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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

IRMA YANEZ, Plaintiff and Respondent, v. ROSA MARTINEZ, Defendant and Appellant.	B293015 (Los Angeles County Super. Ct. No. BC656655)

APPEAL from a judgment of the Superior Court of Los Angeles County, Teresa A. Beaudet, Judge. Affirmed.

Rosa Martinez, in pro. per., for Defendant and Appellant.

Irma Yanez, in pro. per., for Plaintiff and Respondent.

Rosa Martinez appeals the judgment entered after she failed to appear for trial in the harassment case filed by Irma Yanez. Martinez asserts that the damages awarded after a court trial were not supported by sufficient evidence. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Irma Yanez filed a complaint seeking damages for intentional infliction of emotional distress against Rosa Martinez. Yanez alleged that Martinez had an extramarital affair with Yanez's husband, and six years after the affair began, sent texts, phone calls, and voicemails to Yanez describing the sexual relations between Martinez and Yanez's spouse. She also came to Yanez's home. Yanez alleged all of these actions resulted in emotional distress. Yanez sought and obtained a civil restraining order against Martinez.

Martinez filed a timely answer to the complaint. The parties filed a joint exhibit list, and joint statement of relief requested, which set forth specific amounts claimed as damages. They also filed a joint statement of stipulated facts, and a joint witness list.

The trial, initially set for May 16, 2018, was continued by the court to July 25, 2018. Yanez served Martinez with notice of the continuance on June 6, 2018.

The trial began, as scheduled, on July 25, but Martinez did not appear. The court received testimony and admitted exhibits into evidence, and found Yanez had met her burden of proof. The court awarded damages: $530 for past medical; $354 for future medical; $22,120 for lost earnings; $14,474 for future lost earnings; and $250,000 for general damages for pain and

suffering and emotional distress.[1] The court entered judgment on August 30, 2018. Martinez appealed.

DISCUSSION

Martinez, on appeal, challenges only the amount awarded as general damages, arguing that it was excessive, and was not supported by substantial evidence. She also asserts that equity requires reduction of the award.[2]

1. We Review The Judgment for Substantial Evidence

The trial court found, based on the facts presented at trial, that $250,000 was an appropriate award of damages for emotional distress. We ordinarily do not dispute the trial court's factual determinations: "'When a trial court's factual determination is attacked on the ground that there is no substantial evidence to sustain it, the power of an appellate court begins and ends with the determination as to whether, on the entire record, there is substantial evidence, contradicted or uncontradicted, which will support the determination, and when two or more inferences can reasonably be deduced from the facts,

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[1] The amounts awarded by the court were equal to, or less than, the amounts listed in the joint statement for relief, except for lost earnings, which exceeded the joint statement by approximately $3800. On appeal, Martinez does not challenge that portion of the award.

[2] Appellant failed to move for a new trial on damages, as required. (See *Jamison v. Jamison* (2008) 164 Cal.App.4th 714, 719; *Schroeder v. Auto Driveaway Co.* (1974) 11 Cal.3d 908, 918-919, fn. 6.) However, respondent failed to raise this issue in her briefing. We consider the case on the merits.

a reviewing court is without power to substitute its deductions for those of the trial court. If such substantial evidence be found, it is of no consequence that the trial court believing other evidence, or drawing other reasonable inferences, might have reached a contrary conclusion.' [Citation.] The substantial evidence standard of review is applicable to appeals from both jury and nonjury trials. [Citation.]'" (*Jameson v. Five Feet Restaurant, Inc.* (2003) 107 Cal.App.4th 138, 143; see also *Piedra v. Dugan* (2004) 123 Cal.App.4th 1483, 1489.)

2. Yanez Provided Substantial Evidence Of Emotional Distress

At trial, Yanez testified that she had been married to her husband for 26 years, and only found out about his affair when Martinez left voicemails on her telephone. Martinez also sent texts describing details of sex between the two, including the fact that they had had sex in the Yanez home. Yanez described, and the court admitted as exhibits, copies of the text messages communicating details of the relationship.

Yanez testified that, as a result of the text messages, she underwent therapy with psychiatrists and psychologists and took medication for depression and anxiety. She was taken off work, losing approximately seven weeks, and placed in intensive therapy. She became fearful for her safety, and that of her children, and, as a result, sought and obtained a civil harassment restraining order.

Yanez provided, and the court admitted into evidence, documents demonstrating the services she obtained, and payments she made, to treat her anxiety disorder. She testified

to her belief that she would need to miss work in the future, as well as the on-going effects of the stress.

Her spouse, Enrique Yanez, also testified, admitting the affair with Martinez.

The final witness, Georgina Garcia, a co-worker, testified to the change in Yanez's personality, her depression, and trouble sleeping.[3]

At the conclusion of the trial, the court held that Yanez had proven intentional infliction of emotional distress, finding "extreme and outrageous conduct by [Martinez]."

3. The Judgment Is Not Excessive

Non-economic damages are subjective, as is the determination by the trier of fact of the proper amount to be awarded. (*Corenbaum v. Lampkin* (2013) 215 Cal.App.4th 1308, 1332 [no fixed standard to determine amount].) (*Pool v. City of Oakland* (1986) 42 Cal.3d 1051, 1067, fn. 17 ["'[T]here is no fixed or absolute standard by which to compute the monetary value of

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[3] Defendant did not appear at trial, leaving the evidence uncontroverted. Code of Civil Procedure section 594, subdivision (a) permits a court, in these circumstances, to proceed to trial, provided the non-appearing party had 15 days notice of the trial. While subdivision (b) requires that the appearing party submit an evidentiary showing of that notice, the failure to do so is subject to harmless error analysis. (*In re Marriage of Goddard* (2004) 33 Cal.4th 49, 56-58.) Where, as here, the record shows proper notice, any error is harmless. (See also *Heidary v. Yadollahi* (2002) 99 Cal.App.4th 857, 863 [where answering defendant fails to appear at trial plaintiff may proceed to introduce evidence to prove claims in the absence of defendant where plaintiff has satisfied section 594.])

emotional distress.'"].) Rather, the trier of fact "is entrusted with vast discretion in determining the amount of damages to be awarded." (*Bertero v. National General Corp.* (1974) 13 Cal.3d 43, 64.)

While appellant asserts that the award here should be reduced because it "shocks the judicial conscience" and is "monstrously excessive," she does not explain why that is so. Nothing in this record, however, demonstrates that the court was not objective in reaching its conclusion, or that, given the sustained assault of emails and messages, the court abused its discretion. Without such a showing, we find no basis to reduce the award. (*Hope v. California Youth Authority* (2005) 134 Cal.App.4th 577, 595-596 [award of $1 million in non-economic damages not excessive where no suggestion of "passion, prejudice or corruption" by the trier of fact.]; see also *Fortman v. Hemco, Inc.* (1989) 211 Cal.App.3d 241, 259 [damages award will be reversed only where it "is so grossly disproportionate to the injury that the award may be presumed to have been the result of passion or prejudice."]; *Izell v. Union Carbide* (2014) 231 Cal.App.4th 962, 979.)

DISPOSITION

The judgment is affirmed. Respondent is to recover her costs on appeal.

ZELON, J.

We concur:

PERLUSS, P. J. SEGAL, J.