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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

DANIELA L. BENAVIDEZ,
Plaintiff and Respondent,

v.

MICAH BOWMAN,
Defendant and Appellant.

F067749

(Super. Ct. No. 13CECG01697)

OPINION

THE COURT*

APPEAL from an order of the Superior Court of Fresno County. Carlos A. Cabrera, Judge.

Schweitzer & Davidian and Eric H. Schweitzer for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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Appellant, Micah Bowman, appeals from a civil harassment injunction enjoining him from contacting, harassing, or coming within 50 yards of his neighbor, Daniela L. Benavidez, respondent. Bowman has failed to establish any prejudicial error in the order, and we affirm.

* Before Hill, P. J., Cornell, J. and Gomes, J.

FACTUAL AND PROCEDURAL BACKGROUND

Benavidez commenced this action with a request for an injunction against civil harassment. She obtained a temporary restraining order (TRO) and her request for an injunction was set for hearing. On June 24, 2013, the trial court heard the matter and entered a civil harassment injunction, effective for three years, restraining Bowman from harassing, stalking, contacting, disturbing the peace of, or coming within 50 yards of Benavidez. The testimony presented to the trial court at the hearing indicated the parties live across the street from each other. In April and May 2013, Bowman repeatedly hit golf balls from his front yard across the street into Benavidez's front yard; he then went into her yard and hit the balls back to his own yard. Sometimes the balls hit Benavidez's car; when she protested, Bowman told her this is America and if she didn't like it, she could leave. On one occasion, Bowman moved Benavidez's garbage cans from the curb and parked his car where they had been, even though there was parking available in front of his house. Bowman told her he had gone through her garbage cans before. He told Benavidez he wanted to get to know her better and he wanted to know what her boundaries were. Benavidez interpreted his actions as sexual advances, which were unwelcome. His frequent presence in front of her house for no apparent reason made her nervous and afraid for her safety.

Bowman testified he hit the golf balls, which were wiffle balls, on his own side of the street to entertain his children; if any went across the street, he simply retrieved them. He stated he moved her garbage cans from the curb because Benavidez had left them there several days. He admitted he told her he wanted to know her, stated he wanted to know what she considered her boundaries to be, and said, "This is America and we are free to play in the streets with our kids"; he asserted Benavidez misinterpreted these statements as racist and sexist.

Bowman appeals from the injunctive order, challenging the sufficiency of the evidence to support the order.

DISCUSSION

The injunction was issued pursuant to Code of Civil Procedure section 527.6.¹ Under section 527.6, a person who has suffered harassment may obtain a temporary restraining order and an injunction against such harassment. (*Id.*, subd. (a)(1).) “Harassment” is defined 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.” (§ 527.6, subd. (b)(3).) Bowman contends Benavidez introduced no evidence he engaged in or threatened violence, and the facts presented at the hearing did not rise to the level of “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.” (*Ibid.*)

Bowman challenges the sufficiency of the evidence to support the injunctive order. He asserts he hit golf balls into Benavidez’s yard and they hit her car, but there was no evidence they caused any damage. He characterizes his comments to her as merely flirtatious and claims flirtatious conversation serves a legitimate purpose—to bring people together. He states there was no showing his conduct was directed at Benavidez, rather than at others in general. Bowman contends the evidence did not demonstrate that a reasonable person would have suffered substantial emotional distress as a result of his conduct, or that Benavidez actually suffered substantial emotional distress.

¹ All further statutory references are to the Code of Civil Procedure, unless otherwise indicated.

It is a fundamental rule of appellate review that the judgment or order appealed from is presumed correct and prejudicial error must be affirmatively shown. (*Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 187 (*Foust*)). When the sufficiency of the evidence to support the judgment or order is challenged, the trial court's factual findings are presumed correct. (*Construction Financial v. Perlite Plastering Co.* (1997) 53 Cal.App.4th 170, 179.) “[A] party challenging a judgment has the burden of showing reversible error by an adequate record.” (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574.) When the record on appeal is incomplete because it does not contain all the documents that were before the trial court in making its determination, the reviewing court cannot determine whether substantial evidence supports the implied findings underlying the trial court's order. (*Gonzalez v. Rebollo* (2014) 226 Cal.App.4th 969, 977; *Haywood v. Superior Court* (2000) 77 Cal.App.4th 949, 955.) In such a case, error is not established due to the inadequacy of the record. (*Haywood*, at p. 955.)

The record on appeal contains a settled statement in lieu of a reporter's transcript of the hearing at which the parties' testimony was taken. The clerk's transcript contains the June 24, 2013, minute order granting injunctive relief and the civil harassment restraining order after hearing issued the same day. The docket, which is included in the record, indicates Benavidez initiated the action by filing a request for an order to stop harassment. That request resulted in issuance of a TRO. Neither the request for injunctive relief nor the TRO is included in the record.

A request for an injunction against civil harassment pursuant to section 527.6 must be made on a mandatory Judicial Council form (civil harassment form CH-100). (Cal. Rules of Court, rule 1.31; Cal. Rules of Court, appen. A, Judicial Council Legal Forms List.) The form calls for a declaration under penalty of perjury describing the harassment and any injury sustained as a result. Presumably, Benavidez's request for an injunction was made on the mandatory form and signed under penalty of perjury. Based on that

request, the trial court issued a TRO, impliedly finding Benavidez had made the necessary showing in her declaration.

In *Ensworth v. Mullvain* (1990) 224 Cal.App.3d 1105, the court reviewing issuance of a civil harassment injunction looked to both the testimony at the hearing and the declaration filed in support of the initial request in determining whether the record contained substantial evidence to support the injunction. (*Id.* at pp. 1110-1111.) We are not able to consider the content of Benavidez’s request for injunctive relief, including her declaration describing the harassment, in determining whether substantial evidence supports the trial court’s decision because Bowman failed to include that request in the record. A necessary corollary to the rule that it is the appellant’s affirmative duty to show error by an adequate record is “that a record is inadequate, and appellant defaults, if the appellant predicates error only on the part of the record he provides the trial court, but ignores or does not present to the appellate court portions of the proceedings below which may provide grounds upon which the decision of the trial court could be affirmed.” [Citation.]” (*Osgood v. Landon* (2005) 127 Cal.App.4th 425, 435.) ““[I]f any matters could have been presented to the court below which would have authorized the order complained of, it will be presumed that such matters were presented.”” [Citation.]” (*Foust, supra*, 198 Cal.App.4th at p. 187.) Facts sufficient to support the trial court’s order could have been presented in Benavidez’s request for a civil harassment injunction. Because that document was not included in the record, we must presume the facts presented in it, combined with the testimony given at the subsequent hearing, made an adequate showing to support issuance of the injunction.

In the absence of a complete record that contains all the evidence that may support the order, we must presume the order is correct. (See *Stasz v. Eisenberg* (2010) 190 Cal.App.4th 1032, 1039.) Bowman has failed to establish error in the order.

DISPOSITION

The June 24, 2013, civil harassment restraining order after hearing is affirmed.