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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

SARA VAN HORN,

Plaintiff and Respondent,

v.

JENNIFER MORGAN,

Defendant and Appellant.

B233928

(Los Angeles County Super. Ct.
No. BS131209)

APPEAL from an order of the Superior Court of Los Angeles County, Reva Goetz, Judge. Affirmed.

The Law Office of Alda Shelton and Alda Shelton for Defendant and Appellant.

David C. Garrett for Plaintiff and Respondent.

Appellant Jennifer Morgan appeals from a portion of a protective order in favor of respondent Sara Van Horn in this elder abuse action. Morgan contends the portion of the order that restrains her from interfering with Van Horn's mail was an abuse of discretion because: 1) the trial court adjudicated the contractual rights of a third party; 2) there was no substantial evidence that Van Horn experienced mental suffering as a result of Morgan's interference with her mail; and 3) the trial court was not authorized to order Morgan to take affirmative action. We find that Morgan does not have standing to appeal the rights of a third party, there was substantial evidence of mental suffering to support the protective order, and the trial court acted within its discretion in ordering Morgan to stop interfering with the delivery of Van Horn's mail. Therefore, we affirm.

FACTS AND PROCEDURAL BACKGROUND

The Woman's Club of Hollywood owns property at 1749 North La Brea. The property consists of a main building located in the front of the property, a house, and a cottage. Van Horn has rented the house from the Club for approximately 15 years. The address of the house is 1751 North La Brea. However, the only address established with the post office for the purpose of mail delivery is 1749 North La Brea. Van Horn has always received her mail at the main building.

In 2010, Nina Van Tassell claimed to be the president of the Club and Morgan claimed to be the executive director and treasurer. In May 2010, Morgan began threatening to evict Van Horn. In the fall, an unlawful detainer action was filed against Van Horn, but the action was voluntarily dismissed one month later. In January 2011, the trial court granted a petition in Los Angeles Superior Court case No. BC446641 by certain members of the Club to place the Club in receivership. The trial court ordered the parties in that case to submit a list of names of people to be appointed receiver until an election could be held, which the receiver would oversee. Within 10 days, Van Tassell caused the Club to file for bankruptcy, which temporarily prevented the appointment of a receiver.

Morgan took Van Horn's keys to the main building and installed a locked mailbox. As a result, Van Horn could no longer access her mail. Several people have keys to the mailbox. When Van Horn asked for a key to the mailbox, she was told to get her own mailbox. However, the post office told Van Horn that there is no such address as 1751 North La Brea. The post office explained that the owner of the property needs to establish the address in order for Van Horn to get her mail delivered to a separate mailbox for that address. Van Horn explained the post office's requirements to Morgan, but Morgan refused to make arrangements with the post office to establish an address for a separate mailbox. An employee of the Club brings Van Horn's mail to the house at irregular times and leaves it on her porch. Van Horn missed payment on bills and had one of her utility services shut off as a result.

On April 5, 2011, Van Horn filed a request for protective orders against Morgan under Welfare and Institutions Code section 15657.01, pursuant to the Elder Abuse and Dependent Adult Civil Protection Act (Welf. & Inst. Code, §§ 15600-15601) (the Elder Abuse Protection Act). Temporary restraining orders were issued. Morgan and Van Tassell caused an unlawful detainer action to be filed and served on Van Horn in violation of the protective orders. An unknown man took photographs of the house from all angles. Van Horn filed a request for protective orders against Van Tassell as well.

A hearing was held on April 28, 2011. Van Horn was 69 years old at the time of the hearing. She testified about the attempts to force her to vacate the property. She is emotionally exhausted from her inability to get her mail, the constant threats of eviction for different reasons, refusal to take her rent checks, accusations made by Morgan to the Club that she had stolen property, and attempts to characterize her elderly dog as vicious. She is fearful of Morgan, because Morgan does not respect the legal process, threatens people to get her way, and will do anything to evict Van Horn. She is afraid that she will find the locks changed on her doors.

Van Tassell testified. She could not remember any details within the time frame of the bankruptcy filing a few months earlier. She had no memory for dates even a few days prior to the hearing. She and Morgan had hired Attorney Alda Shelton together.

Van Tassell testified that she had signed legal documents on her attorney's instructions without question, made decisions based on information from the attorney or Morgan, and allowed Morgan to make decisions concerning actions taken on the property, such as hiring a photographer to take pictures of Van Horn's house. Morgan testified that she had installed the locked mailbox based on the attorney's advice, due to concerns about the security of the Club's mail.

The trial court found Van Horn had been subjected to a pattern of harassment and intimidation. The court declined to issue any restraining orders against Van Tassell, because the court found she did what she was told to do. However, the court cautioned her to pay more attention to what she was doing. The court stated, "I'm not granting the orders, but I'm telling you it's very clear, based on what I heard, that you're not acting of your own and, as the president, you're the leader of the organization. I have some concerns, and I can tell by how you're smiling and nodding your head that you tend to agree with what the court has just said." Van Tassell agreed. The court advised her to make her own decisions.

The trial court granted the restraining orders against Morgan. In addition to other orders, the court ordered that Morgan "not in any way take or cause or otherwise to divert [Van Horn's mail]." The court entered a written order that day. Paragraph 13 of the order states: "Restrained person, or her employer, The Woman's Club of Hollywood, is to provide either a new mailbox or access to the mailbox or a key or combination to the locked mailbox to protected person not later than noon on [April 29, 2011]." Morgan filed a timely notice of appeal from the order.

DISCUSSION

Standard of Review

"We review the issuance of a protective order under the Elder Abuse Act for abuse of discretion, and we review the factual findings necessary to support the protective order

for substantial evidence. [Citation.]” (*Gdowski v. Gdowski* (2009) 175 Cal.App.4th 128, 135.)

Contractual Rights of the Club

Morgan contends that the protective order is an abuse of discretion, because it effectively adjudicated the Club’s contractual rights. We conclude that Morgan does not have standing to raise this issue.

A party has standing to appeal only if that party is “aggrieved.” (Code Civ. Proc., § 902.) “One is considered ‘aggrieved’ whose rights or interests are injuriously affected by the judgment [or order]. [Citations.]” (*County of Alameda v. Carleson* (1971) 5 Cal.3d 730, 737.) A party may not appeal based upon an alleged error that injuriously affected only nonappealing third parties. (*Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1128.) “[C]ontentions based on a lack of standing involve jurisdictional challenges and may be raised at any time in the proceeding. [Citations.]” (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 438-439.)

Morgan is not aggrieved by adjudication of a third party’s contractual obligations, and therefore, she does not have standing to appeal as to this issue.

Evidence of Emotional Distress

Morgan contends that there is no substantial evidence that her interference with Van Horn’s mail caused any mental suffering. We disagree.

Welfare and Institutions Code section 15657.03 allows an elder who has suffered certain types of abuse to seek protective orders. “Abuse of an elder” includes actions resulting in mental suffering. (Welf. & Inst. Code, § 15610.07.) “Mental suffering” is defined as “fear, agitation, confusion, severe depression, or other forms of serious emotional distress that is brought about by forms of intimidating behavior, threats, harassment, or by deceptive acts performed or false or misleading statements made with

malicious intent to agitate, confuse, frighten, or cause severe depression or serious emotional distress of the elder or dependent adult.” (Welf. & Inst. Code, § 15610.53.)

Van Horn testified that she suffered emotional distress as a result of Morgan’s campaign to evict her, including Morgan’s installation of the locked mailbox and her refusal to provide Van Horn with direct access to her mail. She was emotionally exhausted and fearful of the next action that Morgan would take against her. There was substantial evidence to support finding that Van Horn experienced mental suffering as a result of Morgan’s actions.

Character of Restraining Order

Morgan contends the order is a mandatory injunction compelling her to take certain action. We disagree.

“To determine whether an injunction is mandatory or prohibitory, we ‘examine the terms and effect of the injunction in order to discover its character. [Citation.]’ [Citation.] ‘The purpose of mandatory relief is to compel the performance of a substantive act or a change in the relative positions of the parties. [Citations.] By contrast, the prohibitive order seeks to restrain a party from a course of conduct or to halt a particular condition. [Citation.] The character of prohibitory injunctive relief, however, is not changed to mandatory in nature merely because it incidentally requires performance of an affirmative act. [Citation.]’ [Citation.]” (*People ex rel. Brown v. iMergent, Inc.* (2009) 170 Cal.App.4th 333, 342.)

In this case, the trial court entered an order to restrain Morgan from interfering with Van Horn’s receipt of her mail. The evidence showed that Morgan, of her own accord, installed a locked mailbox that interfered with Van Horn’s receipt of her mail. In order not to interfere with Van Horn’s mail delivery, Morgan will have to remove the locked mailbox and allow mail to be delivered in the manner it was previously, provide Van Horn with a key to the locked mailbox, or make arrangements with the post office to establish a separate mailbox for the delivery of Van Horn’s mail. The fact that an

affirmative act must be taken to restore the status quo does not change the character of the relief from a prohibitory injunction to one that's mandatory. The trial court's order recognizes Morgan's concern for the security of the mail by allowing her to continue using the locked mailbox. However, Morgan must cease to interfere with Van Horn's receipt of her mail. We find no abuse of discretion.

DISPOSITION

The order is affirmed. Respondent Sara Van Horn is awarded her costs on appeal.

KRIEGLER, J.

We concur:

TURNER, P. J.

ARMSTRONG, J.