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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

JULIE MARTIN,

Plaintiff and Respondent,

v.

STEVEN PETROFF,

Defendant and Appellant.

D059876

(Super. Ct. No. 37-2010-00081284-  
CU-HR-SC)

APPEAL from an order of the Superior Court of San Diego County, Francis M.

Devaney, Judge. Affirmed.

Steven Petroff appeals from an order enjoining him from harassing or contacting Julie Martin, and ordering Petroff to stay 100 yards away from Martin's home and workplace. (Code Civ. Proc.,<sup>1</sup> § 527.6.) Petroff challenges the sufficiency of the evidence to support the order. We reject Petroff's contentions and affirm.

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<sup>1</sup> All further statutory references are to the Code of Civil Procedure.

## FACTUAL AND PROCEDURAL SUMMARY

On December 28, 2010, Martin filed a petition seeking a protective order against Petroff under the civil harassment statute. (§ 527.6.) Martin said Petroff is her husband's long-time friend, and last summer Petroff indicated he wanted to have a romantic relationship with her and he has since taken actions that have made her fearful. Martin said Petroff has been told "repeatedly" to leave her alone, but he was "stalking" her and seems to be "mentally unstable." Martin said she was afraid for herself and her two young grandchildren who live with her.

With respect to the specific acts of harassment, Martin said Petroff had telephoned her numerous times at home and at work and she was forced to change her home phone number. She also said her neighbors have told her that Petroff sits in his vehicle outside her residence. Martin claimed that Petroff's stalking behavior has "recently become much worse," explaining that four days earlier, Petroff had placed copies of a lengthy letter he wrote to her on 27 different vehicles parked in her neighborhood. Martin included a copy of the letter with her petition. She also said she received two letters from Petroff in the mail that were "sprayed with cologne." Martin said these letters were at least five pages long and talk about "how he thinks I am his soul mate and how I have been leading him on." She said that Petroff "recently lost his job and he seems increasingly unstable."

About two weeks later, the court held a hearing on Martin's petition. At the hearing, Martin reiterated much of the information in her petition, and said she was concerned for her safety and the safety of her household members. She said she lives with her quadriplegic husband, two young grandchildren, and two daughters. She said

that although Petroff had not made any specific threats against her, Petroff's letters were "scary." She noted, for example, that in one letter Petroff said he "would take me apart, piece by piece." Martin also said that Petroff would stare at her in a "scary" manner and that it makes her "ill just being around him now." Martin said she has never had a relationship with Petroff and does not "quite understand" why he is writing the letters. Martin said that Petroff is making "[me] [v]ery fearful [for] my life."

Martin also presented evidence about an incident when she was returning home with her small grandson at about 9:00 in the evening, when "all of a sudden" Petroff's vehicle comes "zooming onto my driveway." When Petroff got out of the car, he was "[r]eally frantic" and said " 'I need to talk to you.' " He told her to " 'put that kid in the house right now.' " After she complied with his request, Petroff told her "his whole divine love for me and stuff." Two days later, Petroff called her and was "irate yelling at [her]," asking why she told others about what he said to her.

Martin's adult daughter (Nicole) testified that she saw Petroff parked near her mother's house about five or six months earlier. She also said that she has seen Petroff drive past her mother's house, and that "every time he drives past he stares at the house." Nicole said that about six months earlier, a man came to her mother's house and indicated that he had a "message" for her father, which she believed to be was from Petroff. When Nicole told this man that her father was a quadriplegic, he responded " 'I'm so sorry. I did not know. Pretend like I never even came here.' "

One of Martin's other witnesses testified that Martin had never shown any interest in Petroff, and the witness said she believed "it's kind of beyond infatuation to obsession to where it should be concerning."

At the hearing, 54-year-old Petroff admitted that he (or someone at his direction) recently left 27 copies of his letter to Martin "around the neighborhood." Petroff said he distributed this letter because Martin had failed to invite him to a party at her house and had convinced her friends not to invite him to their parties. He said the distribution of the letters gave him "satisfaction" and he was "venting" to show Martin "what it feels like to humiliate someone publicly like she has been doing [to] me." Petroff said he believed Martin "likes" him because she had "hit" on him at a funeral wake two years earlier.

Petroff urged the court to deny the request for the protective order, claiming that many of the assertions by Martin and her witnesses were "not true." He denied that he telephoned Martin or attempted to contact her without her consent. He emphasized that he is a "decent person" who does not have a "police record" and that he has a community college degree and has worked in the medical field. Petroff said he is "a helper not a hurter." Petroff denied intending to harass Martin.

At the conclusion of the evidence, the court said it had "listened to all of you" and "read everything that was presented to me," and concluded there was sufficient evidence to warrant granting the motion for a protective order. The court explained that although there was no evidence Petroff had committed violence or made specific threats of violence, Petroff had engaged in a "knowing and willful course of conduct" that was "intended to annoy, harass and alarm" Martin and there was no legitimate reason for the

conduct. The court found that Petroff's recent conduct in distributing copies of his letter to Martin was particularly concerning and "makes no sense." The court concluded: "[W]hat I can take from this is that you are, in fact, not only obsessed, but infatuated with this woman for some reason. And it's scary to her. It's very concerning to me and, obviously, to the family. . . . [¶] You have had a course of conduct directed at Ms. Martin to annoy, alarm or harass her for no good reason. . . . Now, you say it's just to get it off your chest or even the score, whatever it may be, but there is no legitimate reason for doing it. Now you have this woman petrified of you."

The court then issued a three-year protective order prohibiting Petroff from harassing or contacting Martin, and ordering Petroff to stay 100 yards away from Martin's home and workplace.

The court later denied Petroff's reconsideration motion, finding Petroff did not present any new facts. At the hearing on the reconsideration motion, the court emphasized that it does not routinely grant protective orders and that it issued the order only "after serious consideration of the issues and serious discussion [with the parties]."

## DISCUSSION

Petroff challenges the sufficiency of the evidence to support the court's imposition of an injunction under section 527.6. Although Martin did not file a respondent's brief, we must uphold the order unless we find prejudicial error based on the arguments asserted in Petroff's brief and on the appellate record. (See *Nakamura v. Parker* (2007) 156 Cal.App.4th 327, 334.)

When considering a claim that the evidence does not support the court's ruling, "[w]e 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." (*Schild v. Rubin* (1991) 232 Cal.App.3d 755, 762.) Even if the evidence is subject to more than one reasonable interpretation, we may not reweigh the evidence or choose among alternative permissible inferences. (*Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 630-631.) If the court's ruling is silent as to a particular factual finding, we are required to imply findings sufficient to support the court's ruling. (*Wilson v. Sunshine Meat & Liquor Co.* (1983) 34 Cal.3d 554, 563.)

Under section 527.6, a court may issue a protective order against a person who has engaged in "harassment." (§ 527.6, subd. (a); see *R.D. v. P.M.* (2011) 202 Cal.App.4th 181, 188-189.) "Harassment" means "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), italics added.) "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 [plaintiff]." (*Ibid.*) "'Course of conduct' is a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including following or stalking an individual . . . ." (§ 527.6, subd. (b)(1).)

The purpose of section 527.6 "is to prevent future harm to the applicant by ordering the defendant to refrain from doing a particular act.'" (*Huntingdon Life Sciences, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.* (2005) 129 Cal.App.4th 1228, 1266.) Before imposing a protective order, a trial court must find clear and convincing evidence that unlawful harassment exists. (§ 527.6, subd. (i).) If the court determines that a party has met the "clear and convincing" burden, the court's determination will not be disturbed on appeal without a showing of a clear abuse of discretion. (See *Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 904, 912; *Ensworth v. Mullvain* (1990) 224 Cal.App.3d 1105, 1111, fn. 2.)

Applying these legal principles, we find no abuse of discretion in this case.

Martin presented evidence that Petroff engaged in activities specifically directed at her that made Martin and her family feel fearful. This evidence showed that Petroff had been interested in developing a romantic relationship with Martin, and when Martin rebuffed these efforts and then disclosed Petroff's actions to others, Petroff became "obsessed" with her and instigated numerous unwanted contacts. Petroff drove by Martin's house, telephoned her at home and work, stared at her in an alarming fashion, and sent her rambling letters with statements that could be interpreted as threatening. Most recently, Petroff placed on numerous car windshields copies of a letter discussing his personal feelings towards Martin. Petroff admitted he wanted to get back at Martin, and let her know how it felt to be humiliated.

On this record, there was evidence supporting that Petroff engaged in a course of willful conduct that seriously alarmed and annoyed Martin, and served no legitimate

purpose. Thus, the court had a sufficient basis to grant the protective order under section 527.6.

Petroff's arguments to the contrary are unpersuasive.

First, Petroff contends there was no evidence that Martin suffered substantial emotional distress. However, Martin's testimony that she was "[v]ery fearful [for] my life" and feels "ill" when she is around him is sufficient to show Petroff's actions caused Martin to suffer substantial emotional distress.

Petroff next argues that his conduct was not "so outrageous as to cause a reasonable person substantial emotional distress." The evidence showed Petroff had affirmatively engaged in unwanted contacts with Martin for at least one year. Four days before she filed the petition, Petroff placed a letter to her on numerous vehicles in her neighborhood. In her testimony, Martin emphasized that she was responsible for a household that included young children and a quadriplegic husband, and she felt vulnerable and scared in the face of Petroff's continued conduct directed against her. Under these circumstances, the trial court had an ample basis to conclude that a reasonable person would have similarly suffered substantial emotional distress.

In this regard, Petroff's reliance on *Schild v. Rubin, supra*, 232 Cal.App.3d 755 is misplaced. In *Schild*, the court found that a neighbor's playing basketball several days a week did not constitute unlawful harassment under section 527.6 because this activity "would not 'cause a *reasonable person* to suffer substantial emotional distress.'" (*Schild, supra*, at p. 763.) The court emphasized that "[a] reasonable person must expect to suffer and submit to some inconveniences and annoyances from the reasonable use of property

by neighbors [in a] suburban residential neighborhood." (*Ibid.*) Petroff's actions in continuing to contact Martin despite her requests that he not do so, and in writing and distributing letters to Martin, is not comparable to a neighbor's recreational basketball game.

Petroff additionally contends his harassment activities did not constitute a prohibited "course of conduct." Under section 527.6, a "[c]ourse of conduct" is defined as "a series of acts over a period of time, however short, evidencing a continuity of purpose." (§ 527.6, subd. (b)(1); *Leydon v. Alexander* (1989) 212 Cal.App.3d 1, 4.)

Under this statutory definition, a single isolated incident of harassment is generally insufficient to warrant the issuance of a protective order. (See *Leydon v. Alexander, supra*, 212 Cal.App.3d at p. 4.) However, in this case, there were numerous actions that seriously alarmed, annoyed or harassed Martin. Martin presented evidence that Petroff made unwanted telephone calls, drove by her house and/or parked in the neighborhood, confronted her in the evening when she was with her small grandchild, and distributed numerous letters about the relationship in her neighborhood.

Petroff contends the court relied only on his act of distributing the letter to find that he committed the prohibited harassment. This contention is unsupported. Although the court said it believed the "heart of the matter" was Petroff's distribution of the letter in December 2010, it heard the evidence of all of the other incidents leading to this event, and had a reasonable basis to conclude Petroff had engaged in numerous acts of harassing conduct towards Martin.

In a related argument, Petroff contends the court's order must be reversed because there was no evidence his conduct was likely to recur in the future. An injunction restraining future conduct is authorized under section 527.6 only when it appears from the evidence that the harassment is likely to recur in the future. (*R.D. v. P.M.*, *supra*, 202 Cal.App.4th at p. 189.) In evaluating the likelihood that the harassment will continue, the court may consider the totality of the circumstances, "including evidence of conduct that might not itself constitute harassment." (*Id.* at pp. 189-190.)

The evidence showed that Petroff remained angry with Martin for rebuffing him and continued to feel humiliated by the fact that Martin had told her family and friends about Petroff's attempts to create a romantic relationship with her. His behavior had become increasingly erratic and his recent act of distributing his letters in the neighborhood showed that his anger had not dissipated. Based on this evidence, the court found that Petroff had a remaining obsessive focus on Martin. On this record, the court had a reasonable basis to conclude that the harassment was likely to recur in the future.

Petroff cites two cases that are factually distinguishable on the "likely to recur" element. (*Russell v. Douvan* (2003) 112 Cal.App.4th 399; *Scripps Health v. Marin* (1999) 72 Cal.App.4th 324.) In each of those cases, unlike here, the evidence showed there was no likelihood of any continued contact between the parties.

Finally, Petroff argues that his conduct "simply does not rise to the level of intentional, premeditated abuse found in *Brekke* [*v. Wills* (2005) 125 Cal.App.4th 1400]." In *Brekke*, a 15-year-old boy wrote violent and threatening letters to the parents of his 16-year-old girlfriend, a scenario which the court described as "a parent's nightmare come

true." (*Id.* at p. 1403.) The fact that the circumstances here may not be as disturbing as the facts in *Brekke* does not mean the court's conclusions were unsupported. The *Brekke* court applied the law to the facts and found that the boy's activities supported a finding of harassment under the civil harassment statute. We reach the same conclusion on the facts before us.

DISPOSITION

Order affirmed. Each party to bear their own costs.

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HALLER, J.

WE CONCUR:

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NARES, Acting P. J.

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O'ROURKE, J.