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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

TODD AMATEAU,

Petitioner and Appellant,

v.

JOSEPH KRAFT,

Respondent.

B270535

(Los Angeles County
Super. Ct. No. BS159143)

APPEAL from a judgment of the Superior Court of Los Angeles County, Carol Boas Goodson, Judge. Reversed and remanded.

Alpert Law Group, Ashley Montgomery and Jeffrey Alpert for Petitioner and Appellant.

No appearance for Respondent.

Petitioner and appellant Todd Amateau sought a restraining order against respondent Joseph Kraft, seeking to prevent respondent from contacting appellant's minor children. (Code Civ. Proc., § 527.6.)¹ Although a family court order in respondent's divorce from his ex-wife directed the wife not to allow respondent, her boyfriend, to have contact with the minor children of appellant and his ex-wife, respondent nonetheless contacted them. The trial court denied the petition for a temporary restraining order on the ground that the appropriate course of action was to seek relief in the family court. We reverse.

FACTUAL AND PROCEDURAL BACKGROUND

In January 2016, appellant filed a request for a restraining order against respondent. The request was accompanied by a declaration in which appellant stated the following.

On December 11, 2012, a final judgment was entered in the divorce case between appellant and his ex-wife, Nikole. Respondent and Nikole were in a relationship before the divorce was final. For several years beginning in March 2012, appellant was "emailed and harassed by" respondent. However, he did not respond to this conduct until 2015, when respondent placed nude photos of Nikole having sex with another man on the family computer. Appellant's minor daughter found the photos and texted appellant to tell him "how distraught she was over not just the photos but the fact that Mr. Kraft utilized the

¹ Further unspecified statutory references are to the Code of Civil Procedure.

computer.” Appellant included exhibits of his daughter’s texts, showing that she told appellant she was having a panic attack because of respondent, that respondent offered her alcohol, and that her mother did not respond to her concerns. After this conduct, appellant asked the family court to modify the custody arrangement to prohibit respondent from having any contact with the children.

On May 5, 2015, the family court entered a stipulation and order modifying custody and support issues between appellant and Nikole. Among other issues, Nikole agreed that “Joseph Kraft shall at no time be allowed access to any of the Parties’ minor children; and if any violation of this condition occurs, sole physical custody shall be granted to [appellant] for the six (6) months subsequent to any violation.”

In his request for a restraining order, appellant stated that “[t]here are already custody orders in place intended to stop [respondent] from contacting the minor children in any way,” but that respondent had violated the order by contacting appellant’s daughter. He stated that Nikole had continued to maintain a relationship with respondent despite the May 2015 stipulation, and that his daughter was fearful of respondent. Respondent also had started sending text messages to appellant’s and Nikole’s younger daughter, who was ten years old. According to the exhibits submitted with the application, the text messages were sent in October and December 2015, which was after the family court order prohibiting respondent from having any contact with the children. Appellant acknowledged Nikole’s right to

maintain a relationship with respondent but did not want to expose their children to respondent.

The trial court conducted a hearing and advised appellant that if Nikole was violating the custody order, appellant should ask the family court to hold a contempt hearing or to modify the visitation order based on the failure to comply with the court order. The court reasoned that appellant's request is based on issues "that were covered and considered by the family law court." The court therefore denied the request for a restraining order.

DISCUSSION

"Section 527.6, subdivision (a)(1) provides that '[a] person who has suffered harassment as defined in subdivision (b) may seek a temporary restraining order and an order after hearing prohibiting harassment as provided in this section.' Section 527.6, subdivision (d) provides that a temporary restraining order may issue, with or without notice, based on the petitioner's declaration if the court finds it is reasonable proof of harassment of the petitioner by the respondent, and that great or irreparable harm may result to the petitioner if the restraining order is not issued. [¶] Within 21 days, or if good cause appears, within 25 days, from the date of the petition for a temporary restraining order is granted or denied, the court shall hold a hearing on the petition. (§ 527.6, subd. (g).)" (*Harris v. Stampolis* (2016) 248 Cal.App.4th 484, 496.)

“The elements of unlawful harassment, as defined by the language in section 527.6, are as follows: (1) “a knowing and willful course of conduct” entailing a “pattern” of “a series of acts over a period of time, however short, evidencing a continuity of purpose”; (2) “directed at a specific person”; (3) “[that] seriously alarms, annoys, or harasses the person”; (4) “[that] serves no legitimate purpose”; (5) [that] “would cause a reasonable person to suffer substantial emotional distress” and “actually cause[s] substantial emotional distress to the [person to be protected by the order]”; and (6) which is not a “[c]onstitutionally protected activity.” [Citation.] Section 527.6, subdivision (i) requires ‘clear and convincing evidence that unlawful harassment exists.’” (*Parisi v. Mazzaferro* (2016) 5 Cal.App.5th 1219, 1227 (*Parisi*).

In *Brekke v. Wills* (2005) 125 Cal.App.4th 1400 (*Brekke*), the mother of a 16-year-old girl obtained a restraining order against the girl’s 15-year-old boyfriend, who had written “vile and vitriolic” letters threatening to kill the girl’s mother and father. (*Id.* at p. 1403.) On appeal, the boyfriend contended the restraining order violated his rights to free speech and freedom of association. As pertinent here, the court “categorically reject[ed] the absurd suggestion that defendant’s freedom of association trumps a parent’s right to direct and control the activities of a minor child, including with whom the child may associate. [Citations.]” (*Id.* at p. 1410.) The court explained that parents have broad authority over their minor children, including “deciding who may spend time with a minor child. [Citation.]” (*Ibid.*) The court further reasoned that parents were required by law to protect their children

from people who might exert a negative influence over them. (*Id.* at pp. 1410-1411.)

Appellant submitted evidence that respondent placed nude photos of Nikole having sex with another man on the computer used by appellant's minor children, offered appellant's older daughter alcohol and texted appellant's younger daughter, despite the family court order that Nikole keep respondent away from the children. This undisputed evidence shows that respondent "engaged in a course of conduct serving no legitimate purpose, evidencing a continuity of purpose that would cause a reasonable person to suffer substantial emotional distress, and which actually caused substantial emotional distress to" appellant's minor child. (*Parisi, supra*, 5 Cal.App.5th at pp. 1227–1228.) Pursuant to *Brekke*, appellant had the right to enjoin respondent from harassing his minor children.

We acknowledge the trial court's concern that appellant's argument is based on issues "that were covered and considered by the family law court." The court likely was referring to the general rule "disfavoring . . . civil actions which are really nothing more than reruns of a family law case." (*Neal v. Superior Court* (2001) 90 Cal.App.4th 22, 25 (*Neal*)). However, we find *Neal* and similar cases distinguishable.

In *Neal*, the ex-husband never paid any of the obligations he owed under the divorce judgment. After the ex-wife sought help from the District Attorney to collect the arrearages, the parties entered into a stipulation. Instead of complying with the stipulation, the ex-husband filed a civil complaint against the ex-wife. The appellate court held that

the trial court should have sustained the ex-wife's demurrer, reasoning that the substance of the claims in the civil complaint "all stem directly from the family law case." (*Neal, supra*, 90 Cal.App.4th at p. 26.) The court explained that "family law cases should not be allowed to spill over into civil law, regardless of whether the family law matter may be characterized as an action for fraud [citation], malicious prosecution [citation], or securities law violation [citation]. Almost all events in family law litigation can be reframed as civil law actions if a litigant wants to be creative with various causes of action. It is therefore incumbent on courts to examine the substance of claims, not just their nominal headings." (*Id.* at p. 25; see Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group 2008) § 3:22.5, pp. 3-14 to 3-15 (Hogoboom & King) ["Claims stemming directly from a family law case (whether pre- or postjudgment) belong in the *family court* rather than on the general civil side of the superior court. This is so even though the claims could be pleaded as general civil causes of action (such as breach of contract, fraud, malicious prosecution, abuse of process, infliction of emotional distress, etc.)."].)

This deference to the family court stems from the principle of priority of jurisdiction, which holds that "“where a proceeding has been . . . assigned for hearing and determination to one department of the superior court by the presiding judge . . . and the proceeding . . . has not been finally disposed of . . . it is beyond the jurisdictional authority of another department of the same court to interfere with the exercise of the power of the department to which the proceeding has been so

assigned If such were not the law, conflicting adjudications of the same subject-matter by different departments of the one court would bring about an anomalous situation and doubtless lead to much confusion. [Citation.]” . . .’ [Citations.] ¶] ‘One department of the superior court cannot enjoin, restrain, or otherwise interfere with the judicial act of another department of the superior court. Even between superior courts of different counties, having coequal jurisdiction over a matter, the first court of equal dignity to assume and exercise jurisdiction over a matter acquires exclusive jurisdiction. [Citations.] ¶] A judgment rendered in one department of the superior court is binding on that matter upon all other departments until such time as the judgment is overturned. [Citation.] . . .’ [Citations.]” (*Glade v. Glade* (1995) 38 Cal.App.4th 1441, 1449-1450 (*Glade*).

In *Glade*, a trust holding a note secured by the wife’s and husband’s community property residence filed a foreclosure action during the pendency of marital dissolution proceedings.² The wife sought to consolidate the foreclosure action with the marital dissolution action and to join the trust to the marital dissolution action. On appeal, the court held that the family law court properly stayed the foreclosure action because of the family court’s “broad powers to determine and

² Although the family court here entered a judgment of dissolution, “in child support *and custody* matters, the family court has continuing jurisdiction, and thus the matter remains pending, even after the court enters a judgment of dissolution.” (*In re Marriage of Kreiss* (2004) 122 Cal.App.4th 1082, 1085.)

characterize community property and join third parties with an interest in such property.” (*Glade, supra*, 38 Cal.App.4th at p. 1451.)

Unlike this case, the cases holding that the family court has priority of jurisdiction involve issues central to the family court proceedings, such as the right to property or support payments. (See, e.g., *Burkle v. Burkle* (2006) 144 Cal.App.4th 387, 393 (*Burkle*) [where wife sued husband for failing to make payments under the terms of a family law court order, the appellate court described the suit as “a textbook example of an improper attempt to wage ‘family law . . . by other means’”]; *Neal, supra*, 90 Cal.App.4th at p. 24 [lawsuit based on husband’s contention he had paid off a promissory note given as part of the divorce judgment]; *Glade, supra*, 38 Cal.App.4th at p. 1450 [citing “the family law court’s broad jurisdictional authority where the right to and disposition of community property are concerned”].) As the court in *Neal* reasoned, the civil complaint filed by the husband there was “essentially about whether [the husband] paid the money that the family law judgment obligated him to pay.” (*Neal, supra*, 90 Cal.App.4th at p. 26.) By contrast, appellant’s desire to keep respondent away from his children is based on respondent’s disturbing conduct toward the children, not an issue central to the family court proceedings.

The cases holding that the family court has priority also generally deal with lawsuits between the former spouses. (See, e.g., *Neal, supra*, 90 Cal.App.4th at p. 24 [husband filed civil complaint against wife and collection agency she used]; *Burkle, supra*, 144 Cal.App.4th at p. 391

[during marital dissolution proceeding, wife filed separate civil action against husband and two accounting firms].) Here, respondent was not a party to the marital dissolution proceedings. In some circumstances, the family court has authority to join third parties with interests pertinent to the dissolution proceedings, such as trusts holding property pertinent to the dissolution, pension plans that will be subject to the family court's division of property, or other parties affecting the enforcement of child support or who have visitation rights. (See *Glade, supra*, 38 Cal.App.4th at pp. 1450-1451 ["given that a divorce action divides community property and establishes support obligations, third parties claiming an interest in alleged community property have the right to intervene in the action if the spouses do not join them"]; *In re Marriage of Wilson* (1989) 209 Cal.App.3d 720, 721–722 [holding "that a labor union which operated a hiring hall referring its members for employment could be joined as a party to the marital dissolution action of one of its members for the purpose of ordering the union to notify the other spouse of such referrals in order to enforce the member's obligation under a child support order"]; *In re Marriage of Johnston* (1978) 85 Cal.App.3d 900, 906 ["A pension plan may properly be joined as a party to a dissolution action, whenever it holds in its possession funds which constitute a community asset"]; *Hogoboom & King, supra*, § 3:135, p. 3-59, citing Fam. Code §§ 2021, 2337, subd. (d)(1) ["In dissolution, nullity or legal separation proceedings, the court is empowered to order the joinder of 'interested' third persons"]; *Raye & Pierson, California Civil Practice Family Law Litigation* (October 2016),

§ 4:11, citing former Cal. Rules of Court, rule 1254 [“The court must order the joinder as a party of any person the court discovers who is not yet a party but has physical custody of the child, or claims custody or visitation rights.”].) Respondent, however, is not such a third party and, even if he was, he was not joined as a party in the dissolution proceedings.³

Moreover, if appellant were to obtain an order prohibiting respondent from having contact with the children, this would not “enjoin, restrain, or otherwise interfere with the judicial act of another department of the superior court.” (*Glade, supra*, 38 Cal.App.4th at p. 1450.) To the contrary, it would reinforce the family court’s order that Nikole prevent respondent from having access to the children, and give jurisdiction over respondent to prevent such contact.

Thus, although the request for a restraining order under section 527.6 might be related to the dissolution proceedings, appellant can seek a restraining order against respondent based on his harassing conduct, unrelated to the dissolution proceedings. (See *Brekke, supra*, 125 Cal.App.4th at pp. 1410-1411.) That is, appellant’s desire to

³ California Rules of Court, rule 5.24(c) provides that the persons who may be joined in a family court proceeding are a person “who has or claims custody or physical control of any of the minor children subject to the action, or visitation rights with respect to such children, or who has in his or her possession or control or claims to own any property subject to the jurisdiction of the court in the proceeding,” and “[a] person served with an order temporarily restraining the use of property that is in his or her possession or control or that he or she claims to own, or affecting the custody of minor children subject to the action, or visitation rights with respect to such children.”

prohibit respondent from contact with appellant's children is not an issue that, "but for the dissolution proceeding, would not have occurred." (*Burkle, supra*, 144 Cal.App.4th at p. 393.)

DISPOSITION

The matter is reversed and remanded for further proceedings. Appellant is entitled to costs on appeal.

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WILLHITE, J.

We concur:

EPSTEIN, P. J.

COLLINS, J.