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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

WENDI COLE,

Plaintiff and Appellant,

v.

JUREKA HALL,

Defendant and Respondent.

B240420

(Los Angeles County
Super. Ct. No. YS023386)

APPEAL from an order of the Superior Court of Los Angeles County,
Irving Shimer, Judge. Affirmed in part and reversed in part.

Sheppard, Mullin, Richter & Hampton, Moe Keshavarzi and Heather
Zinkiewicz for Plaintiff and Appellant.

No appearance for Defendant and Respondent.

Wendi Cole appeals from the issuance of a mutual temporary restraining order issued against her and respondent Jureka Hall. We reverse in part and affirm in part.

FACTUAL & PROCEDURAL BACKGROUND

Cole and Hall are neighbors in the same apartment building in Inglewood. On February 16, 2012, Cole requested a civil harassment restraining order against Hall pursuant to Code of Civil Procedure section 527.6. Cole alleged that Hall was banging on her door and that Hall threatened to harm her in the hallway or by yelling through their shared wall. Cole was afraid that Hall would block Cole from entering or exiting her apartment and act in a physically violent manner.

At a hearing held on March 13, 2012, the parties were allowed to testify. Although Cole refers to the reporter's transcript of the hearing, no reporter's transcript was filed on appeal.

At the hearing, Hall submitted a declaration dated March 12, 2012.¹ The declaration stated that Cole would not stop asking to visit Hall and would not accept Hall's declinations. Cole offered her something that looked like several dog food patties. When Cole had guests over, they would gather in front of respondent's door and Cole would look into Hall's apartment. Hall complained about a scraping sound on the wall she shared with Cole which occurred after midnight, and that Cole tried to interrupt when Hall spoke to the apartment manager about the sound. She also alleged Cole had frequently called the police to come to Hall's apartment with unwarranted complaints. She alleged that Cole followed her into common areas of the building and stared at her.

The court then issued a mutual restraining order barring them from talking to, harassing, or intimidating one another, effective for three years.

¹ The declaration does not have a file stamp.

Cole contends that the court abused its discretion when it granted the restraining order against her because it was not supported by a cross-complaint filed by Hall, and there was insufficient evidence to support the order.

Hall did not file a respondent's brief.

DISCUSSION

Code of Civil Procedure section 527.6 provides in pertinent part: “(a)(1) 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. [¶] (b)(3) ‘Harassment’ is 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.”

After a party has requested an injunction, the opposing party may file a response and deliver it to the requesting party no later than 48 hours before the hearing. (Code Civ. Proc., § 527.6, subd. (d); Cal. Rules of Court, rule 3.1152(d).) The court must hold a hearing, receive relevant testimony, and must issue the injunction if it finds clear and convincing proof of harassment. (Code Civ. Proc., § 527.6, subd. (i); *Nora v. Kaddo* (2004) 116 Cal.App.4th 1026, 1028.)

We review the issuance of an injunction for abuse of discretion. (*Kobey v. Morton* (1991) 228 Cal.App.3d 1055, 1060.)

In order to issue a mutual restraining order against the parties under Code of Civil Procedure section 527.6, the formality of a cross-complaint is required to provide due process. (*Nora v. Kaddo, supra*, 116 Cal.App.4th at p. 1029; *Kobey, supra*, 228 Cal.App.3d at p. 1060.)

Since Hall did not file a cross-complaint and did not even submit a response until the date of the hearing, Cole had neither adequate notice nor an opportunity to defend

herself against Hall's allegations. The trial court abused its discretion in granting a mutual injunction against Cole. (*Nora v. Kaddo, supra*, 116 Cal.App.4th at p. 1029; *Kobey v. Morton, supra*, 228 Cal.App.3d at p. 1060.)

DISPOSITION

The portion of the order granting a harassment injunction against Cole is reversed. In all other respects, the order is affirmed. Appellant is awarded costs on appeal.

WOODS, J.

We concur:

PERLUSS, P. J.

ZELON, J.