

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re JAVIER GUERRERO

on

Habeas Corpus.

D063097

(San Diego County
Super. Ct. No. 37-2012-00093124-
CU-HR-CTL)

Petition for writ of habeas corpus. Melinda Lasater, Judge. Relief granted.

Law Office of Anthony J. Boucek, Anthony J. Boucek; Higgs, Fletcher & Mack
LLP, Loren G. Freestone for Respondent and Appellant.

Melody L. Grover-Kwong in pro. per.

FACTS

Petitioner Javier Guerrero (Guerrero), a member and trustee of the Fraternal Order of Eagles, Aerie 244 (Aerie) has petitioned for writ of prohibition or alternatively habeas corpus, or certiorari, challenging the trial court's judgment finding him guilty of three counts of contempt and sentencing him to a total of three days in custody and a total fine of \$2,500. The trial court found he had violated a March 29, 2012 restraining order

barring him from contacting Melody Grover-Kwong (Grover-Kwong), a member of Auxiliary, a sister organization to Aerie, either directly or indirectly by filing complaints with Aerie that were served on her, her mother, Jo Ann Grover, and Robert Baca.

This writ petition is considered with Guerrero's companion appeal in case No. D062041, in which we reverse the trial court's restraining order. We issued the order to show cause. We do not repeat the underlying facts that we set forth in our companion opinion.

In September 2012, Grover-Kwong filed a motion in the trial court for an order to show cause why a finding of contempt should not be made against Guerrero for violating the restraining order.

The trial court concluded Guerrero violated the restraining order by preparing, signing and submitting to the Aerie's leadership three complaints seeking discipline against Grover-Kwong, Jo Ann Grover and Baca. As to the count relating to Grover-Kwong, the court concluded Guerrero's actions "were in retaliation for the restrictions placed on him by the restraining order [Grover-Kwong] had obtained against him. The filing of the complaint against Grover-Kwong was intended to harass, intimidate and threaten her and [Guerrero] was successful in accomplishing his goal. [¶] [Guerrero] knew, according to the Aerie procedures, [Grover-Kwong] would be served with the formal complaint which he had completed and signed. The complaint included the specific allegations on a separate attachment also signed by him. The formal notification of the complaint was an indirect contact with [Grover-Kwong]. In addition, [Guerrero] also knew there would be a tribunal which he had initiated and she would have to

[defend] herself." (Fns. omitted.) The trial court similarly found Guerrero guilty of the other two contempt counts, reasoning that he knew Jo Ann Grover and Baca would inform Grover-Kwong of the complaint and notice of trial against them.

DISCUSSION

In light of the fact we reversed the court's temporary restraining order in the companion appeal, all contempt proceedings based upon its violation are given no effect. (Accord, *First Nat. Bank v. Superior Court* (1966) 240 Cal.App.2d 109, 111 ["The trial court acted beyond its jurisdiction in issuing the temporary restraining order. Since that order must fall, all contempt proceedings based upon its violation fall with it."].)

DISPOSITION

Relief granted. The judgment of contempt is annulled. The stay issued on December 13, 2012, is vacated.

O'ROURKE, J.

WE CONCUR:

HUFFMAN, Acting P. J.

McDONALD, J.