra*, 72 Cal.App.4th at pp. 327–328.) The hospital sought and was granted an injunction under section 527.8. (*Scripps Health*, at pp. 328–329.) The appellate court reversed, concluding there was no evidence the son was likely to commit further acts of violence against the hospital’s employees. (*Id.* at p. 336.) The appellate court noted there were no prior threats of violence or subsequent threats by the son against a hospital employee, the temporary restraining order was vacated when the son expressly stated he would stay away from the hospital pending the evidentiary hearing and he abided by this representation, and the mother had since transferred her health insurance to a different

company rendering it unlikely she would return as a patient at the hospital. (*Ibid.*) The court concluded that “given the circumstances surrounding this single incident, the evidentiary record does not establish the likelihood [the son] would repeat any violent acts against [hospital] employees.” (*Ibid.*)

While the instant case did not involve only a single incident, there nevertheless is no substantial evidence the conduct Garrido complained of would continue in the future. Garrido left her position as a housekeeper at the housing complex more than two months before the hearing on the restraining order. There is no evidence Garrido and Weller had any kind of contact after that outside of court. Nor is there any evidence they were likely to do so in the future. There is no evidence, for example, that they work, shop or socialize in the same vicinity, or that they have common acquaintances suggesting their paths might cross in the future.

When her attorney asked Garrido why she thought she needed a protective order, the sum total of her answer was as follows: “Because he took pictures of me. I don’t understand why he needs them.” “He might do something to my son. He might be looking for me. I don’t know.” Garrido’s testimony that Weller surreptitiously photographed her while she was sweeping in front of the residential complex is not sufficient to support a finding of a reasonable probability of *future* harm absent an injunction. Her latter concerns are speculation, which again, is not sufficient to support an injunction.

We therefore conclude that while the trial court’s finding of harassment is amply supported, there is not sufficient evidence of a probability of future harm to support injunctive relief. We appreciate Garrido left her employment because of Weller’s conduct, but we are addressing here the propriety of injunctive relief, not whether Garrido has any claim for damages against Weller.

DISPOSITION

The civil harassment restraining order is reversed. Parties to bear their own costs on appeal.

Banke, J.

We concur:

Humes, P. J.

Dondero, J.

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