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COURT OF APPEAL, FOURTH APPELLATE DISTRICT  
DIVISION ONE

STATE OF CALIFORNIA

KARI B. CASIAS,

Respondent,

v.

EUGENE J. ALLEN,

Appellant.

D059826

(Super. Ct. No. EV17900)

APPEAL from an order of the Superior Court of San Diego County, Evan P. Kirvin, Judge.

Eugene Jerome Allen appeals the trial court's grant of Kari Casias's petition for a restraining order against him for a period of three years. Allen contends there is insufficient evidence to support the restraining order because no evidence showed he intended to harass Casias. We affirm.

**BACKGROUND**

Casias testified at a hearing on the petition that despite her requests to Allen to stop contacting her, he thrice requested that their pastor speak to Casias on his behalf.

Allen also sent her a text message saying that following church services, he had found a compact disc on his windshield along with a note indicating that Casias was involved in Internet pornography. He said he became so upset that he destroyed the compact disc. Later, Allen confessed to Casias that he had mailed her a pornographic video featuring a girl who looked like her. An accompanying note stated, " 'Here is a worship CD I found. I left one on your friends [*sic*] Jeep. You guys should enjoy it.' "

Casias also testified, "This is disturbing behavior. I don't know why [Allen] did this. He has photos of the girl. He gave me a paper where a picture of this girl in this pornographic video—which I still don't see how it is relevant because even if it was me, I still have a right not to have him contact me . . . anymore." She added, "I discovered from a private investigator . . . that there was a woman . . . out of Carlsbad who has an active restraining order against [Allen] right now and her case has similarities to my case. There was a crime of vandalism done in her case. . . . [T]hat crime was staged to look like another man did it too."

At the hearing, Allen testified, "I have seen pictures of Ms. Casias when she was younger and these photos, they resemble the pictures that I saw on the wall of her apartment. I became angry when I found this CD. We talked many times about her past, and she never mentioned anything in regards to that." He stated, "The CD that she is referring to, that I was agreeable with her in admitting, 'Yes that I did send that.' Some of the E-mails—most of our communication was through E-mail. . . . None of those made any threats to her. I have never written any threats. I did apologize many times for my actions in what I had done." Allen explained away the restraining order against him for

harassing the other woman, stating he was not listed as a suspect in the criminal report in that incident. He continued, "The restraining order came about—the way I feel it came about is that my representation from the attorney that I had, did not properly represent me in Court."

Referring to E-mails he and Casias had sent each other, Allen testified: "[Casias] does indicate, I think on Page 8 where she says that in her E-mail, it was my way to attempt to threaten her by scaring [*sic*] her or blackmailing her to allow me to speak to her again. As you look at that E-mail, that is here . . . your Honor, with regards to why I forwarded it to our pastor, there is nothing in there with regards to blackmail or threatening or anything. There is nothing like that even remotely close in this particular E-mail."

The court granted the restraining order, ruling, "[T]he petitioner has met her burden of proof, which does not necessarily mean that she has to prove a threat, but to the harassing type of behavior, even disturbing the peace. That behavior, I believe, did occur here."

## DISCUSSION

Allen contends there is insufficient evidence to support the restraining order because he "did not engage in a pattern of conduct that would constitute harassment. There were no credible threats, and that there [*sic*] was no proof that [Casias] suffered any substantial emotional distress." He further contends, "In absence of any evidence of harm or the intend [*sic*] to harm, the Emails were a form of speech or expression, regardless if we dislike what we said to each other. Emails are Constitutionally Protected

provided that there is no violation of law, and should not be use [sic] to obtain a [sic] Order of Protection."

"[W]e view the evidence in a light most favorable to the respondent, and indulge all legitimate and reasonable inferences to uphold the . . . court's determination. If there is substantial evidence supporting the order, the court's issuance of the restraining order may not be disturbed." (*In re Cassandra B.* (2004) 125 Cal.App.4th 199, 210-211.)

" 'We must accept as true all evidence . . . tending to establish the correctness of the trial court's findings . . . , resolving every conflict in favor of the judgment.' " (*Sabbah v. Sabbah* (2007) 151 Cal.App.4th 818, 823.)

Fundamentally, appellate review begins with the presumption that the trial court's judgment is correct, and the burden is on appellant to overcome that presumption of correctness and show reversible error. (*State Farm Fire & Casualty Co. v. Pietak* (2001) 90 Cal.App.4th 600, 610.) Accordingly, an appellant is responsible for providing an adequate record demonstrating error, and absence of a record of the oral proceedings at trial has precluded any challenge based on the insufficiency of the evidence to support the judgment. (*Aguilar v. Avis Rent A Car System, Inc.* (1999) 21 Cal.4th 121, 132.)

Here, Allen does not include in the appellate record the petition for restraining order and its attachments. Significantly, he also omits the same e-mails he claims were not harassing and deserve constitutional protection. We therefore have no basis for evaluating his claims. Based on Allen's failure to provide an adequate record of the trial proceedings, his challenge to the sufficiency of the evidence must be rejected. "Failure to

provide an adequate record on an issue requires that the issue be resolved against appellant." (*Barak v. The Quisenberry Law Firm* (2006) 135 Cal.App.4th 654, 660.)

In reaching our conclusion in this case, we are mindful that Allen represents himself. Nevertheless, he is not entitled to preferential consideration. The California Supreme Court has made clear that "mere self-representation is not a ground for exceptionally lenient treatment." (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984.) "A doctrine generally requiring or permitting exceptional treatment of parties who represent themselves would lead to a quagmire in the trial courts, and would be unfair to the other parties to litigation." (*Id.* at p. 985.) "A party proceeding in propria persona 'is to be treated like any other party and is entitled to the same, but no greater[,] consideration than other litigants and attorneys.' [Citation.] Indeed, 'the in propria persona litigant is held to the same restrictive rules of procedure as an attorney.' ' ' (*First American Title Co. v. Mirzaian* (2003) 108 Cal.App.4th 956, 958, fn. 1.) These rules hold true in the appellate courts. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247; *Bistawros v. Greenburg* (1987) 189 Cal.App.3d 189, 193.)

DISPOSITION

The order is affirmed.

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O'ROURKE, J.

WE CONCUR:

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NARES, Acting P. J.

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HALLER, J.