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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

ESTA BERNSTEIN, Plaintiff and Appellant, v. OLIVIA BENAVIDES, Defendant and Respondent.	B262408 (Los Angeles County Super. Ct. No. BS153062)

APPEAL from an order of the Superior Court of the County of Los Angeles, Jeffrey Winikow, Judge. Affirmed.

Esta Bernstein, in propria persona, for Plaintiff and Appellant.

No appearance for Defendant and Respondent.

INTRODUCTION

Plaintiff and appellant Esta Bernstein appeals from the trial court's order denying her request for civil harassment restraining orders (request) pursuant to Code of Civil Procedure[1] section 527.6.[2] Plaintiff contends that the trial court erred because the alleged defamatory statements made by defendant and respondent Olivia Benavides were not protected speech that served a legitimate purpose. We affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff filed a request for civil harassment restraining orders (request) pursuant to section 527.6. Plaintiff stated in the request, under penalty of perjury, that from December 2014 and January 2015, "Harassment has taken place in public on Facebook pages with hundreds of witnesses, via private message (Facebook) during which my sister was present, and attempts were made to harass me through my friends." Plaintiff also stated in her request that defendant "posted multiple defamatory messages on Facebook, in public and in private messages consistently stating her biggest goal is 'to take her [me] down' and will not stop until she does. She has contacted my sister (with whom she is not acquainted) and made references to viewing pictures of my brother for no reason other than to let me know she's watching me and those I know. She has threatened (in public via Facebook) to videotape me and my actions without my

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[1] All statutory citations are to the Code of Civil Procedure unless otherwise noted.

[2] A section 527.6 order is an appealable order. (§ 904.1, subd. (a)(6) [An appeal may be taken from an order refusing to grant an injunction].) Plaintiff's notice of appeal did not state that she was appealing from a section 527.6 order; plaintiff checked the box that she was appealing from a "[j]udgment after court trial." The record on appeal does not disclose that a judgment was issued. Our Supreme Court has stated that, "'[I]t is, and has been, the law of this state that notices of appeal are to be liberally construed so as to protect the right of appeal if it is reasonably clear what [the] appellant was trying to appeal from, and where the respondent could not possibly have been misled or prejudiced.' [Citations.]" (*In re Joshua S.* (2007) 41 Cal.4th 261, 272.) The notice of appeal is sufficient to appeal the section 527.6 order.

permission, which would involve following me to do so. She has sent me text messages saying she hopes I burn in hell." Plaintiff attached to her request 60 pages of what she characterized as "Facebook Screenshots" and Facebook "e-mails."

Plaintiff sought, inter alia, an order that defendant not harass, intimidate, stalk, threaten, disturb the peace of, or contact plaintiff, and not to "link to [plaintiff's] name or the name of [plaintiff's] business in social media." Plaintiff also requested an order that defendant "stay at least 100 yards away from" plaintiff, and her home, vehicle, workplace, and any location where plaintiff is involved in "horse rescue operations."

Plaintiff was represented by counsel at the hearing on the request. The trial court's minute order provides that plaintiff and defendant were "sworn to testify," but the record on appeal does not state that either of them testified at the hearing.

Plaintiff provided a settled statement from the trial court, pursuant to California Rules of Court, rule 8.137, that states, "The hearing in this matter consisted of live testimony and points and authorities submitted by the parties and by interested party Susan Klausner. The Court reviewed all written documents and evidence, and heard the live testimony. The live testimony consisted of three witnesses. [¶] Kristi Sindt-Baker testified that she witnessed all of the cyber posts about which Plaintiff complained, and confirmed that she read them over the internet. Ms. Sindt-Baker also expressed a belief that Defendants [*sic*] w[as] monitoring her own Facebook account. [¶] Barbara Johnson testified that Defendant posted false and defamatory matters about Plaintiff, including accusations which were untrue. Ms. Johnson attested to her personal knowledge that the Defendant's postings were untrue. [¶] Daniel Klausner testified as to his belief that Defendant was monitoring his own activities, and attempted to interfere with his attempts to place his horses at Plaintiffs sanctuary. Mr. Klausner also submitted an extensive declaration detailing all of his factual assertions about Defendant and about why he believed a protective order was necessary."

The trial court denied plaintiff's request, characterized by the trial court as a "petition for injunction prohibiting harassment." The trial court's February 10, 2015, minute order states that plaintiff's "exhibits 1 (transcription of text from [defendant]); 2

(copy of facebook post); and 3 (copy of facebook posts) [were] each admitted in evidence. [¶] . . . [¶] All exhibits shall be discarded by order of the Court with no objection from the parties once the Court issues its ruling." The trial court's February 11, 2015, minute order states, "As ordered on February 10, 2015, all exhibits are ordered discarded forthwith."

The settled statement states, "After reviewing the documentary evidence, and considering the live testimony, the Court ruled that Plaintiff failed to satisfy her burden of proving by preponderance of the evidence, let alone by clear and convincing evidence, that Defendant posed any type of credible threat of violence against Plaintiff or anyone else. While Defendant did engage in a willful course of conduct which seriously alarmed or annoyed Plaintiff, the Court found that this course of conduct served a legitimate purpose to the extent it voiced a good faith belief that Plaintiff was engaged in wrong doing, and that Plaintiff was engaged in activities in which others in the general public should be aware. The Court was not in a position to evaluate whether the allegations against Plaintiff were actually true, but assumed for the sake of this hearing that the allegations were false. Plaintiff has an adequate remedy at law to the extent she can plead and prove defamation for false and misleading allegations posted on the internet through social media. Plaintiff's subjective feelings of harassment and subjective fears of harm were insufficient to justify the injunctive relief and prior restraint on Defendant's speech given the legitimate purpose served by Defendant's speech and given the lack of objective evidence showing an imminent threat of bodily harm. [¶] The Court admonished Defendant to not continue with her current conduct, and that it would consider an injunction in the future if Plaintiff could show irreparable harm. The Court denied Plaintiff's request for a permanent injunction."

DISCUSSION

Plaintiff contends that the trial court erred in denying her injunction request. We disagree.

A. Standard of Review

Generally, a superior court's ruling on a request for a restraining order or injunction is reviewed for an abuse of discretion. (*Cohen v. Board of Supervisors* (1985) 40 Cal.3d 277, 286; *Biosense Webster, Inc. v. Superior Court* (2006) 135 Cal.App.4th 827, 834.) The exercise of that discretion will not be disturbed on appeal absent a showing that it has been abused. (*IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 69; *Continental Baking Co. v. Katz* (1968) 68 Cal.2d 512, 527.) The party challenging the trial court's order has the burden of making a clear showing of such an abuse. (*Biosense Webster, Inc. v. Superior Court, supra,* 135 Cal.App.4th at p. 834.)

To the extent there are disputed factual issues, we review the trial court's findings under the substantial evidence standard, resolving all factual conflicts and questions of credibility in the respondent's favor and drawing all legitimate and reasonable inferences to uphold the judgment, if it is supported by evidence that is reasonable, credible and of solid value. (*Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 904, 912; *Schild v. Rubin* (1991) 232 Cal.App.3d 755, 762 ["whether substantial evidence supports the requisite elements of willful harassment, as defined in Code of Civil Procedure section 527.6, . . ."].)

B. Applicable Law

"Section 527.6 was enacted 'to protect the individual's right to pursue safety, happiness and privacy as guaranteed by the California Constitution.' [Citations.] It does so by providing expedited injunctive relief to victims of harassment. [Citation.]" (*Brekke v. Wills* (2005) 125 Cal.App.4th 1400, 1412.) Harassment is defined as, inter alia, "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).) "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." (*Ibid*.) To serve a legitimate purpose, the conduct must be done to meet a legitimate need. (*Byers v. Cathcart* (1997) 57 Cal.App.4th 805, 812.) The statute requires "clear and convincing evidence that unlawful harassment exists." (§ 527.6, subd. (i).)

Course of conduct is defined as "a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose . . . ." (§ 527.6, subd. (b)(1).) "Constitutionally protected activity is not included within the meaning of 'course of conduct.'" (*Id*.)

"'"[A]n injunction[3] is an unusual or extraordinary equitable remedy which will not be granted if the remedy at law (usually damages) will adequately compensate the injured plaintiff."'" (*Department of Fish & Game v. Anderson-Cottonwood Irrigation Dist.* (1992) 8 Cal.App.4th 1554, 1565 [11 Cal.Rptr.2d 222].)" (*Lofton v. Wells Fargo Home Mortgage* (2014) 230 Cal.App.4th 1050, 1067; § 526, subds. (a) (4) and (5).)

C. Analysis

Plaintiff failed to provide most of the relevant papers as part of the record on appeal. We asked plaintiff to provide us with a letter brief stating the effect of her failure to do so.

In plaintiff's letter brief, citing *Sweet v. Markwart* (1953) 115 Cal.App.2d 735, she contends that we should not "strike and dismiss" her "Settled Statement" for failure to comply with the procedural requirements because the settled statement is not fraudulent or a sham. We do not seek to strike and dismiss her "Settled Statement." Our concern is the sufficiency of the statement and the adequacy of the record.

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[3] "An injunction is [an] order requiring a person to refrain from a particular act." (§ 525.)

We begin with the presumption the judgment is correct. (*Osgood v. Landon* (2005) 127 Cal.App.4th 425, 435.) "All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.' [Citations.]" (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.)

"[T]o be successful on appeal, an appellant must be able to affirmatively demonstrate error on the record before the court." (*In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 822.) The appellant bears the burden to provide an adequate record for the appellate court to evaluate a claim of error. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295-1296; *Ritschel v. City of Fountain Valley* (2006) 137 Cal.App.4th 107, 122; *Rancho Santa Fe Assn. v. Dolan-King* (2004) 115 Cal.App.4th 28, 46.)

Although plaintiff represents herself on appeal, we note that "[p]ro. per. litigants are held to the same standards as attorneys. (See *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 985 [35 Cal.Rptr.2d 669, 884 P.2d 126] ['A doctrine generally requiring or permitting exceptional treatment of parties who represent themselves would lead to a quagmire in the trial courts, and would be unfair to the other parties to litigation.'] . . .)." (*Kobayashi v. Superior Court* (2009) 175 Cal.App.4th 536, 543.)

Plaintiff's status as a propria persona litigant does not exempt her from the rules of appellate procedure or lessen her burden on appeal. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247.) We are required to treat propria persona litigants as any other party, affording them "'the same, but no greater consideration than other litigants and attorneys.'" (*Id*. at p. 1247.) The judgment is presumed correct on appeal, and it is the burden of the party challenging it, whether represented by counsel or in propria persona, to "affirmatively demonstrate prejudicial error." (*People v. Garza* (2005) 35 Cal.4th 866, 881.)

Plaintiff's settled statement states that in ruling on plaintiff's request, the trial court reviewed all of the evidence. The February 10, 2015, minute order states that the

trial court admitted into evidence plaintiff's "exhibits 1 (transcription of text from [defendant]); 2 (copy of facebook post); and 3 (copy of facebook posts)," but that they shall "be discarded by order of the Court with no objection from the parties once the Court issues its ruling." That minute order states that plaintiff was represented by counsel. It appears that, according to the minute order, neither plaintiff nor her counsel objected to the exhibits being discarded.

The trial court's February 11, 2015, minute order, states that the exhibits are ordered discarded, as ordered the day before. The February 11, 2015, minute order contains a certificate of mailing stating that it was served on plaintiff's counsel on February 11, 2015, "by depositing it in the United States mail at the courthouse . . . ."[4]

The record on appeal before us does not include the exhibits admitted into evidence. We obtained the trial court's file and it did not contain the exhibits.

Without a complete record, we do not have the necessary information to conduct a meaningful and fair appellate review. Where the party fails to furnish an adequate record of the challenged proceedings, her claim on appeal must be resolved against her. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140-1141; *Rancho Santa Fe Assn. v. Dolan-King, supra,* 115 Cal.App.4th at p. 46; *Hernandez v. California Hospital Medical Center* (2000) 78 Cal.App.4th 498, 502.)

Upon our request, plaintiff provided us with copies of documents she contends were the exhibits admitted into evidence at the hearing. We, of course, do not know that those documents were, in fact, the exhibits that were admitted into evidence. The documents however appear to fall within the trial court's general description of the exhibits stated in the February 10, 2015, minute order.

Even if the documents provided to us by plaintiff were the exhibits introduced into evidence at the hearing, plaintiff has failed to establish prejudicial error. The trial court

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[4] Plaintiff provided us with an e-mail that she contends she received from her counsel, dated March 11, 2015, stating that the February 11, 2015, minute order "just came in the mail today."

denied plaintiff's request for an injunction because, inter alia, she had an adequate remedy at law. Plaintiff does not challenge the trial court's ruling on that basis and therefore has failed to establish error.

DISPOSITION

The order is affirmed. The parties are to bear their own costs on appeal.

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KUMAR, J.*

We concur:

TURNER, P. J.

BAKER, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.