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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

CITY OF LOS ANGELES, Plaintiff and Respondent, v. ROBERT GARBER, Defendant and Appellant.	B258980 (Los Angeles County Super. Ct. No. BS150139)

APPEAL from an order of the Superior Court of Los Angeles County, Herbert Dodell, Judge. Affirmed.

Robert Garber, in pro. per., for Defendant and Appellant.

Michael N. Feuer, City Attorney, Vivienne A. Swanigan, Assistant City Attorney, and Jennifer M. Handzlik, Deputy City Attorney, for Plaintiff and Respondent.

Robert Garber (Garber) appeals from the superior court's granting of a three-year Workplace Violence Restraining Order against him under Code of Civil Procedure section 527.8,[1] obtained by the Los Angeles City Attorney's Office (the City Attorney) on behalf of its employee, Deputy City Attorney Geoffrey Plowden (Plowden). We affirm.

BACKGROUND

On August 5, 2014, the City Attorney filed a petition for a restraining order on Plowden's behalf under section 527.8. According to Plowden's declaration in support of the petition, Plowden was assigned to the Police Litigation unit of the City Attorney's Office, and had recently opposed Garber, who was representing himself, in Garber's suit in federal district court alleging excessive force by police officers. Plowden stated that "during the trial, Mr. Garber was fixated on myself, the judge and the Court Clerk [*sic*], irrationally claiming [that] we 'fixed' the case to Mr. Garber's detriment. . . . Mr. Garber aggressively approached me within a few inches, yelling at me in front of the judge and jury."

According to Plowden, on July 30, 2014, the district court judge dismissed Garber's suit in the middle of trial. Garber became enraged, pointed at Plowden from about 15 feet away, and "angrily yelled, 'This is not over!'" Plowden believed that "this threat was clearly not about filing an appeal or pursuing further litigation in the case." Four security personnel immediately escorted Garber out of the courthouse. However, Garber returned and was detained by six security personnel.

Plowden has litigated two cases against Garber, and Garber has lost both. Garber "has filed [a] pleading saying [Plowden is] corrupt . . . and perjure[s

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[1] All further section references are to the Code of Civil Procedure.

himself], despite [Garber's] knowledge to the contrary." Plowden was "aware of at least three of Mr. Garber's prior arrests for assaultive behavior in the last 7 years, wherein Mr. Garber brandished a machete, a gun, and stabbed another man." Based on Garber's "bizarre and threatening behavior," Plowden was afraid for his safety and that of his family and fellow employees.

The superior court issued a temporary restraining order on August 5, 2014, and scheduled a hearing on a permanent restraining order for August 26, 2014.

Garber filed a written opposition to the petition for a restraining order. In a declaration supporting his opposition, Garber accused Plowden of committing a "fraud on [the] court" in his recently dismissed federal civil rights lawsuit. According to Garber, Plowden presented a "tampered" version of a video of the event in question, as well perjured testimony by a police officer. After the video was played, the district court judge "abruptly ordered the jurors out of the courtroom and dismissed [the] case by stating that [Garber] was 'out of control.'" Garber accused Plowden of perjury in Plowden's declaration in support of the petition for a restraining order. In particular, referring to Plowden's statement regarding Garber's prior arrests, Garber stated that after his arrest for brandishing a gun he had been acquitted of the charge by a jury (he attached a copy of a minute order reflecting this fact). With respect to his arrest for stabbing someone else, he stated that he had also been stabbed and that no charges were filed against him because of the complaining witnesses' inability to identify him. As to the machete incident, Garber stated that he had no knowledge of any machete. Garber accuse Plowden of seeking a restraining order "to continue harassing me by sending the LAPD to come to my trailer, by day or night, throw all my belongings out of the trailer and legally – but unlawfully – 'search' for an imaginary weapon."

On August 26, 2014, the superior court held a hearing on the petition for a restraining order. Both Plowden and Garber testified. The hearing was not reported and no settled or agreed statement is included in the record on appeal. The court granted the petition, and issued a restraining order against Garber which precludes him from, inter alia, harassing or threatening Plowden, and directs that he stay at least 100 yards away from him, his home, workplace and vehicle. The order expires on August 26, 2017.

DISCUSSION

Section 527.8, subdivision (a) provides in relevant part: "Any employer, whose employee has suffered . . . a credible threat of violence from any individual, that can reasonably be construed to be carried out or to have been carried out at the workplace, may seek a temporary restraining order and an injunction on behalf of the employee." A credible threat of violence means "a knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose." (§ 527.8, subd. (b)(2).)

Garber contends that the evidence does not support the issuance of the three-year restraining order, because the City Attorney failed to prove that he engaged in a credible threat of violence. However, he has failed to provide a record sufficient to consider the claim. Before issuing the order, the superior court heard testimony from Plowden and Garber. No reporter was present, and Garber has failed to provide the court with an agreed or settled statement. (See Cal. Rules of Court, rules 8.130(h), 8.137.) Thus, we do not have a record of the testimony upon which the court granted the order.

"Generally, appellants in ordinary civil appeals must provide a reporter's transcript at their own expense. [Citation.] In lieu of a reporter's transcript, an appellant may submit an agreed or settled statement. [Citations.] [¶] In numerous situations, appellate courts have refused to reach the merits of an appellant's claims because no reporter's transcript of a pertinent proceeding or a suitable substitute was provided. [Citations.] [¶] The reason for this follows from the cardinal rule of appellate review that a judgment or order of the trial court is presumed correct and prejudicial error must be affirmatively shown. [Citation.] 'In the absence of a contrary showing in the record, all presumptions in favor of the trial court's action will be made by the appellate court. "[I]f any matters could have been presented to the court below which would have authorized the order complained of, it will be presumed that such matters were presented."' [Citation.] This general principle of appellate practice is an aspect of the constitutional doctrine of reversible error. [Citation.] '"A necessary corollary to this rule is that if the record is inadequate for meaningful review, the appellant defaults and the decision of the trial court should be affirmed."' [Citation.] 'Consequently, [appellant] has the burden of providing an adequate record. [Citation.] Failure to provide an adequate record on an issue requires that the issue be resolved against [appellant].' [Citation.]" (*Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 186-187; see also *Estate of Fain* (1999) 75 Cal.App.4th 973, 992 ["Where no reporter's transcript has been provided and no error is apparent on the face of the existing appellate record, the judgment must be *conclusively presumed correct* as to *all evidentiary matters*. To put it another way, it is presumed that the unreported trial testimony would demonstrate the absence of error. [Citation.]"].)

Because Garber has failed to provide an adequate record, he has forfeited his challenge to the sufficiency of the evidence to prove that he engaged in a credible

threat of violence. But even if we were to overlook the inadequacy of the record, we would nonetheless affirm. "Where findings of fact are challenged on a civil appeal, we are bound by the 'elementary, but often overlooked principle of law, that . . . the power of an appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted,' to support the findings below. [Citation.] We must therefore view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor in accordance with the standard of review so long adhered to by this court. [Citations.]" (*Jessup Farms v. Baldwin* (1983) 33 Cal.3d 639, 660.)

The record on appeal contains Plowden's declaration in support of the petition. According to Plowden, Garber believed that Plowden, the district court judge, and court clerk conspired to defeat Garber's federal civil rights lawsuit. During the trial, Garber behaved aggressively, approaching Plowden within inches and yelling at him. After the judge dismissed the suit, Garber became enraged, pointed at Plowden from about 15 feet away, and "angrily yelled, 'This is not over!'" Four security personnel immediately escorted Garber out of the courthouse. Nonetheless, Garber returned and was detained by six security personnel. Moreover, Plowden was aware that within the last seven years Garber had been arrested for assaultive conduct. Further, Garber's declaration in support of his opposition to the petition for a restraining order confirmed Plowden's claim that Garber was enraged at Plowden over the dismissal of the lawsuit.

On this evidence, a rational trier of fact could conclude that Garber's loud, angry statement in open court to Plowden – "'[t]his is not over!'" – after which Garber had to be taken from the courtroom by four security guards (only to return again and be taken away by six security guards) was "a knowing and willful

statement" meant to convey a threat to Plowden's safety, and that under the circumstances the statement "would place a reasonable person in fear for his or her safety." (§ 527.8, subd. (b)(2).) To the extent Garber produced evidence challenging Plowden's credibility, or disputing the willfulness or threatening nature of his statement, the superior court was entitled to credit Plowden's version of events and discredit Garber's. In short, the evidence present in the record supports the superior court's order.

DISPOSITION

The order is affirmed. The City Attorney shall recover its costs on appeal.

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WILLHITE, J.

We concur:

EPSTEIN, P. J.

COLLINS, J.