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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

DAVID ROGER VEGA,
Plaintiff and Appellant,

v.

KARA MIEKO TSUBOI,
Defendant and Respondent.

A146351

(Alameda County
Super. Ct. Nos. RG15778936;
RG15781831)

BACKGROUND

On July 22, 2015, Kara Tsuboi filed a request for civil harassment restraining orders against David Roger Vega. (Code Civ. Proc., § 527.6.) The request sought protection not only for Tsuboi, but also for her husband, her son, her infant daughter, and her mother. Tsuboi’s request was filed on her behalf by Stephanie Penrod, an attorney at the Family Violence Law Center. The request noted six other “court cases” in which Tsuboi had been involved with Vega since 2011, two of which were noted in the column labeled “criminal.”

Tsuboi’s request was accompanied by her declaration that, among other things, quoted an Alameda County Superior Court judge who in 2011 described Vega’s stalking of Tsuboi as “ ‘the most egregious case of stalking he had ever seen.’ ” Tsuboi’s declaration also referred to an earlier harassment order that, she claimed, had been dissolved without her knowledge. Tsuboi’s declaration included 182 pages of exhibits.

The matter was set for hearing on August 7.

On July 28, representing himself, Vega filed a response to Tsuboi's request. The response included a 13-page document that Vega described as "[t]his attached declaration," though the document was not executed under penalty of perjury. Vega's "declaration" attached 112 pages of exhibits.

On August 5, Tsuboi filed a memorandum of points and authorities in support of her request.

The matter was called on August 7, on which date the court scheduled the civil harassment hearing for September 4.

On August 10, Vega filed his counter-memorandum of points and authorities and a "Conditional Request for Orders and Criminal Prosecution of 2 Counts [of] Perjury" against Tsuboi. This request was "reluctantly requested" by Vega, only in the event the court "grant[ed] the order" for Tsuboi, in which case Vega "want[s] an equal order against" Tsuboi.

The matter came on as scheduled before the Honorable Stuart Hing, an experienced superior court judge. Tsuboi was represented by an attorney from the Family Violence Law Center. Vega appeared on his own behalf.

Judge Hing began by setting the stage, noting among other things that Vega had filed a counter request but that it had not been served. Tsuboi's attorney advised that she was nevertheless prepared to proceed. The parties were then sworn. Addressing Tsuboi, Judge Hing stated he had read "everything that's been written on your behalf," and asked her if it was true. Tsuboi replied it was. Judge Hing then made the same representation to Vega, and asked him if what he had written was true. Vega replied, "It's truer than hers."

Judge Hing then indicated he was prepared to rule for Tsuboi, and asked if there was anything else the parties wanted him to consider. Vega objected to his counter request being considered. After some pages of colloquy, Vega acknowledged to Judge Hing that what Vega was referring to was "nothing new."

Judge Hing ruled for Tsuboi, and entered a civil harassment restraining order after hearing. It was for five years.

On September 22, Vega filed his notice of appeal.

On December 8, Vega filed his opening brief. It is 53 pages long and has two arguments. The first is that the “Superior Court Erred in Failing to Recognize that Respondent Had No Legal Basis for a New Restraining Order Based on Information in Her CH-100 Item 7 Statement, Which Functions Only to Extend the Violation of Petitioner’s 5th/14th Amendment Rights from the Related Family Law Case to Here.” The second is that the “Superior Court Erred in Allowing Respondent’s Attorney’s ‘*Memorandum . . .*’ to Continue Misrepresenting Every Document Provided by Petitioner to the Court, Resulting in an Order that Legally Enforces Infringement of Rights, Not Preventing Harassment.”

Vega’s brief begins with quotations of the Fifth and Fourteenth Amendments to the United States Constitution, which, Vega asserts, “are the only laws/statutes/references that [he] will ever need . . . to show why the 5-year civil harassment restraining order . . . must be over-ruled and negated . . . after noneother [*sic*] than the most thorough review conceivable of all exhibits and content previously submitted for both case RG15778936 and RG15781831.” No cases are cited in the brief, and the few statutes mentioned in the brief are merely mentioned, with no argument based on any of them.

On January 12, 2016, we sent a letter to Tsuboi’s counsel at the Family Violence Law Center, advising that if no brief was filed within 15 days of that notice, “this cause may be submitted for decision based on the record and appellant’s opening brief.” No brief was filed.

DISCUSSION

Code of Civil Procedure 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.)

Section 527.6 provides an expedited procedure for obtaining an injunction to prevent harassment. Harassment is defined under the statute 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.” (§ 527.6, subd. (b)(3).) If an injunction is granted under the statute, it can last a maximum of five years. (§ 527.6, subd. (j).)

This, then, was the law to be applied by Judge Hing 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.)

“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 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 describes 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 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.)

In light of that law, Vega’s burden on appeal is heavy, as he must demonstrate that Judge Hing’s order is not supported. This, Vega has not done—indeed, even attempted to do.

The most fundamental rule of appellate review is that an appealed judgment or order is presumed to be correct. “ ‘All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown.’ ” (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; *Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956.) Vega fails to demonstrate any error here.

Vega’s brief also fails to present any argument or legal authority. So, in the words of the leading appellate commentator: “When appellant asserts a point but fails to support it with reasoned argument and citations to authority, the court may treat it as *waived* and pass it without consideration. [*People v. Stanley* (1995) 10 [Cal.]4th 764, 793; *Salas v. California Dept. of Transp.* (2011) 198 [Cal.App.]4th 1058, 1074; see *EnPalm, LLC v. Teitler Family Trust* (2008) 162 [Cal.App.]4th 770, 775—issue deemed waived where appellants failed to support claim by argument, discussion, analysis or citation to record, or to include any trial proceedings in appellate record; *Stoll v. Shuff* (1994) 22 [Cal.App.]4th 22, 25—alleged error never discussed in body of opening brief ‘not a serious effort to raise the issue on appeal’ and thus waived]” (Eisenberg et al., *Cal. Practice Guide: Civil Appeals and Writs* (The Rutter Group 2015) ¶ 8:17.1, p. 8-6.)

Beyond all that, we have reviewed the evidence contained in the record, including that contained in Tsuboi's declaration and the numerous exhibits attached. That evidence fully supports the restraining order here.

DISPOSITION

The civil harassment restraining order is affirmed.

Richman, J.

We concur:

Kline, P.J.

Miller, J.

A146351; *Vega v. Tsuboi*