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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Sacramento)

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ADAM BROWN,

Plaintiff and Respondent,

v.

JOHN EVPAK,

Defendant and Appellant.

C069590

(Super. Ct. No. 11CP00737)

DENNIS CASTRILLO,

Plaintiff and Respondent,

v.

JOHN EVPAK,

Defendant and Appellant.

C069590

(Super. Ct. No. 11CP00743)

Plaintiffs Adam Brown and Dennis Castrillo each obtained a civil harassment restraining order against their neighbor, defendant John Evpak. (Code. Civ. Proc., § 527.6.) In this pro se judgment roll appeal from the restraining orders, defendant claims he did not consent to a temporary judge hearing the matter; his conduct did not violate the statutory prohibitions on harassment; and substantial evidence does not support the trial court's issuance of the orders. Defendant also contends the restraining orders infringe on his constitutionally protected conduct, effectively "take" his private property, and are constitutionally overbroad because they restrain his conduct as to plaintiffs' guests.

By separate motion, plaintiffs ask that we dismiss the appeal as frivolous, and impose sanctions on defendant for bringing a frivolous appeal.

We decline to dismiss the appeal. We affirm the restraining orders, because defendant has not produced a record sufficient to enable appellate review of his evidentiary assertions, and his remaining challenges lack merit. We award plaintiffs their costs on appeal, and recognize they may seek attorney fees in the trial court.

#### BACKGROUND

Defendant has elected to proceed on a clerk's transcript. (Cal. Rules of Court, rule 8.120.) As a result, the appellate record does not include a reporter's transcript of the hearing that gave rise to the orders challenged in this appeal. This is referred to as a "judgment roll" appeal. (*Allen v. Toten* (1985) 172 Cal.App.3d 1079, 1082-1083; *Krueger v. Bank of America* (1983) 145 Cal.App.3d 204, 207.)

Plaintiffs and defendant are neighbors and all are also members of the Kings Court Lane Homeowners Association. A private lane and cul-de-sac maintained by the homeowners association, Kings Court Lane, provides access for plaintiffs to their homes; there is a dedicated easement over the lane for all owners and their guests. The lane passes through a portion of defendant's property.

In September 2011, plaintiffs filed separate petitions for temporary restraining orders and injunctions to prevent defendant from harassing them, their families, and guests.

Plaintiff Brown and his wife submitted declarations in support of Brown's petition (case No. 11CP00737). In them it was averred that, since approximately 2006, defendant has engaged in a pattern of violent, confrontational behavior against them and their families and guests, and has committed verbal and physical assaults against other homeowners association members and their guests. They describe incidents in which defendant engaged in stalking, blocking the lane, calling their children and children's friends "pussy," "little fat fuck," "little bitch," "fucking nigger," and "fucking fat-ass," and shouting "wetbacks" at their landscape maintenance workers. Efforts by the homeowners association to intervene or otherwise resolve conflicts with defendant have not worked. The most recent event recounted by Brown occurred in late August 2011, when defendant cursed and directed racial slurs at their 10-year-old daughter's guests and the sheriff responded.

Both Brown and his wife averred that defendant's conduct caused them to fear for their physical safety and that of their family and guests.

Plaintiff Castrillo likewise submitted a declaration in support of his petition (case No. 11CP00743), in which he averred defendant has blocked the easement lane with his truck, assaulted Castrillo, yelled profanity at Castrillo's stepsons and their friends, and threatened workers at his house.

The court issued temporary restraining orders that defendant not harass plaintiffs or their families or interfere with anyone's use of the common lane, and set the matters for hearing.

In his answer to the requests for restraining orders and in his supporting declaration, defendant denied the specific acts of wrongdoing alleged by plaintiffs. He also denied his actions were illegal and asked that any restraining orders be mutual.

Defendant disputed that the homeowners association can regulate the use of the Kings Court Lane, because it “goes through my private property” and, in his view, plaintiffs may neither park on the road nor invite their guests to use it. Moreover, defendant averred, plaintiffs, their families and guests have “continuously harassed, threatened, assaulted and battered” him and his family. Plaintiffs, their families and guests have verbally assaulted him, called his wife names, driven their cars at unsafe speeds near his property, and vandalized or stolen his property.

The hearing on plaintiffs’ petitions spanned two days. The minute orders of the hearing indicate that all parties appeared with their respective counsel and 16 witnesses testified, but the proceedings were not reported.

Following the presentation of evidence and argument, the trial court (by Judge Michael S. Ullman) announced that it “found clear and convincing evidence” to warrant issuing restraining orders in both plaintiffs’ petitions, and it issued a three-year injunction in each case. The personal conduct orders prohibit defendant from, inter alia, harassing, threatening, or blocking plaintiffs and their families. They also order that defendant stay five yards away from plaintiffs and their families, vehicles, homes and driveways (except when defendant is on his property at the easement’s edge), and that he “not impede guests of homes on Kings Court Lane from utilizing [the] street for ingress [and] egress.”

## DISCUSSION

### I

#### *Defendant’s Appeal*

On appeal, we must presume the trial court’s judgment or order is correct. (*Boyle v. CertainTeed Corp.* (2006) 137 Cal.App.4th 645, 649-650.) Error is never presumed; rather, we adopt all inferences in favor of the judgment or order appealed from, unless the record expressly contradicts them. (*Brewer v. Simpson* (1960) 53 Cal.2d 567, 583; *Rossiter v. Benoit* (1979) 88 Cal.App.3d 706, 712.)

It is the burden of the party challenging an order on appeal to provide an adequate record to assess error. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140-1141.) An appellant must present an analysis of the facts and legal authority on each point made, and also must support the arguments with appropriate citations to the material facts in the record. If he fails to do so, the argument is forfeited. (*County of Solano v. Vallejo Redevelopment Agency* (1999) 75 Cal.App.4th 1262, 1274; *Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856.)

Although defendant is representing himself on appeal, he is held to the same standards as an attorney. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985; *In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 830 [“self-represented parties are entitled to no greater consideration than other litigants and attorneys”]; *Gamet v. Blanchard* (2001) 91 Cal.App.4th 1276, 1284 [pro se litigants are not entitled to special exemptions from rules of court].)

Because defendant has chosen to appeal “on the judgment roll” (*Allen v. Toten, supra*, 172 Cal.App.3d at pp. 1082-1083), we “ ‘must conclusively presume that the evidence is ample to sustain the [trial court’s] findings.’ ” (*Ehrler v. Ehrler* (1981) 126 Cal.App.3d 147, 154.) Our review is limited to determining whether any error “appears on the face of the record.” (*National Secretarial Service, Inc. v. Froehlich* (1989) 210 Cal.App.3d 510, 521; Cal. Rules of Court, rule 8.163.)

Defendant devotes much of his brief on appeal to arguing that the evidence does not support the issuance of the injunctions, or that his conduct did not violate the statute governing civil harassment restraining orders.

Code of Civil Procedure section 527.6, subdivision (a)(1), provides: “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.” Subdivision (b)(3) of the statute defines “ ‘[h]arassment’ ” 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.” (Code Civ. Proc., § 527.6, subd. (b)(3).) Code of Civil Procedure “[s]ection 527.6 is intended ‘to protect the individual’s right to pursue safety, happiness and privacy as guaranteed by the California Constitution.’ [Citations.]” (*Russell v. Douvan* (2003) 112 Cal.App.4th 399, 403; Cal. Const., art. I, § 1.)

A trial court’s decision to grant a permanent injunction rests within its sound discretion and will not be disturbed without a showing of a clear abuse of discretion. (*Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 904, 912.) To determine whether the trial court abused its discretion in issuing an injunction, appellate courts generally review the trial court’s findings under the substantial evidence standard, resolving all factual conflicts and questions of credibility in the respondent’s favor and drawing all legitimate and reasonable inferences to uphold the order, so long as it is supported by evidence that is reasonable, credible and of solid value. (*USS-Posco Industries v. Edwards* (2003) 111 Cal.App.4th 436, 444; *Schild v. Rubin* (1991) 232 Cal.App.3d 755, 762.)

We cannot engage in the required analysis, however, absent a reporter’s transcript of the hearing at which the challenged orders were entered. Instead, as we have explained, we must under these circumstances conclusively presume that the evidence adduced at the hearing warranted the issuance of the orders. (*Ehrler v. Ehrler, supra*, 126 Cal.App.3d at p. 154.) The sufficiency of the evidence is not open to review in a judgment roll appeal, and we do not substitute an analysis of the declarations submitted in support of the issuance of the original temporary restraining order, as defendant does in his appellate brief.

We further note that, in a bench trial, the trial judge is the ultimate arbiter of fact, as he was privy to the testimony of all parties and witnesses. Given the court’s findings

that clear and convincing evidence supports issuing permanent restraining orders in plaintiffs' favor, we presume it found plaintiffs' evidence supporting their claims more credible than defendant's denials, and we must defer on appeal to the trial court's implicit determinations of credibility. (*Lenk v. Total-Western, Inc.* (2001) 89 Cal.App.4th 959, 968.)

Without a reporter's transcript of the hearing at which the challenged order was entered, we must also presume that official duties have been regularly performed (Evid. Code, § 664), and this presumption extends to the actions of trial judges (*Olivia v. Suglio* (1956) 139 Cal.App.2d 7, 9 ["If the invalidity does not appear on the face of the record, it will be presumed that what ought to have been done was not only done but rightly done."]). This means we assume -- contrary to defendant's arguments on appeal -- that the trial court properly applied the statutory requirements of Code of Civil Procedure section 527.6 when it found grounds for issuance of the restraining orders in plaintiffs' favor, and found no grounds for issuance of mutual restraining orders.

The trial court's orders are not erroneous on their face. (Cf. Cal. Rules of Court, rule 8.163; see *National Secretarial Service, Inc. v. Froehlich, supra*, 210 Cal.App.3d at p. 521.) Nothing in the record demonstrates that defendant has any private property or other interest infringed by the orders that he "not impede" plaintiffs, their families, or their guests from using the dedicated lane easement for ingress and egress, and the stay-away order expressly does not apply while defendant is on his property to the edge of the easement. The orders do not, as defendant argues, give plaintiffs, their families, or their guests "unrestrained access to about one-third of [his] private property" in violation of the principles of inverse condemnation.

Nor has defendant shown that the prohibition of his interference with plaintiffs' "guests'" use of Kings Court Lane is unconstitutionally overbroad. Under California law, use of such a road easement typically extends to the guests of the easement holders (see *Le Deit v. Ehlert* (1962) 205 Cal.App.2d 154, 165-167) and defendant cites no

authority for application of a different rule here. (See *County of Solano v. Vallejo Redevelopment Agency*, *supra*, 75 Cal.App.4th at p. 1274.)

In addition, not all speech or conduct is constitutionally protected, and defendant has not shown he has a constitutionally protected interest in any speech or conduct that may otherwise be the subject of an injunction against harassing or threatening plaintiffs and their families. (*R.D. v. P.M.* (2011) 202 Cal.App.4th 181, 191-193; cf. *Brekke v. Wills* (2005) 125 Cal.App.4th 1400, 1409.)

Finally, we reject defendant's argument that he was denied due process of law because he did not agree to have Judge Ullman, a temporary assigned judge, decide the petitions. Absent a reporter's transcript, we presume that the assignment was properly made and all prerequisites met. (*Olivia v. Suglio*, *supra*, 139 Cal.App.2d at p. 9; *In re Horton* (1991) 54 Cal.3d 82, 96-97.)

## II

### *Plaintiffs' Motion for Sanctions*

By separate motion, plaintiffs have moved for dismissal of the appeal and for sanctions against defendant for filing a frivolous appeal, arguing that the "misconduct of [defendant] determined to be true by the trial court, as well as [his] actions in filing this bad faith appeal provide conclusive evidence of [defendant's] malicious character and continued harassment of [plaintiffs] through the abuse of the court system."

As we note above, absent a reporter's transcript of the hearing, we cannot say what the court expressly "found" to be defendant's misconduct, except to the extent we presume defendant's conduct warranted issuance of the restraining orders.

Moreover, although defendant's claims would appear utterly without merit to any reasonable attorney (*In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 650), we do not believe they warrant the imposition of sanctions against him. While it is proper to sanction a self-represented party for pursuing a frivolous appeal (*Bistawros v. Greenberg* (1987) 189 Cal.App.3d 189, 193), there should be some indication that the party is aware

of the groundless nature of the appeal (e.g., *ibid.* [party possessed “sophistication” in appellate practice far beyond that of an ordinary layperson]; *Leslie v. Board of Medical Quality Assurance* (1991) 234 Cal.App.3d 117, 121 [both hearing officer and trial court had informed litigant that grounds for his challenge to discipline were baseless, yet he pursued appeal]) or is seeking only to harass the other party, the alternate basis for an award of sanctions under *In re Marriage of Flaherty, supra*, 31 Cal.3d at page 650 (e.g., *Banks v. Dominican College* (1995) 35 Cal.App.4th 1545, 1558-1559 [not only did the appellant graduate from a “legal studies program,” she had pursued baseless claims “for years” after a battery of retained counsel withdrew on ethical grounds, and litigated in “unbalanced and bizarre” way]). As we do not find those circumstances present, we decline plaintiffs’ request for dismissal and sanctions.

We, however, grant plaintiffs’ request for costs. In so doing, we do not consider here their request for an award of attorney fees because, although there is a statutory basis for awarding attorney fees to the party prevailing in a petition for a civil harassment restraining order (Code Civ. Proc., § 527.6, subd. (r)), the better practice is for the trial court to determine in the first instance whether attorney fees should be awarded and in what amount. (*Security Pacific National Bank v. Adamo* (1983) 142 Cal.App.3d 492, 498; Cal. Rules of Court, rule 8.278(d)(2).)

#### DISPOSITION

The orders are affirmed. Plaintiffs shall recover their costs. (Cal. Rules of Court, rule 8.278(a)(1).)

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NICHOLSON, Acting P. J.

We concur:

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BUTZ, J.

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MURRAY, J.