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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

EDWARD BIELECKI,

Plaintiff and Respondent,

v.

ERNEST MOORE,

Defendant and Appellant.

B268701

(Los Angeles County
Super. Ct. No. BS157654)

APPEAL from an order of the Superior Court of
Los Angeles County, Carol B. Goodson, Judge. Affirmed.

Ernest Moore, in pro. per., for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

INTRODUCTION

Ernest Moore was a Los Angeles County social worker who reported to Edward Bielecki until the County terminated Moore's employment some time prior to September 26, 2015. On that date, Moore approached Bielecki and his wife at a restaurant while they ate dinner and "threw" a punch at Bielecki. The two men fought until the restaurant manager separated them and Moore left.

Bielecki sought a restraining order against Moore, which the trial court granted after a contested hearing. Moore contends among other things that substantial evidence does not support the court's order. We reject Moore's various arguments and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On September 29, 2015 Bielecki filed a petition under Code of Civil Procedure section 527.6¹ seeking a restraining order against Moore. The record on appeal does not include the petition, but according to Moore's opening brief, which purports to quote the petition, Bielecki alleged the following:

"On [September 26, 2015,] at about 9:20 pm, my wife and I were at [a steak] restaurant in Marina Del Rey. . . . We were seated at a table in the outdoor dining area. I noted that a former [County] employee, Ernest L. Moore, had come into the area. . . . He walked by us at a range of about ten feet and I could tell from my peripheral vision that he was staring at me. He

¹ Undesignated statutory references are to the Code of Civil Procedure.

walked around behind me, at which point, my wife asked me ‘do you know that guy?’ I told her that I did. He walked back around from behind me and kept staring directly at me. I did not make direct eye contact with him because I did not want to provoke anything, but I tracked his movement. He walked away and appeared to go back into the adjoining parking structure.

“About ten minutes later, Moore came back out of the parking structure and walked directly toward us. I warned my wife ‘here he comes again.’ . . . He walked up to our table and said ‘Ed Bielecki, do you remember me?’ I replied, ‘yeah.’ He immediately threw a right straight punch at my head. He was wearing what appeared to be a black [mixed martial arts] style glove on his right hand. I ducked the punch and came out of my chair. He was standing very close to my wife at that point, so my immediate concern was to get him away from her. I picked up a metal lantern stand from our table and threw it at him. It hit him in the chest area and it caused him to back up a couple of steps. I then positioned myself between him and my wife and assumed a defensive stance. He had his fists up and tried to throw another punch, but before he could complete the punch I landed a kick to his lower abdomen. He again backed up, but he still had his fists up and he looked intent on continuing the fight. He made another motion with his right hand as though he was going to step in and throw a punch so I landed a second kick to his lower abdomen. At that point, the manager of the restaurant came out and positioned himself between Moore and me. He asked us to stop the fighting. I told him that I was just defending myself. He (the manager) said ‘I know.’

“Moore then turned around and walked back toward the parking structure. I asked the manager to immediately call the

police, because I knew my assailant, and I wanted to press charges. The police arrived about 90 minutes after the incident, and they took a report.”

Moore filed a response to Bielecki’s petition on the required form and denied “do[ing] anything described in [the petition].” Moore attached 22 pages of documents to his response to support his contention that Bielecki had “a long history of fabricating false allegations against me.” Among other things, the documents included a police report for a traffic collision in May 2013 that Moore contended Bielecki “staged” to “intimidate” Moore. The documents also included employment records that Moore offered as evidence of his wrongful termination following “several presentations to the Los Angeles County Board of Supervisors about the corruption, intimidation and harassments” Moore experienced as a County employee. Moore also argued Bielecki’s petition “is another attempt to use the police and judicial system to intimidate me into not seeking criminal charges against him.” According to the superior court case summary included in the clerk’s transcript, on September 29, 2015 the court issued a temporary restraining order based on Bielecki’s petition.

At the hearing on October 21, 2015, Bielecki, his wife, and Moore testified. Bielecki summarized the allegations in his petition, and his wife corroborated her husband’s testimony. The trial court asked Bielecki’s wife what, if anything, Moore had on his hand. Bielecki’s wife said Moore wore a black mesh “fighting” glove with the fingers “missing.”

Moore denied he was at the restaurant on the night in question and said, “If this was true . . . they should have some video.” The trial court read Moore’s written response to the

petition and observed that the response addressed only “events leading up to [his] termination.” The court stated: “The only thing I’m interested in is what happened on the evening of [September 26] in [the steak restaurant], but you say you were not there.” Moore said, “Well, Ed Bielecki is a pathological liar. He is known for getting other people to gang against me to bring false testimony against me.” When the court stated Bielecki and his wife came across as credible witnesses, Moore stated Bielecki had “lied” and “there [were] defects in his report.” The court stated, “Sir, you said you weren’t even there.” Moore responded, “Yeah, but it doesn’t—his complaint doesn’t make any sense. There [are] defects.”

The court found that Bielecki’s account of the incident “ma[de] sense” and issued the restraining order. Moore timely appealed. Bielecki has not appeared in the appeal.

DISCUSSION

Moore argues substantial evidence does not support the trial court’s finding that he attacked Bielecki.² He also argues the trial court “disregard[ed] the evidence of past felony crimes committed against [him]” and “did not allow [him] to present all of his testimony during th[e] hearing.” He also appears to argue the trial court denied him additional time to “subpoena additional witnesses and video recordings from mall security.” Finally, Moore contends the restraining order was “excessive” because “it

² Moore also contends that Bielecki’s testimony conflicted with his wife’s testimony and that the transcript of the hearing is not “accurate.” Moore, however, does not provide any explanation or examples to support these contentions.

included gun restrictions against [Moore], who is a licensed security guard and [the order] will adversely affect his employment.”

A. *Section 527.6*

“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.” (*Parisi v. Mazzaferro* (2016) 5 Cal.App.5th 1219, 1227; see *Brekke v. Wills* (2005) 125 Cal.App.4th 1400, 1412.) Section 527.6 provides that “[a] person who has suffered harassment . . . may seek a temporary restraining order and an order after hearing prohibiting harassment” (§ 527.6, subd. (a)(1).) Section 527.6 defines “harassment” to include “unlawful violence,” which, in turn, is defined as “any assault or battery,” among other things, not including “lawful acts of self-defense or defense of others.” (§ 527.6, subds. (b)(3), (7).) If a court “finds by clear and convincing evidence that unlawful harassment exists, an order shall issue prohibiting the harassment.” (§ 527.6, subd. (i).)³

³ “An injunction restraining future conduct is only authorized when it appears that harassment is likely to recur in the future.” (*Harris v. Stampolis* (2016) 248 Cal.App.4th 484, 496, see *Russell v. Douvan* (2003) 112 Cal.App.4th 399, 402-403 [single act of past violence was insufficient for a restraining order under section 527.6]; see also *Cooper v. Bettinger* (2015) 242 Cal.App.4th 77, 90 [“a restraining order should be renewed only when the trial court finds a reasonable probability that the defendant’s wrongful acts would be repeated in the future”].) The trial court did not make an express finding that Moore was likely to harass Bielecki in the future. Moore, however, does not

“We review issuance of a protective order for abuse of discretion, and the factual findings necessary to support the protective order are reviewed for substantial evidence. [Citations.] ‘We resolve all conflicts in the evidence in favor of . . . the prevailing party, and indulge all legitimate and reasonable inferences in favor of upholding the trial court’s findings.’” (*Parisi v. Mazzaferro*, *supra*, 5 Cal.App.5th at p. 1226; see *Harris v. Stampolis* (2016) 248 Cal.App.4th 484, 497.) “Whether the facts are legally sufficient to constitute civil harassment within the meaning of section 527.6 is a question of law reviewed de novo.” (*Parisi v. Mazzaferro*, at p. 1226; accord, *R.D. v. P.M.* (2011) 202 Cal.App.4th 181, 188.)

B. *Substantial Evidence Supports the Restraining Order*

The trial court credited Bielecki’s version of events, discredited Moore’s denial, and issued the restraining order. The trial court apparently discredited Moore’s testimony because he testified both that he was not at the steak restaurant on the night of the attack and that Bielecki’s version of events included unspecified “defects” that Moore could not have known without being there. In addition, Moore did not submit any evidence supporting his contention he was not at the restaurant that

challenge the restraining order on this basis, and the court’s order granting the injunction arguably includes such an implied finding. (Cf. *Cooper v. Bettinger*, *supra*, 242 Cal.App.4th at pp. 88-89 [“[t]he court need not make express findings, but rather, ‘the granting of the injunction itself necessarily implies that the trial court found that [the respondent] knowingly and willfully engaged in a course of conduct that seriously alarmed, annoyed or harassed [the petitioner], and that [the petitioner] actually suffered substantial emotional distress’”].)

evening, and his written response to Bielecki's request for a restraining order did not deny any of the pertinent facts. Moore's response only attempted to discredit Bielecki by providing evidence of alleged past falsehoods. Bielecki's testimony, corroborated by his wife, constitutes substantial evidence that Moore committed an assault or battery on Bielecki and supports the "clear and convincing" finding of harassment required to issue the restraining order. (See Evid. Code, §§ 411, 780 [the testimony of a single, credible witness, even a party, may constitute substantial evidence]; *Harris v. Stampolis*, *supra*, 248 Cal.App.4th at pp. 498-499 [deferring to the trial court's determinations of credibility in issuing a restraining order].)

Moore's other arguments also lack merit. He contends the trial court "disregard[ed] the evidence of past felony crimes committed against [him]," but the record shows the court read Moore's response during the hearing and found that evidence had little to do with Bielecki's petition. Moore also argues the trial court denied him additional time to "subpoena additional witnesses and video recordings from mall security," but the record includes no request for a continuance⁴ and suggests that the video recordings he sought do not exist. Indeed, Moore states in his opening brief he contacted the security company that patrolled the area including the steak restaurant and learned the company did not have surveillance video from the night in question. Finally, nothing in the record supports Moore's assertion that the trial court "did not allow [him] to present all of his testimony during th[e] hearing."

⁴ Section 527.6, subdivision (p)(1), provides that "[e]ither party may request a continuance of the hearing, which the court shall grant on a showing of good cause."

C. *Section 527.6 Mandates Gun Restrictions on Subjects of Restraining Orders*

Section 527.6, subdivision (u)(1), provides: “A person subject to a protective order issued under this section shall not own, possess, purchase, receive, or attempt to purchase or receive a firearm or ammunition while the protective order is in effect.” Section 527.6, subdivision (u)(2), provides: “The court shall order a person subject to a protective order issued under this section to relinquish any firearms he or she owns or possesses.” Consistent with these requirements, the restraining order states Moore “cannot own, possess, have, buy or try to buy, receive or try to receive, or in any other way get guns, other firearms, or ammunition.” Moore argues these gun restrictions are “excessive” because Bielecki did not request them. Section 527.6, subdivision (u), requires the court to include these provisions even if the petitioner does not request them.

DISPOSITION

The order is affirmed. Moore is to bear his costs on appeal.

SEGAL, J.

We concur:

PERLUSS, P. J.

ZELON, J.