Filed 11/12/19 Kotora v. Ames CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

SUSAN KOTORA, Plaintiff and Respondent, v. ROBERT H. AMES, Defendant and Appellant.	B265706, B270397 (Los Angeles County Super. Ct. No. GS013979)

APPEAL from an order of the Superior Court of Los Angeles County, Mary Thornton House, Judge. Affirmed.

Robert Henry Ames, in pro. per., for Defendant and Appellant.

Meyer, Olson, Lowy & Meyers, Craig S. Pedersen, for Plaintiff and Respondent.

In 2012, petitioner and respondent Susan Kotora (Kotora) obtained a civil harassment restraining order against defendant and appellant Robert Henry Ames (Ames) after a lengthy contested hearing. Three years later, Kotora sought to renew the restraining order. She served notice of the renewal proceedings by mail to Ames's P.O. Box, a method of service the trial court had mandated pursuant to agreement of the parties. Ames did not appear at the hearing on the request to renew, and the court issued a renewed restraining order. Months later, Ames noticed an appeal; filed a motion to vacate the restraining order; and filed a motion to quash service, which argued he had no notice of the restraining order renewal hearing. The trial court denied these motions and Ames noticed another appeal. We consider the correctness of the various challenged rulings.

I. BACKGROUND

A. The Harassing Behavior, as Established at a 2012 Restraining Order Hearing[1]

Kotora met Ames during the summer of 2005. Ames had become acquainted with Kotora's son Dexton Kotora (Dexton) and her ex-husband Dan Kotora (Dan), and Ames had been helping Dexton address traffic tickets he previously incurred. Kotora became curious about the 51-year-old Ames's friendship with her then-teenaged son Dexton.

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[1] The substantive propriety of this order is not at issue in this appeal. We base this statement of facts on the evidence presented at the hearing that supports the trial court's ruling on the original request for a restraining order.

Kotora invited Ames to accompany her and Dexton to the Hollywood Bowl because she wanted to meet him and thank him for helping Dexton with the traffic tickets. After that initial outing, Kotora had a handful of other in-person encounters with Ames, including at least one in which Ames visited Kotora's shop at the Pasadena Antique Center. Kotora eventually agreed to have lunch with Ames in March 2006.

During that lunch, Ames gave Kotora gifts and told her he was in love with her. Kotora informed Ames she did not share his feelings. The conversation eventually turned to a recent serious illness Kotora had suffered. Kotora believed the illness stemmed from food poisoning she suffered after eating at a restaurant. Ames mentioned he worked for or with an attorney and asked if she was interested in seeking a settlement. Kotora said she was not.

In the days that followed, Ames contacted the owner of the restaurant from which Kotora suspected she'd gotten food poisoning and asked for a copy of Kotora's receipt for the meal. He called Kotora's mother, who lived outside of California, and spoke to her for approximately four hours. He also contacted Kotora's former in-laws, who lived in Pennsylvania at the time, and her former sister-in-law.

Over the next few years, Ames made further efforts to insert himself in Kotora's life. In 2007, Kotora's mother received two or three packages purportedly from Kotora that she had not in fact sent. Her former mother-in-law similarly received a gift that listed Kotora's address as the return address even though Kotora had not sent the package. Ames also continued to call Kotora's mother. The same year, Ames traveled to Texas and made contact with Kotora's brother, her brother's girlfriend,

Korbi Christenson (Christenson), and her nephew. During a conversation with Christenson, Ames graphically described Kotora's alleged sexual preferences. Kotora also received numerous calls from a blocked number, but when she picked up the phone, the caller would not say anything and would eventually hang up.

During the summer of 2007, Dexton enlisted in the Navy. At some point during his service, Ames spoke to Dexton's commanding officer about Dexton. Ames also spoke to the Naval Criminal Investigative Service regarding Dexton and stated, among other things, that Dan had made efforts to place Dexton in the Navy in order to prevent him from testifying to a crime in which Dexton was the victim.

In 2008, Ames sent Kotora a birthday card to her home address that listed her business address as the return address. He signed the card "R" but did not include his full name or his return address. He also established an honorarium in her name with the arts department of her high school in Ohio.

The following year, Ames asked an employee from a local shipping company to deliver a package to Kotora at her place of business. The return address on the package was Kotora's home address. Kotora rejected the package. Ames subsequently began calling the Pasadena Antique Center. He spoke to three or four individuals who worked in the building, including Ron Frank (Frank), the son of the owner of the property. Ames encouraged Frank to "get rid" of Kotora.

Then, in the spring of 2010, Kotora and the co-owner of her home listed it for sale. Ames called or otherwise contacted two different realtors who represented Kotora, as well as related brokers. During a call with one of Kotora's realtors, Ames

intimated that he represented Kotora and informed the realtor that Kotora was the sole owner of the home. The property went into escrow in late 2010. Ames contacted the buyer's agent and accused him of being involved in a fraudulent transaction in which the seller was not really on the title to the property.

Then and thereafter, Kotora continued receiving calls from a blocked number. One Sunday in February 2011 while Kotora was at her home, she looked out the window and saw Ames's truck driving slowly past. She was at home the following week when she noticed Ames's truck driving slowly down the street again. Kotora got in her car and followed him for a period of time. Following this incident, Kotora attempted to obtain a restraining order, but she was unable to serve the documents on Ames because she could not locate him.

One evening in March 2011, Kotora was driving home from work when she saw Ames driving behind her. Kotora did not want him to follow her, so she slowed down until he was forced to pass her. Kotora then began following him. She tried to keep pace, but he sped up and began driving erratically. Ames reported Kotora to the Department of Motor Vehicles (DMV), which ultimately resulted in Kotora receiving a notice from the DMV's Safety Bureau stating her driver's license was being re-examined.

In May of that year, Kotora received a package in the mail from Ames, containing a framed letter with a marketing paragraph Kotora had posted on the internet and a description of her business that Ames had written. He also sent a copy to Kotora's mother. The package did not have a return address.

In November 2011, a business run by Kotora and a partner, Shauna Novotny (Novotny), received a negative Yelp review

written by a "Robert S." Among other things, the reviewer wrote that hiring the company had been a "'terrible experience'" and that he believed the estate sale they handled had been run dishonestly. Novotny reviewed the company records and could not find a client by the name of "Robert S." Over the next four months, additional negative reviews authored by five or six usernames appeared on various websites. Though the usernames initially only reviewed Novotny and Kotora's joint business and the Pasadena Antique Center, they later reviewed a slew of other businesses that were somehow related to Kotora or her family, including the restaurant at which Kotora had lunch with Ames in 2006.

In 2012, Dexton was arrested in Memphis, Tennessee. Kotora learned of the arrest from Dan the morning after it occurred. Later the same day, Ames called Kotora from a blocked number. He stated he was calling to let her know Dexton had been arrested, was in Shelby County Jail, and was being arraigned the next morning. He also provided her with the bail amount and the case number. Kotora informed Ames the family was handling the situation and told him to stay out of their business. Ames cursed at her before hanging up the phone.

Around the same time, Novotny discovered a review of the business that stated Dexton had been arrested. The review included his booking photo, identified him as Kotora's son, and stated people need to be aware that Dexton helps with estate sales run by the business. Novotny contacted Google, which began flagging the reviews that discussed Dexton and removing them. The removed reviews were later re-posted. Negative reviews ceased appearing toward the end of February 2012.

At the conclusion of the contested evidentiary hearing in which evidence of the aforementioned events was adduced, the trial court granted Kotora's request for a civil harassment restraining order. The court found, with respect to Kotora's efforts to sell her home, that Ames "did everything in [his] power to foil that real estate sale." The court characterized Ames's communications with Dexton's "military advisers" and the real estate agents involved in the sale of Kotora's home as "malicious." The court further opined that sending a birthday card or package without a return address involves a "creep factor that is huge," and Ames "should know that that would disturb people." The court characterized Ames's overall behavior as "cyber terrorism."

The restraining order the court issued protected Kotora, her son, and any member of her family within the third degree of consanguinity. Among other things, the restraining order provided that if Ames sought to submit information or complaints about Kotora or any other protected parties to any administrative or regulatory agencies or departments, he would be required to both provide the agency or department with a copy of the restraining order and notify the court and counsel for Kotora of his actions. The order was set to expire on May 11, 2015.

As the court was issuing the order, counsel for Kotora raised a final issue on the record, resulting in the following colloquy:

"[Counsel]: Your Honor, I have one other question. Is there any way that if in the future we need to modify these orders, or take any further action. As the court is aware, physical service has been an issue in this case. Can Mr. Ames be ordered to provide, at least to the court, or keep the court aware of an address where he can be physically served, or can we have an

extension, you know, some sort of an extension if he keeps the post office box or any change in post office box, I would like to be sure that even looking three years from now when it's time to come to renewal we'll have a way to get this individual served.

The Court: Mr. Ames, how do you want to handle this? I am glad to respect your privacy regarding your address, but there needs to be a way of getting ahold of you.

Mr. Ames: Yes, Your Honor, but that's 3 years down the road.

The Court: Could be a day down the road, I have no idea.

Mr. Ames: Then the proof of service, your honor, may continue to come to the P.O. Box."

The trial court added a paragraph to the restraining order that provides, "Respondent shall accept service of all documents at his current post office box. If that changes during the period of this order, respondent shall send written notification to petitioner's counsel."

B. Renewal Proceedings

1. Kotora's request for renewal

On April 15, 2015, approximately one month before the restraining order was set to expire, Kotora filed a form CH-700 Request to Renew Restraining Order, which sought to have the order renewed for an additional five years. Kotora attached a declaration to the request that detailed the background of how and why the restraining order was granted and summarized Ames's efforts to appeal the issuance of the restraining order. In her declaration, Kotora stated she was concerned Ames was using the appellate process as a means to ensure she was still aware of his presence and to send an indirect message that he

remained invested in making contact or getting her attention however possible. The declaration further averred Kotora's fear of Ames had increased as a result, and she was concerned about what he would do if the restraining order were not renewed.

Kotora filed a proof of service reflecting the request to renew the restraining order and accompanying documents, including a "[CH-710] Notice of Hearing to Renew Restraining Order (setting on May 7, 2015),"[2] were served by mail to Ames's post office box on April 15, 2015. The proof of service notes the method of service was chosen pursuant to the court's directions for future service included in the existing restraining order.

The next month, Kotora filed another proof of service, including a "Notice of Hearing to Renew Restraining Order [CH-710] filed May 1, 2015," a "Declaration of Craig S. Pedersen, Esq. re: *Ex Parte* Notice filed May 1, 2015,"[3] and a "[Proposed] Order Renewing Civil Harassment Restraining Order" served on May 15, 2015. The proof of service indicated the documents had been served by mail on Ames's post office box pursuant to the terms of the existing restraining order.

The court held a hearing on the request to renew the restraining order on May 28, 2015. Ames did not appear. After hearing argument from Kotora, the trial court renewed the restraining order for five years. The court found Ames's behavior was "cyber-terrorism and psycho-terrorism of an individual," "sophisticated," and "intelligently planned and plotted." The

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[2] Ames has not included the notice of hearing in the appellate record.

[3] Ames has not included the notice of hearing or the declaration in the record.

court further remarked it was a case it had not seen the likes of in 20 years on the bench, aside from criminal proceedings, and that "malicious" might even be a kind description of the behavior. As renewed, the restraining order would expire on May 11, 2020.

2. Ames's subsequent filings

Roughly two months after the renewal of the restraining order, in late July of 2015, Ames filed a notice of appeal. The following day, he filed a peremptory challenge against the assigned trial judge who issued the order pursuant to Code of Civil Procedure section 170.6.[4] The judge denied the peremptory challenge as untimely.

Later in 2015, Ames filed a motion to quash service and a motion to vacate the "judgment." The motion to quash argued service of the restraining order renewal request should be quashed because Ames had not been personally served. Ames asserted he had not received the documents mailed to him until mid-June 2015 because he was experiencing medical issues. Ames's separate motion to vacate argued default judgment had been entered against Ames without proper personal service and, as a result, the court lacked personal jurisdiction over him.

The day before the hearing on these motions, Ames moved to disqualify the assigned judge because her "findings, and rulings reveal a[n] *extremely* biased and prejudiced mindset." The trial court issued an order striking the motion to disqualify on the ground that the statement was based on Ames's opinion that the court had ruled incorrectly and unfairly, and

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[4] Undesignated statutory references that follow are to the Code of Civil Procedure.

demonstrated no legal grounds for disqualification for cause. The trial court's order reminded Ames that a ruling on disqualification is not appealable and can only be reviewed via writ proceedings.

The court held a hearing on the motions to quash and vacate the following day and denied both motions. The court found there was proper proof of service of the request to renew the restraining order because the renewal proceedings were not a new case and Ames had been served via a method of service to which he had agreed when the trial court issued the original restraining order. As to the motion to vacate, the court found there were no substantive or procedural grounds for vacating the order. The court also sanctioned Ames $2,500 for filing a frivolous motion to quash.

Ames subsequently filed a notice of appeal indicating he was appealing from the court's order renewing the restraining order and the orders on the "Motion to vacate judgment and squash service C.C.P. Sec.473.5 & C.C.P. Sec.473(d)."

II. DISCUSSION[5]

Neither of the two appeals before us has merit. Ames's briefs in his first-noticed appeal argue the trial court erred in ruling on motions that had not yet been filed when Ames noticed

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[5] Kotora has not filed a respondent's brief. That does not constitute a default, i.e., the appealed order is not automatically reversed. (*In re Bryce C.* (1995) 12 Cal.4th 226, 232.) Rather, we consider the appellant's brief, independently examine the record on appeal, and reverse only if prejudicial error is found. (*Id.* at p. 233; *Kennedy v. Eldridge* (2011) 201 Cal.App.4th 1197, 1203; see also Cal. Rules of Court, rule 8.220(a)(2).)

the appeal. We thus dismiss that appeal as premature or, alternatively, abandoned. Ames's second appeal focuses on his efforts to disqualify the trial court judge based on allegations of bias. But statutory claims that a trial court judge should have been disqualified, however, are reviewable only by seeking a writ of mandate. Ames's disqualification contentions cannot proceed in this appeal.

We are accordingly left with only two arguably viable appellate contentions: (1) the trial court lacked jurisdiction to issue the renewed restraining order and any subsequent orders because the original restraining order expired before the renewal hearing, and (2) the trial court erred in denying Ames's motions to vacate and quash because service of the request to renew the restraining order was defective. The first contention fails because the completion and filing of a notice of hearing for a request to renew a restraining order extends the term of the original restraining order until the completion of the renewal hearing. The second contention fails because Ames had previously stipulated, and the trial court previously ordered, that service by mail on his post office box would constitute proper service.

A. Ames's Motion to Augment the Record on Appeal

Ames filed a motion to augment the record on appeal seeking to add additional copies of Kotora's Request to Renew Restraining Order (Form CH-700) and Order Renewing Restraining Order (Form CH-730) to the record. Both documents are described in pertinent part as being typed, unsigned, undated, and non-filed. Documents neither filed nor lodged with the trial court ordinarily cannot be included as part of the record

on appeal. (See *Doers v. Golden Gate Bridge, Highway & Transp. Dist.* (1979) 23 Cal.3d 180, 184, fn. 1.) Because there is no indication the documents Ames apparently wants to have added to the record were ever filed in the trial court, we deny the motion. This denial has no material effect on Ames's appeal, however, because an apparently identical copy of form CH-730 and a substantially identical (albeit filed-stamped copy) of form CH-700 are already in the appellate record.

B. Appeal No. B265706

The notice of appeal filed in B265706, which was filed in July 2015, states Ames appeals from a "[j]udgment after court trial" entered on May 28, 2015. The only order issued on that date, and thus the only order that could be the subject of the notice of appeal, was the restraining order renewal. Ames's briefing on appeal, however, does not challenge the renewal. Rather, as demonstrated by Ames's opening brief and his letter brief filed in November 2017,[6] the appeal concerns matters that transpired after the court issued the renewed restraining order—namely, the court's denial of Ames's motions to vacate and quash. Because Ames makes no argument on appeal challenging the renewal, he abandoned any challenge to the renewal itself. (*Pfeifer v. Countrywide Home Loans, Inc.* (2012) 211 Cal.App.4th 1250, 1282 [issues not raised in brief are deemed waived or abandoned].)

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[6] Ames filed this letter brief in response to our order asking him to "brief the issue of how the appeals in case numbers B265706 and B270397 differ in any material respect such that they should be treated separately for purposes of appeal."

Nor does the notice of appeal in B265706 validly appeal from the trial court's denial of the motion to vacate or the motion to quash. An appeal from an order is untimely if made before a trial court has at least announced its intended ruling. (E.g., *Silver v. Pacific American Fish Co., Inc.* (2010) 190 Cal.App.4th 688, 691; *First American Title Co. v. Mirzaian* (2003) 108 Cal.App.4th 956, 960.) Ames had not even filed his motions to vacate and quash when he filed the notice of appeal in B265706, and the trial court certainly had not announced any intended ruling. The notice was thus untimely as to the orders denying those motions. We accordingly dismiss the appeal in B265706.

C. Appeal No. B270397

1. Motion to disqualify

Ames's principal contention in the B270397 appeal is that the trial court erred by denying Ames's motion to disqualify, arguing the assigned judge should have disqualified herself under section 170.1 because any reasonable person would believe the judge was biased and prejudiced. However, "[t]he determination of the question of the disqualification of a judge is not an appealable order and may be reviewed only by a writ of mandate from the appropriate court of appeal sought only by the parties to the proceeding." (§ 170.3, subd. (d).) Our Supreme Court has concluded "[s]ection 170.3(d) forecloses appeal of a claim that a *statutory* motion for disqualification authorized by section 170.1 was erroneously denied . . . ." (*People v. Brown* (1993) 6 Cal.4th 322, 334.) Ames did not file a writ petition, even after the court order denying his motion to disqualify stated such orders may only be reviewed by writ of mandate. His contentions

regarding the trial judge's disqualification are not properly raised in this appeal and we do not consider them.

2. The trial court correctly denied Ames's post-renewal motions

A civil harassment restraining order issued under section 527.6 may have a duration of not more than five years. (§ 527.6, subd. (j)(1).) However, upon a party's request, the order may be renewed for up to another five years without a showing of any further harassment since the issuance of the original order. (§ 527.6, subd. (j)(1).) Renewal, however, is not automatic. (*Cooper v. Bettinger* (2015) 242 Cal.App.4th 77, 89.) Instead, a court may renew a restraining order under section 527.6 where there is "a reasonable probability that the defendant's wrongful acts would be repeated in the future." (*Id.* at p. 90.) "In deciding to renew a restraining order under section 527.6, the trial court may rely solely on the record in the original case." (*Ibid.*)

The trial court did not lack jurisdiction to renew the restraining order by holding a hearing too late. The original restraining order was set to expire on May 11, 2015. Pursuant to section 527.6, subdivision (j)(1), Kotora was permitted to request the renewal at "any time within the three months before the order expires." (§ 527.6, subd. (j)(1).) She filed her request for renewal on April 15, 2015, nearly a month before the order was set to expire. Though the renewed order was not issued until May 28, 2015, that does not mean the restraining order lapsed in the interim. To the contrary, the mandatory "Notice of Hearing to Renew Restraining Order" form, which requires the court to fill in the hearing date, time, and location, and which must be signed by the court, provides "[t]he current restraining order stays in

effect until the end of the hearing" on the renewal request. (Cal. Judicial Council Form CH-710.)

The record on appeal does not contain a copy of the Notice of Hearing because Ames did not request it be included in the appellate record. In the absence of an affirmative showing of error, we presume the trial court properly extended the term of the restraining order until the end of the renewal hearing. (*Schnabel v. Superior Court* (1993) 5 Cal.4th 704, 718; *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) Accordingly, jurisdiction continued through that hearing, where the restraining order was renewed for an additional five years.

As to Ames's motion to quash that challenged the method of service for the request to renew the restraining order, it is defeated by his own agreement to the method of service.

Section 527.6 provides that "[u]pon the filing of a petition under this section, the respondent shall be personally served with a copy of the petition, temporary restraining order, if any, and notice of hearing of the petition. Service shall be made at least five days before the hearing." (§ 527.6, subd. (m).) The statute also establishes a procedure by which a previously-obtained restraining order may be renewed "upon the request of a party," but it does not expressly state whether a "request for renewal" constitutes a "petition" as described by subdivision (m).

The mandatory Judicial Council form "Notice of Hearing to Renew Restraining Order" for use in a civil harassment proceeding, however, states a request to renew a restraining order and any accompanying documents must be personally served on the restrained person. (Cal. Judicial Council Form CH-710.) Assuming that form direction applies in the usual case, we do not read that form direction to prohibit litigants, as they often

do, from waiving the personal service requirement—which is what occurred here. (See, e.g., *O'Keefe v. Miller* (1965) 231 Cal.App.2d 920, 922 [waiver of personal service by stipulation].)

Section 1011, the statute governing service generally, provides "[t]he service may be personal, by delivery to the party or attorney on whom the service is required to be made, or it may be as follows: [¶] (b) If upon a party, service shall be made in the manner specifically provided in particular cases . . . ." (§ 1011, subd. (b).) The "manner specifically provided" in this case was mail service on Ames's post office box. Ames expressly consented to that method of service at the court's May 11, 2012, hearing in lieu of providing an address at which he could be personally served. The trial court memorialized that agreement in its order granting the initial restraining order. The renewal proceedings were further proceedings in the same case. Thus, Kotora's service of the request for renewal and associated documents via mail on Ames's post office box, pursuant to his prior agreement and the court's order, constituted proper service.[7] (*Sweeting v. Murat* (2013) 221 Cal.App.4th 507, 513-514.)

At times in his briefing, Ames also complains certain documents Kotora served on him after the trial court renewed the restraining order, including purported copies of the order, consisted of "mostly blank unsigned pages." Though unsigned copies of the order appear in the record, their provenance is

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[7] The non-California cases regarding personal service that Ames cites are inapposite—both because they are not binding on this court and because they address only basic principles regarding personal service, none of which affect the conclusion we reach.

unclear. In any event, the record contains a properly signed copy of the order, and there can be no dispute that Ames did, in fact, ultimately receive notice of it, as demonstrated by his subsequent motions and appeals. Ames has not demonstrated any reversible error.

DISPOSITION

The judgment is affirmed. Respondent shall recover her costs on appeal, if any.

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BAKER, Acting P. J.

We concur:

MOOR, J.

KIM, J.