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

MICHELLE CASTILLO,  
  
Plaintiff and Respondent,  
  
v.  
  
DIANNA L. PERKINS,  
  
Defendant and Appellant.

F069469  
  
(Super. Ct. No. 14CECG00670)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Fresno County. Carlos A. Cabrera, Judge.

Dianna L. Perkins, in pro. per., for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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Defendant Dianna L. Perkins appeals from an order granting a one-year injunction pursuant to Code of Civil Procedure section 526.7. The injunction prohibited Perkins from harassing her ex-sister-in-law or the sister-in-law's daughters.

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\* Before Gomes, Acting P.J., Detjen, J. and Franson, J.

On appeal, Perkins elected to proceed without a reporter's transcript. The absence of a reporter's transcript has left a gap in the record as to what actually occurred in the proceedings. As a result of this gap, Perkins is unable to carry her burden of demonstrating that the trial court (1) violated her due process rights or (2) made findings not supported by substantial evidence.

We therefore affirm the order granting the injunction.

### **FACTS AND PROCEEDINGS**

On March 4, 2014, plaintiff Michelle R. Castillo took her 14-year-old, special needs daughter to a doctor's appointment for a sinus condition. The appointment was at the Charlie Mitchell Clinic in Madera. The minor's father, Ralph Poole, was at the clinic along with his mother and Perkins, his sister.

Perkins and plaintiff became involved in an altercation that day, with each offering a different version of what happened. Plaintiff alleged that as she was leaving the clinic, she pulled over to the median of the road and Perkins stopped her car in front of plaintiff, got out of her car, began cursing at plaintiff, came over to plaintiff's half-open window, stuck her arm inside plaintiff's car and began punching the left side of plaintiff's head and pulling her hair. Plaintiff alleged she rolled up the window and Perkins punched the window, screamed vulgarities, and then went back to her car and drove away. Plaintiff stated she phoned the police and filed a report with the Madera County Sheriff's Department (Case No. 14-1029) and Deputy Kutz. Plaintiff alleged her left ear was cut and bleeding as a result of the attack. Plaintiff also alleged she had been harassed at other times by Perkins.

Perkins's version of events is different. Perkins alleges that she, her mother and her brother were waiting at the clinic for the appointment before plaintiff and the minor daughter arrived. Perkins went to the bathroom and, when Perkins returned, plaintiff and the minor were in the room. Plaintiff turned to Perkins, gave her a mean look, and said that Perkins would have to leave. Perkins said she did not think so and began to move

toward plaintiff, tripped and bumped into plaintiff. Perkins alleges that plaintiff then slugged her in the back, knowing that Perkins had had seven major back surgeries and had a spinal cord stimulator in her back.

On March 6, 2014, plaintiff filed a request for civil harassment restraining order in Fresno County Superior Court. The same day, the court issued a temporary restraining order and set a hearing date.

In responding to plaintiff's request for a restraining order, Perkins presented a form from Dr. Thomas O'Laughlin stating Perkins had a contusion to her back. Perkins's response asked the court to order a psychiatric evaluation of plaintiff and test her for abusing pharmaceutical drugs. Perkins also asked the court to order plaintiff to pay \$400 in doctor's fees and \$300 for x-rays.

On April 14, 2014, a show cause hearing was held regarding the alleged harassment. Perkins asserts that she informed the court about an April 16, 2014, family court matter and a domestic violence hearing involving her brother that was set for April 18, 2014. The court continued the hearing until after the other matters were heard.

On April 21, 2014, the hearing on the harassment allegations was held. The trial court issued a minute order granting a one-year injunction adopting the same conditions as the restraining order, except that the distance was reduced to 100 yards.

Perkins filed a timely notice of appeal from the order granting the injunction. In her notice of designation of record on appeal, Perkins checked the box stating she elected to proceed *without* a record of the oral proceedings in the superior court. The Judicial Council form used to designate the record on appeal warns appellants who make this election "that without a record of the oral proceedings in the superior court, the Court of Appeal will not be able to consider what was said during those proceedings in determining whether an error was made in the superior court proceedings."

## DISCUSSION

### I. BACKGROUND

#### A. Civil Harassment

It appears that the temporary restraining order and subsequent injunction were granted pursuant to Code of Civil Procedure section 527.6, which authorizes orders enjoining civil harassment. Pursuant to subdivision (a)(1) of that statute, “[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.”

An order after hearing may enjoin civil harassment only on proof by clear and convincing evidence. (Code Civ. Proc., § 527.6, subd. (d).) When a trial court makes findings of fact under the clear and convincing standard of proof, appellate courts apply the substantial evidence standard of review. (*Tomaselli v. Transamerica Ins. Co.* (1994) 25 Cal.App.4th 1269, 1287; *In re Henry V.* (2004) 119 Cal.App.4th 522, 529 [substantial evidence is the appropriate standard of review for determining whether sufficient evidence supports a finding of fact under the clear and convincing standard of proof].)

#### B. Appellant’s Burden

Here, Perkins claims two errors occurred. First, she contends the trial court violated her due process rights when it did not allow her to call witnesses. Second, Perkins claims the trial court’s findings are not supported by substantial evidence.

As a court of review, we are bound by the rule of appellate procedure that the order of the lower court is presumed correct and an appellant challenging that order must overcome the presumption by affirmatively demonstrating prejudicial error. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) An appellant—even a self-representing litigant—cannot carrying this burden unless he or she provides the appellate court with an adequate record of the lower court’s proceedings. (*Ballard v. Uribe* (1986) 41 Cal.3d

564, 573; *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247 [appellant representing self on appeal must follow rules of procedure].)

When the rules about the appellant's burden and the need for an adequate record are combined with the substantial evidence standard of review, it results in the corollary that "an appellant which contends that some particular finding is not supported must set forth in its brief a summary of the material evidence on that issue.... The appellant must state fully, with transcript references, the evidence that it claims to be insufficient to support the trial court's findings." (*Trailer Train Co. v. State Bd. of Equalization* (1986) 180 Cal.App.3d 565, 587-588.)

## II. DUE PROCESS CLAIM

Perkins contends that she "did not get the chance to finish with her defense as the court ruled before asking if [she] was finished."

The appellate record does not contain a reporter's transcript of the hearing held on the request for an injunction because Perkins elected not to request a transcript of those proceedings. Without a record of what procedures actually were implemented during the hearing and what the parties agreed to and contested, we are unable to determine what precisely the trial court did and whether those actions denied Perkins due process. In other words, Perkins's claim that she was not allowed to call witnesses is not corroborated by the record and the rules of appellate procedure do not authorize this court to accept an appellant's description of what happened as accurate unless that description is supported by citations to the record.

As a result of the inadequate record, Perkins has failed to carry her burden of establishing reversible error in connection with her due process claim. (See *Aguilar v. Avis Rent A Car System, Inc.* (1999) 21 Cal.4th 121, 132 (*Aguilar*) [failure to provide reporter's transcript resulted in an inadequate record and appellate court could not evaluate merits of appellant's contention; injunctive relief upheld]; *Gee v. American*

*Realty & Construction, Inc.* (2002) 99 Cal.App.4th 1412, 1416 [rejecting appeal for failure to provide reporter’s transcript of critical motion hearing].)

### III. SUBSTANTIAL EVIDENCE CLAIM

Generally, a trial court’s findings of fact are reviewed under the substantial evidence standard. (See *Smith v. Adventist Health System/West* (2010) 182 Cal.App.4th 729, 745 [substantial evidence standard applied to findings underlying issuance of preliminary injunction].) Under the substantial evidence standard, we must view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor. (*Brewer v. Murphy* (2008) 161 Cal.App.4th 928, 935.) The testimony of a single witnesses, even a party to the litigation, can constitute substantial evidence. (*In re Marriage of Mix* (1975) 14 Cal.3d 604, 614.)

The present case is similar to *Aguilar*, in which the California Supreme Court stated that the appellants had the burden of showing the challenged finding was not supported by substantial evidence and then stated:

“[Appellants] elected not to provide a reporter’s transcript of the trial proceedings. Accordingly, they have no basis upon which to argue that the evidence adduced at trial was insufficient to support the trial court’s finding that injunctive relief was necessary to prevent a continuation of [appellants’] unlawful conduct.” (*Aguilar, supra*, 21 Cal.4th at p. 132.)

Without a record of the testimony presented to the trial court, Perkins cannot carry her burden of showing that the evidence was insufficient to support the trial court’s findings. In short, an appellate court cannot determine the evidence was insufficient if it does not have a record of *all* of the evidence presented to the trial court.

Furthermore, even if a transcript had been presented and the transcript and other evidence showed, as Perkins claims, “that there are discrepancies in [plaintiff’s] story,” those discrepancies would not necessarily establish reversible error. Under applicable

law, we must resolve all conflicts (i.e., discrepancies) in plaintiff's favor and, as a result, the evidence still might have been sufficient to support the trial court's findings.

#### IV. MOOTNESS

The one-year injunction issued in this case would have expired in April 2015, over three months ago. As a result, it appears that this appeal is moot.

“If relief granted by the trial court is temporal, and if the relief granted expires before an appeal can be heard, then an appeal by the adverse party is moot.”

*(Environmental Charter High School v. Centinela Valley Union High School Dist. (2004) 122 Cal.App.4th 139, 144; see American Civil Liberties Union v. Board of Education (1961) 55 Cal.2d 167, 181-182.)* Therefore, the controversy relating to the one-year injunction appears to be moot because the record does not show the injunction was extended. (See *Covina U.H. School v. Interscholastic Fed. (1934) 136 Cal.App. 588, 589-590* [challenge to permanent injunction issued for specified school year was moot because school year had ended while appeal was pending].)

#### **DISPOSITION**

The order of April 21, 2014, granting the one-year injunction is affirmed.

The parties shall bear their own costs on appeal.