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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

CHELE MOORE, Plaintiff and Appellant, v. ROSE MARIE FOX et al. Defendants and Respondents.	B233657 (Los Angeles County Super. Ct. No. LS 021191)

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

Chele Moore, in pro. per., for Plaintiff and Appellant.

No appearance for Defendants and Respondents.

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These consolidated appeals arise from various petitions for temporary restraining orders (TRO's) and permanent injunctions. Appellant Chele Moore and respondents Rose Marie Fox, Anna Brief-Mueller, Zuma Mejia, Jennifer Haaland, and Rick Wong are all either parents of students or employees at Dixie Canyon Elementary School. Fox first sought a TRO and permanent restraining order against Moore. Thereafter, Moore also filed petitions for TRO's and permanent restraining orders against Fox, Brief-Mueller, Mejia, Haaland, and Wong. The trial court granted Fox's request for a TRO against Moore, and later, granted Fox a permanent restraining order against Moore. The trial court denied all of Moore's requests for TRO's and permanent restraining orders against the respondents. Moore appeals from the orders granting Fox's petition for permanent restraining order and denying Moore's petitions for the same. We affirm.

FACTS AND PROCEDURAL HISTORY[1]

1. Fox v. Moore

The earliest filed proceeding among these consolidated proceedings was brought by Fox against Moore. Fox filed an ex parte request for orders to stop harassment on February 15, 2011. She is a 70-year-old special education aide at Dixie Canyon Elementary School, where Moore's daughter, T., was a student. Fox alleged that Moore had been consistently harassing her since mid-September 2010 and had threatened to commit acts of violence against her. Fox said that the alleged harassment had started out

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1 Moore filed a motion to augment the record because some of the documents filed in the trial court and included in the clerk's transcript were either not copied correctly or not included in sequential order. She wishes to augment the record with the correctly copied and ordered documents. None of the respondents have opposed the motion to augment. We hereby grant the motion. (Cal. Rules of Court, rule 8.155(a)(1)(A).)

Moore also filed a motion for consideration of additional evidence under Code of Civil Procedure section 909. "We grant such requests only under exceptional circumstances that justify deviating from the general rule that appellate review is limited to the record before the lower court." (*LaGrone v. City of Oakland* (2011) 202 Cal.App.4th 932, 946, fn. 6.) Moore has not demonstrated such exceptional circumstances are present here. We therefore deny her motion.

"rather benign at first," with Moore accusing Fox of speaking ill of T. in class and in front of other students. The problems between the two escalated to the point where Moore sent an email to Fox in November 2010, copying the school principal and parent/teacher association (PTA) board members, that accused Fox of being rude, unprofessional, and constantly harassing, among other things. Moore's email stated:

> "[T]here is a saying in my culture when one is under attack, especially unjustifiably and when I have come to the proper channels on numerous occasions to discuss my concerns regarding such and to have a stop put to it, etc., and the attacks just keep on coming, '*I am going to put my foot in ones* [*sic*] *neck*.'
>
> "Let me be clear in my statement of '*I am going to put my foot in ones* [*sic*] *neck*,' I do not believe in actual physical violence, but I do believe in what I will be instituting since my verbal complaints have fallen on death [*sic*] ears and that will fill [*sic*] way worse than an a [*sic*] . . . whooping." (Original underscoring and italics.)

Fox took these statements as threats to harm her. Her petition also alleged that Moore had filed a false police report against Fox for purportedly battering T. On February 15, 2011, the court issued a TRO against Moore prohibiting her from contacting Fox and ordering her to stay at least 25 yards away from Fox. The court scheduled a hearing on Fox's request for permanent restraining orders for March 30, 2011. Fox served Moore with the TRO and notice of hearing on March 14, 2011.

2. Moore v. Fox, Mejia, Brief-Mueller, Wong, and Haaland

Mejia, Brief-Mueller, and Haaland are the parents of students at Dixie Canyon Elementary School. Wong is a teacher at the school. The day that Moore received the TRO against her, she commenced proceedings against Fox, Mejia, Brief-Mueller, Wong, and Haaland by also filing ex parte requests for orders to stop harassment.

In the petition against Fox, Moore alleged that Fox harassed her and T. and committed hate crimes and "terrorist" threats against them. She alleged that Fox battered and falsely imprisoned T. on the school campus and violated the policies of Los Angeles Unified School District and T.'s educational and privacy rights by stalking her and T.

She also alleged that Fox threatened to "'lynch [her] black a--'" and run her and T. off the school campus.

Moore's petition was filed with a nine-page declaration that repeatedly accused Fox and other parents or employees of the school of following or stalking T. or Moore, threatening them, harassing them, making "slanderous" statements, and conspiring as a group to do these things. Moore alleged that there were ongoing investigations by the police, the school district, and "other government agencies" into the acts of Fox and others. She referred to Fox, Mejia, and Haaland as a "KKK" gang when they allegedly stalked and harassed T. She also accused Brief-Mueller, who is a public defender, of saying that she would use her contacts with judges and the Los Angeles Police Department to "get [Moore] good."

Moore also filed a three-page declaration from 11-year-old T. T. stated that Fox had prevented her from leaving the classroom or calling Moore on an occasion in December 2010. She also declared that Fox, Mejia, and Haaland were recurrently following her at school, yelling at her, and bullying her, and she was afraid that they, as well as Wong and Brief-Mueller, would kidnap her.

Moore additionally filed a seven-page declaration from True Warner, T.'s babysitter. Warner alleged that Fox, Mejia, Haaland, and Brief-Mueller had been stalking, harassing, and chasing her and T. and "acting in a very threatening manner." She stated that Mejia had followed her home before and banged on her door demanding to know where Moore was and where she lived. She alleged that on other occasions Haaland parked in front of her home and was "lurking" about, and Haaland chased her and T. in the car when they attempted to leave. Warner said that, when she arrived at her destination and stopped her car, Haaland jumped out of her car and banged on Warner's car windows and tried to open Warner's doors. She also yelled at T., who was sitting in the back of Warner's car, "*Where's* [*sic*] *the hell your mom?*" (Original italics.) Warner said she and Haaland got into a "yelling altercation," and Haaland demanded, "*Where the hell is* [*Moore?*] *I want to talk to her.*" (Original italics.)

Moore's petitions against Mejia, Brief-Mueller, Wong, and Haaland alleged that they, like Fox, harassed her and T. and committed hate crimes and terrorist threats against them. Additionally, she alleged that Brief-Mueller joined with Fox in threatening to "'lynch [her] black a--'" and run her and T. off the school campus.

The court declined to issue TRO's against Fox, Mejia, Brief-Mueller, Haaland, and Wong. It scheduled a hearing for March 30, 2011, on the orders requested by Moore's petitions against each of these individuals.

3. Moore's Peremptory Challenges

On March 28, 2011, Moore filed peremptory challenges (Code Civ. Proc., § 170.6)[2] to the judicial officer in each of the proceedings she initiated as well as in Fox's proceeding against her. She also filed a declaration in which she argued the judicial officer should be disqualified for cause under section 170.1, in the alternative. She argued that the judicial officer's bias and corruption was evidenced by the court's failure to provide her with copies of Fox's TRO papers despite repeated requests, the courtroom deputy's service of Fox's TRO papers on her, and the wait she endured in the courtroom on the day she filed her requests for TRO's, only to have them quickly denied.

4. March 30, 2011 Hearing

Moore filed her answer to Fox's petition on the date of the scheduled hearing on her petitions and Fox's petition. She argued that filing police reports and complaints with the school district were acts within her constitutional rights, and furthermore, the comments Fox found threatening in her email were merely "idiom[s] . . . commonly used in the African American culture."

On March 30, 2011, the court ordered Moore's statement of disqualification stricken because it did not show on its face any legal grounds for disqualification. The court noted that Moore's peremptory challenge was untimely but nonetheless deemed it "honored in spirit." All of the proceedings were transferred to a new judicial officer and

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[2] All further undesignated statutory references are to the Code of Civil Procedure.

the scheduled hearing commenced that same day. The matters (Fox's petition against Moore, and Moore's petitions against Fox, Brief-Mueller, Mejia, Haaland, and Wong) were consolidated before the same judicial officer for hearing. We summarize the various witnesses' testimony in the following subparts.

a. Fox v. Moore

i. Fox's Testimony

The court permitted Fox to testify and present evidence relevant to her petition for a restraining order first. Fox met Moore on the first day of the school year when Moore dropped off T. at the classroom. T. was a student in Wong's class, and Fox was the classroom aide. Fox witnessed Moore talking to other students in the class in an inappropriate manner and she told Moore she could not speak to the children that way. Two days later, Moore complained to the school principal about Fox.

Fox testified that she had felt threatened by Moore's emails to her. In particular, on November 17, 2010, Moore sent her an email that said: "Now, if you want to know what I think of you . . . , let the record show, that I think YOU are nothing more than an old[,] miserable[,] cranky[,] harassing B---- who is scared of life changes." She also pointed to portions of the same email quoted in a foregoing part that referenced "put[ting] my foot in one[']s] neck" and a "whooping." She felt that Moore was threatening her with and was capable of physical violence. She read the last paragraph in the email in which Moore said she did not "believe in actual physical violence," but based on her prior experiences with Moore, Fox did not believe her. She had heard from parents who worked with Moore on the PTA that they had experienced "run-ins" with Moore and had received threatening emails from her. Parents had dropped out of PTA activities because of their run-ins.

Immediately after Fox received the November 17 email, she filed a police report. She had also called her union because she was hoping the union could protect her. Moore had been sending emails to the school falsely accusing Fox of abusing T. and demanding that she be fired, and Fox felt that Moore was setting up the defense of T. as a reason to hurt Fox. Moore had filed police reports against Fox around December 7, 2010,

and February 9, 2011. The school had investigated Moore's allegations and found no basis for them.

Fox had been experiencing emotional distress because of Moore's actions. She was stressed out because she felt her reputation was on the line. She had been having difficulties sleeping since November 2010. She had been on an increased dosage of blood pressure medication since December 2010. She had also changed her asthma medication in February 2011 because the stress brought on increased wheezing.

Fox had previously filed a petition for a TRO and permanent restraining order against Moore on November 22, 2010. The court did not issue a TRO pending a full hearing and scheduled a hearing for later in December. Fox could not afford the filing fee, however, and the hearing did not proceed.

At the time of the March 30, 2011 hearing, Fox was in fear of Moore. She believed that Moore was "very, very angry" all the time, and that "anger" was "only one letter away from danger."

ii. Moore's Testimony

Moore testified next as follows. She denied that, on the first day of the school year, she spoke to any children inappropriately. She and T. were having a private conversation in the classroom about the class seating arrangements when Fox interfered in the conversation. She did complain to the principal about Fox speaking to her in a negative tone in front of her daughter and other students.

Moore never threatened Fox. The phrase regarding putting a foot to one's neck is an idiom in her culture used in a nonviolent manner. She was referring to taking the "appropriate, proper" channels -- that is, legal channels or filing complaints with the school district. The phrase was a figure of speech, not something that she was going to literally do.

Moore attempted to distance herself and T. from Fox. She resigned from the PTA board in the beginning of September 2010 to distance herself from Fox and two others on the board. She had T. removed from Wong's classroom, where Fox was the aide, around January 9, 2011.

Moore filed one police report against Fox. This occurred on or around February 8, 2011. The report arose from a December 7, 2010 incident in which she accused Fox of battery and false imprisonment against T. The police came to the school in connection with this incident to interview Fox and others on or around December 15, 2010. The police officers wanted to interview T. alone and without Moore, but Moore would not permit that, so they did not interview T. that day. There were some delays in the investigation as Moore arranged for an attorney for T., and the police finally took T.'s statement on February 8, 2011, after Moore had filed an official report.

b. Moore v. Fox, Mejia, Brief-Mueller, Wong, and Haaland

i. Moore's Testimony

The court next wanted to hear from Moore the evidence supporting her petitions against respondents. Moore testified in this respect as follows. Fox and Brief-Mueller threatened to "lynch[] [her] black . . . a--" and get her and T. off the school campus. Fox said this to her on or about January 13, 2011, when she passed Fox on the school campus. She filed a police report about the comment. Brief-Mueller said the same thing to her on or about December 17, 2010. This occurred around the school parking lot. Brief-Mueller also told Moore that she was going to use her contacts as a public defender to "get [Moore] good."

Fox, Mejia, and Haaland approached T. at school on or around February 28, 2011, and asked where Moore was. In a threatening manner, Mejia said, "We're going to get your mom, and I want to know where your mom is." Around the same time, Mejia tried to get T. to go to the park with her. Again on March 1, 2011, Fox and Mejia approached T. on school grounds asking where Moore was, and T. became very upset and fearful.

At this point in her testimony, Moore told the court she was seeking restraining orders on her own behalf and on behalf of T. as well. The court noted that she had not filed the proceedings as guardian ad litem on behalf of T., and that only her claims as an individual were before the court. Rather than have Moore refile all the paperwork as guardian at litem on behalf of T., all respondents agreed at the hearing to "waive[] further filings and notice" and to hear T.'s claims on that day as well.

Moore proceeded to summarize more incidents that had occurred with T. On March 2, 2011, Fox, Mejia, and Haaland followed T., and then Haaland followed Warner and T. in her car. T. was followed at two different points that day. On March 3, they again approached T. asking where Moore was. On March 4, Fox prevented T. from leaving the school campus by closing and locking the gate T. was attempting to use, and Fox told her, "I don't open the gate for kids like you." T. then walked to the other side of the school to exit and meet Warner, who was picking her up.

Wong was part of a conspiracy against Moore with Fox, Mejia, Haaland, and Brief-Mueller. His participation included making the false statement that she disrupted his classroom by falsely accusing Fox. He made this statement in an email to Moore.

ii. Warner

Warner testified next. She had been helping Moore look after T. since approximately November 17, 2010. She drives T. to and from school and doctor's appointments and cares for her when Moore is out of town. T. told her that Mejia, Haaland, and Fox were following her and asking about Moore on either February 18 or March 3, 2011. The same day that T. told her this, Mejia ran after T. as T. was running to the car. Mejia had some papers in her hand.

Around March 2 or 3, 2011, Mejia came to Warner's door with another woman at approximately 9:00 a.m. They knocked on her door and rang the bell and asked if Moore was there, though Warner would not open the door. She told them Moore was not there and she was not going to open the door. They continued to ring and bang on the door. Warner told them she was going to call the police if they kept doing that. They left eventually.

Either the same day or the next day, she came home from picking up T. at school and Haaland's car was parked on the street near her home. After they got home, they left again in the car, and Haaland followed them in her car. They got to their destination and sat in the building parking structure for a few minutes as Warner was waiting for someone to come outside and deliver some paperwork to her. The parking attendant for the building then told her she could not stay parked where she was and she had to move

her car. She drove to the end of the parking structure and was making a U-turn when Haaland jumped out of her car and went to Warner's car. Haaland asked if Warner was Moore and where Moore was. She had papers in her hand. Warner told her Moore was not in the car. T. was asking Warner why Haaland was following them and asking about her mother, and she seemed upset.

Around March 4, 2011, when Warner went to pick up T. from school, Mejia and another woman prevented T. from exiting the campus through the side gate where Warner was waiting for her, and T. had to walk around the school to get to Warner.

T. stayed with Warner for seven to 10 days around this time (February 28 to March 3, 2011) while Moore was out of town. Warner was driving Moore's car during this time period. While T. was staying with Warner, T. had trouble sleeping some nights. She told Warner the kids at school were talking about the situation between Moore and Fox. Around February 28 and March 7, 2011, the school called Warner and said she had to pick up T. because she was not feeling well. T. did not feel well on March 8 and did not return to school that day. During this time, Warner called Moore almost every day to tell her about the troubles T. was experiencing.

After Warner's testimony, the court had to adjourn for the day. The court attempted to find a date that was convenient for all parties for the continued hearing. It was required to find a date that worked for approximately 15 different people, including all the parties, witnesses, and the attorneys for the two represented parties. April 27, 2011, worked for everyone except Moore, who explained that she had to be out of town for unspecified appointments in Las Vegas. The court set the continued hearing for April 27, but informed Moore that she should bring an ex parte request to change the date with proof that she could not reschedule whatever she had planned for April 27, if that was the case. Otherwise, the court expected her to appear on April 27.

5. Answers of Haaland, Brief-Mueller, and Wong

After the first hearing and before the continued hearing, Haaland, Brief-Mueller, and Wong filed answers to Moore's petition. Haaland stated in the declaration filed with her answer that she had not had personal contact with Moore since May 2010. She had

never met Warner until March 2, 2011. On the morning of March 2, she attempted to serve Moore with the TRO papers against her and went to the address listed on the papers as Moore's address. She saw what appeared to be Moore's car (based on the car listed in the court documents) at the apartment complex. She called a friend to meet her there so that she would have a witness to her attempt to serve Moore. Haaland and her friend knocked on the door of Moore's apartment several times and asked if Moore was there. Someone, who Haaland then believed to be Warner, answered that Moore was not there and threatened to call the police if Haaland knocked again. Haaland waited approximately 10 minutes, and after no sign of activity, she chose to leave and attempt service at another time.

Later that same day, Haaland returned to the same address. She parked her car and decided to wait to see if Moore came in or out so she could serve Moore personally. At approximately 4:50 p.m., she saw Moore's car leave the apartment complex, and believing Moore was driving the vehicle, she followed the vehicle for about 25 minutes. It stopped at a business complex and parked in the lot there. Haaland pulled into the same driveway and parked approximately 50 feet behind Moore's car. After five minutes, the parking attendant told both her and the driver of Moore's car that they needed to move. Moore's car attempted to make a U-turn to exit the lot. Haaland saw this as an opportunity to serve Moore; she exited her car and walked to Moore's driver side window, which was partially lowered. It was then she saw Warner was driving the car, not Moore. She asked whether Warner knew where Moore was, and Warner said she did not. She asked Warner for her name, but Warner refused to give it to her. She then got back into her car and proceeded out of the parking lot. Haaland never attempted to enter Moore's car, pound on the car, or scream at the occupants inside.

Brief-Mueller filed a declaration with her answer in which she stated she had not spoken to Moore since June 2010. She denied ever saying to Moore that she would "lynch her black a--." On March 2 and 3, 2011, Brief-Mueller did not stalk, threaten, harass, or follow T. She worked all day on March 2 and picked up her son late from school. On March 3, she again worked and did not pick up her son from school. His

father picked him up that day. She denied any conspiracy between herself, Mejia, and Haaland, noting that she had not spoken to Mejia since September 2010 and had not spoken to Haaland from January to late March 2011. She also denied saying that she was going to use her contacts as a public defender to "get [Moore] good." She had never been to Warner's home and had never seen Warner before the hearing on March 30, to her knowledge.

Brief-Mueller believed Moore was making false accusations against her in public documents for the purpose of ruining her reputation in the legal community and adversely affecting her employment. Two days after the March 30 hearing, her superior, the county public defender, called her into his office. He had received a 40-page complaint about her from Moore, and he wanted to know whether she was a member of the "KKK."

Wong's declaration filed with his answer stated that he was in his classroom on December 7, 2010, when the alleged battery and false imprisonment incident between Fox and T. purportedly occurred. He did not witness any altercation, yelling, or violence of any sort between the two. He denied that Fox hurt T. Additionally, he had never hurt, bullied, or threatened T., and he had never threatened to kidnap her, as Moore alleged in her petition. He also denied discriminating against T., emotionally abusing her, making terrorist threats against her or Moore, and conspiring with the other respondents.

6. April 27, 2011 Hearing

The parties all appeared at the April 27 hearing as scheduled. Moore, however, requested a continuance. She stated she had contacted an attorney earlier that week and was going to retain her, though she had not yet done so because the attorney had been occupied in court. The attorney was not available to be in court with Moore that day. Moore had not notified the other parties that she would be seeking a continuance. The court denied Moore's request for a continuance. The court noted the difficulty it had scheduling a date that worked for all the numerous parties and witnesses and the competing interests it had to consider to arrive at that date, including the interests of a criminal defendant whom Brief-Mueller was defending in a trial for attempted murder around that time. The court declined to disrupt the schedule of the proceedings when

Moore had known about the continued hearing date for approximately a month, yet had waited until that week to try to retain counsel and had given no notice that she would be seeking a continuance.

Moore said she was not ready to proceed that day without counsel. The court explained that, because it had denied her request for a continuance, she either had to proceed then without counsel, or the court would close the proceedings with respect to her petitions against respondents. Moore then made an oral "special motion to strike under the California anti-SLAPP[3] law." The court declined to entertain an oral motion, and Moore requested a continuance to file such a motion in writing. The court denied this request for a continuance as well. Moore reiterated that she was not ready to proceed that day. The court said it would then close the proceedings on her petition and would rule based on the various declarations submitted.

On Fox's petition against Moore, the court granted Fox a permanent restraining order for a period of three years. It found that Fox had proven her case by clear and convincing evidence. It ordered Moore to stay 25 yards away from Fox, her vehicle, and Fox's husband and daughter, both of whom resided with Fox. The court denied all of Moore's petitions for permanent restraining orders. It indicated that it would issue a written order stating the grounds for its rulings.

7. Summary of the Court's Written Ruling

The court issued its written ruling on April 28, 2011. It explained that Fox exhibited nervousness and what appeared to be a genuine fear of Moore while testifying. Fox's testimony that she believed Moore would commit violence against her was of particular note. The court noted Moore's November 17, 2010 email in which she referenced putting her foot in one's neck and a "whooping." While Moore argued that the phrase was merely an idiomatic one within the African-American community and did not constitute an actual threat of violence, Fox had testified she was not African-

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3 Strategic lawsuit against public participation.

American and was unfamiliar with the phrase, and she felt the use of the phrase was a threat of violence. The court found Moore's testimony about the email to be "not the least bit persuasive." The court observed that Moore did not deny sending the email, and in it she also called Fox an old, miserable, cranky "b----."

The court also explained that it doubted Warner's credibility. Her testimony regarding the incident when Haaland followed her in the car was not consistent in material respects with her declaration. Her declaration described Haaland banging on her car windows, trying to forcefully open the car doors, and yelling at T. Her trial testimony omitted all of this. The court "assume[d] that such a violent confrontation would leave such a long-lasting impression on someone that the repeating of those events at later dates would not be subject to any material variance." Warner's testimony about the car chase was also undermined, in the court's view, by the fact that despite Warner's having advised Moore of these and other events promptly -- events that allegedly seriously and adversely impacted T. -- Moore was not persuaded to return to Los Angeles from her out-of-town trip for at least another week. The court inferred from this behavior that either the events did not occur in the manner Moore and Warner claimed, or T. did not suffer the emotional trauma Moore claimed.

Further, the court placed no evidentiary value on T.'s declaration. It appeared to be written by the same person who wrote the other declarations Moore filed because the tone and language of it mirrored these other declarations. The court seriously doubted Moore's claim at the hearing that 11-year-old T. wrote her declaration with the assistance of her therapist.

The court also observed that, contrary to Moore's assertion in her papers that various respondents were under orders or instructions from the school district to stay away from Moore and T., there was no evidence in the record to support this assertion. In sum, the court found Moore's claims against respondents to be "without any merit whatsoever [and] predicated upon false statements and groundless accusations." The court recognized that Moore had a constitutional right to petition for grievances, including the right to file administrative or similar complaints. And the making of such

complaints were not "subject to prior restraint by this court." Still, this did not mean the court had to completely ignore the complaints when their assertion, in the context of other facts, had evidentiary value regarding the parties' contacts, their relationships, and the possible need for protective orders. In numerous respects Moore's complaints were "outrageous" and "utterly lacking in any apparent factual basis." For instance, Moore claimed that Wong and other respondents desired to kidnap T. Moore never offered an explanation for this claim. Similarly, Moore's inflammatory and apparently baseless references to threatened "lynchings" and the "KKK" were inexplicable.

The court found by clear and convincing evidence that Moore's conduct vis-à-vis Fox constituted a knowing and willful course of conduct evidencing a continuity of purpose that seriously alarmed, annoyed, or harassed Fox and that served no legitimate purpose. (§ 527.6, subd. (b)(3).) It further found that Moore's conduct taken in context would cause a reasonable person to suffer substantial emotional distress, and it did not doubt that Fox suffered the same. Despite Moore's alleged qualifications of the violent references in her November 17 email to Fox, the court was convinced Fox understood the email to constitute a credible threat of violence.

The court observed that the permanent restraining order did not and could not restrain Moore's lawful exercise of her constitutional rights. The order did, however, restrain Moore from coming near Fox and her protected family members for three years.

The court lastly found that Moore did not prove her claims against respondents by clear and convincing evidence. It denied her requests for permanent restraining orders with prejudice.

8. Moore's Motion for Reconsideration and Special Motion to Strike

On May 13, 2011, Moore filed (1) a motion for reconsideration of the court's order granting Fox's petition and denying Moore's petitions, and (2) a special motion to strike, purportedly under section 425.16 (the anti-SLAPP statute). Moore also filed a declaration in support of each motion. The motions reference declarations from five other individuals that purportedly also supported the motions. None of these additional declarations appear in the record, however. Also, both the motions themselves and

Moore's declarations contain numerous incomplete or blank citations to exhibits that were not attached to the declarations. Moore noticed these motions for hearing on June 15, 2011.

Moore's motion for reconsideration argued that reconsideration was warranted because (1) the court committed judicial misconduct by thwarting testimony by Moore and her witnesses; (2) there was no clear and convincing evidence of any credible threat by Moore; (3) the court did not order that the various cases were deemed related; (4) the TRO the court granted to Fox was unwarranted pursuant to section 425.16; (5) the court's orders exposed Moore to further physical and emotional harm; (6) the court erred in applying the applicable California law and burden of proof tests; (7) the court erred in refusing Moore a continuance, especially because she did not have the financial means to retain an attorney until April 27, 2011; (8) the court erred in refusing to allow Moore to substitute in an attorney and refusing her the right to counsel; (9) there was unspecified newly discovered evidence; (10) the court lacked awareness of and sensitivity to cultural diversity; and (11) the court erred in relying upon respondents' untimely answers to her petitions. Her special motion to strike asserted identical grounds for granting the motion.

On May 18, 2011, the court issued a minute order striking both motions and taking them off calendar. The court noted that the motions were defective in nature in that they referenced missing declarations, contained blank references to unattached exhibits, had defective proofs of service, and were noticed for a hearing date that the court had not designated. Moreover, Moore did not timely file the motions. Moore filed the motion for reconsideration after the 10-day period set forth in section 1008, subdivision (a). More importantly, the motion constituted an improper postjudgment motion. The court found the special motion to strike was essentially a reiteration of the motion for reconsideration and was therefore improper for the same reasons. Even if the court could construe the motion as a genuine anti-SLAPP special motion to strike, the matter had already been finally adjudicated, and thus the motion was moot.

9. Notice of Appeal and Postnotice Filing

Moore filed timely notices of appeal in each proceeding on May 27, 2011. She filed a motion to consolidate the appeals on July 27, 2011. This court granted that motion on August 11, 2011.[4]

Later, on September 28, 2011, Moore filed a declaration in the trial court purportedly in reply to the answers filed by respondents, in support of her motion for reconsideration and special motion to strike, and in reply to the court's April 28, 2011 order. The declaration was also for the purpose of submitting exhibits "not admitted into evidence over Moore's objections, etc." because of alleged judicial misconduct. (Capitalization omitted.)

DISCUSSION

1. Res Judicata/Collateral Estoppel

Moore first contends that Fox's petition was barred by res judicata or collateral estoppel because she initially filed a petition for a TRO and permanent restraining orders in November 2010, and the court denied her a TRO at that time. We disagree with Moore.

In its narrowest form, the doctrine of res judicata "precludes parties or their privities from relitigating a cause of action that has been finally determined by a court of competent jurisdiction." (*Gamble v. General Foods Corp.* (1991) 229 Cal.App.3d 893, 898.) One of the prerequisites for applying res judicata is that the prior proceeding resulted in a final judgment on the merits. (*Brinton v. Bankers Pension Services, Inc.* (1999) 76 Cal.App.4th 550, 556.) Res judicata also includes a broader principle, commonly called collateral estoppel, under which an *issue* necessarily decided by

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4 None of the respondents has filed briefs in this appeal. Fox, Haaland, Brief-Mueller, and Wong each filed letters notifying the court that they could not afford the filing fee and either did not qualify for a fee waiver or did not have the time to apply for a fee waiver. They indicated they were submitting on the record. Mejia did not file a similar letter.

litigation may be conclusively determined as against parties or their privities in a subsequent lawsuit, even if that subsequent lawsuit involves a different cause of action. (*Vandenberg v. Superior Court* (1999) 21 Cal.4th 815, 828.)

In this case, neither res judicata nor collateral estoppel barred Fox's petition against Moore. Fox initially filed a petition against Moore on November 22, 2010. The court declined to issue a TRO pending a full hearing on the matter. The court made no findings on any issues but merely checked a box on a form indicating that it was scheduling a full hearing for December 10 and was not issuing orders at that time. That same form, a "notice of hearing" form, contained a handwritten notation indicating that Fox did not pay the court fees and therefore no hearing would occur. Fox testified that, indeed, she could not afford the filing fee and thus the hearing on the merits of her request did not proceed. Under Government Code section 68634, subdivision (g), the clerk of the court was obligated to "void the papers that were filed without payment of the court fees." In other words, there was no final judgment on the merits of Fox's petition for a restraining order, and the court did not conclusively determine any issue after litigation by the parties. These essential elements of res judicata and collateral estoppel, respectively, are lacking. Therefore, neither doctrine applies.

2. Moore's Motion for Reconsideration and Special Motion to Strike

Moore also contends that the trial court erred in striking her motion for reconsideration and special motion to strike. This argument is unavailing.

We review the court's ruling on a motion for reconsideration under the abuse of discretion standard. (*New York Times Co. v. Superior Court* (2005) 135 Cal.App.4th 206, 212.) Section 1008, subdivision (a) requires that a motion for reconsideration be "based upon new or different facts, circumstances, or law." The party seeking reconsideration must also provide reasonable justification for the failure to produce the new or different evidence at an earlier time. (*New York Times Co. v. Superior Court*, *supra*, at p. 212.) The party must make the motion for reconsideration within 10 days after it has been served with written notice of entry of the subject order. (§ 1008, subd. (a).)

The entry of judgment divests the trial court of authority to rule on a motion for reconsideration. (*Safeco Ins. Co. v. Architectural Facades Unlimited, Inc.* (2005) 134 Cal.App.4th 1477, 1482.) An order granting an injunction is an appealable final judgment on the merits. (§ 904.1, subd. (a)(6).)

Here, the court did not abuse its discretion in striking the motion for reconsideration because it had a lawful reason for doing so. As the court noted, the motion for reconsideration was a postjudgment motion on which it had no authority to rule. The court's April 27, 2011 permanent restraining order and April 28, 2011 order denying Moore's petitions constituted final judgments on the merits of the actions. Moreover, even if the court was not divested of authority to rule, the motion was not based on "new or different facts, circumstances, or law." Moore was merely reiterating arguments she had made previously during the proceedings or making new arguments based on the same known facts and circumstances. Section 1008 does not give the court authority to "'reevaluate' or 'reanalyze'" facts or law already presented in the proceedings. (*Crotty v. Trader* (1996) 50 Cal.App.4th 765, 771.) And although she repeatedly claimed there was "newly obtained [and] discovered information and evidence," she did not specify what was new or explain why she could not produce the purported new evidence earlier.

To the extent the motion for reconsideration may have been construed as a motion to vacate the judgment pursuant to section 473,[5] the motion was likewise insufficient. Section 473 permits the court to relieve a party from a judgment when the judgment was "taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect." (§ 473, subd. (b); see also *In re Marriage of Simmons* (1975) 49 Cal.App.3d

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5 The caption of the motion styled it a motion for reconsideration of the April 27 and 28, 2011 orders "or, in the alternative, vacate and/or revoke said orders." (Capitalization omitted.)

833, 837.) None of the grounds urged by Moore constituted mistake, inadvertence, surprise, or excusable neglect on her part.

The court did not err with respect to the special motion to strike for the same reasons. Although Moore styled the motion a "Special Motion to Strike Pursuant to C.C.P. § 425.16," she simply rehashed the same arguments she made in her motion for reconsideration. In fact, the two motions were nearly identical. She altogether failed to address the elements of an anti-SLAPP motion pursuant to section 425.16. (See *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67 [defendant must show the challenged cause of action arose from protected activity, and the court then decides whether plaintiff has demonstrated a probability of prevailing].) The motion did not resemble an anti-SLAPP motion in any form. Because the special motion to strike was essentially another version of the motion for reconsideration, it was defective for the same reasons as the motion for reconsideration.

3. Moore's Request for a Continuance

Moore asserts that the trial court erred in denying her a continuance to retain counsel, which violated her constitutional right to counsel. She further asserts that the court erred in denying her a continuance to file a written special motion to strike. We are not so persuaded.

The California and federal Constitutions specifically provide for a right to counsel in criminal matters only. (U.S. Const., amend. VI; Cal. Const., art. 1, § 15; *Hunt v. Hackett* (1973) 36 Cal.App.3d 134, 137.) Generally, there is no due process right to counsel in civil cases. (*People v. $30,000 United States Currency* (1995) 35 Cal.App.4th 936, 942.) The cases on which Moore relies for her right to counsel argument involve the right of a criminal defendant to counsel under the Sixth Amendment. These cases are inapposite. The court did not violate her right to counsel by denying a continuance because she had no such right in this instance.

Moving to Moore's other arguments for reversible error, we note that "[t]he decision to grant or deny a continuance is committed to the sound discretion of the trial court. [Citation.] The trial court's exercise of that discretion will be upheld if it is based

on a reasoned judgment and complies with legal principles and policies appropriate to the case before the court. [Citation.] A reviewing court may not disturb the exercise of discretion by a trial court in the absence of a clear abuse thereof appearing in the record. [Citation.] The burden rests on the complaining party to demonstrate from the record that such an abuse has occurred." (*Forthmann v. Boyer* (2002) 97 Cal.App.4th 977, 984-985.)

Discretion is abused when the court exceeds the bounds of reason, considering all circumstances before it. (*In re Marriage of Laube* (1988) 204 Cal.App.3d 1222, 1225.) In some cases, however, "statutes make continuances mandatory and, therefore, divest the trial court of its usually broad discretion." (*Freeman v. Sullivant* (2011) 192 Cal.App.4th 523, 527.)

All parties must generally regard the date set for trial as certain, and continuances of trials are disfavored. The trial court may grant a continuance only on an affirmative showing of good cause. (Cal. Rules of Court, rule 3.1332(a), (c).) The party seeking a continuance must make the request by a noticed motion or an ex parte application with supporting declarations "as soon as reasonably practical once the necessity for the continuance is discovered." (Rule 3.1332(b).)

The trial court did not abuse its discretion in the case at bar by denying Moore's request for a continuance. Section 527.6 governs civil harassment restraining orders and governed the proceedings here. (*Freeman v. Sullivant*, *supra,* 192 Cal.App.4th at p. 528.) Nothing in section 527.6 mentions a right to a continuance. (*Freeman v. Sullivant*, *supra*, at p. 528.) In fact, the statute required that the court hold a hearing on the request for restraining order within "15 days, or, if good cause appears to the court, 22 days from the date the [TRO] is issued." (Former § 527.6, subd. (d).)[6] In other words, the statute

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6 This citation to former section 527.6 refers to the version of the statute in effect in 2010 and 2011, the relevant time period here. The Legislature has twice amended section 527.6 since then, once effective January 1, 2012, and once effective January 1, 2013. All other citations to section 527.6 refer to the current version of the statute.

contemplated that a hearing on permanent restraining orders would occur sooner rather than later.

Because the statute does not mandate a continuance when requested, the California Rules of Court governed the court's consideration of the continuance request. Moore did not comply with the rules by noticing a motion or filing an ex parte application with supporting declarations. This was despite the fact that she had known the date of the continued hearing a month in advance, and the court had specifically advised her at the March 30 hearing that if she wanted a continuance, she needed to file an ex parte application. Even if she did not actually have the funds to retain counsel prior to the week of the continued hearing, as she claimed, she could have noticed the court and the parties of her desire to retain counsel before the very morning of the hearing. By her own admission, she had at least talked to the lawyer she wanted to retain several days before the hearing, yet she had notified none of the interested parties.

Among the circumstances that *may* indicate "good cause" for a continuance are "[t]he substitution of trial counsel, but only where there is an affirmative showing that the substitution is required in the interests of justice." (Cal. Rules of Court, rule 3.1332(c)(4).) Moore did not show that the interests of justice required her to substitute in an attorney.[7] She had no real explanation for why she could not proceed without counsel and simply stated over and over again that she was not ready to proceed without counsel, despite having done so since the inception of the case. The court gave her the opportunity to proceed with presenting evidence and arguing her case. It was Moore's

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[7] We note that Moore proceeded in pro. per. with no apparent problems during the full-day hearing on March 30, 2011. She cross-examined Fox, examined her own witness (Warner), testified herself, interposed objections to testimony, and made legal arguments to the court. Also, only two of the five respondents were represented by counsel on March 30 -- Fox and Brief-Mueller. At the continued hearing, Brief-Mueller was no longer represented by counsel and was proceeding in pro. per. Thus, the only party represented by counsel at the time of the continued hearing was Fox.

decision not to proceed in pro. per. and let the court rule on the evidence adduced up to that point.

Given all these factors -- the statute's silence on continuances, Moore's failure to bring an ex parte application or motion with supporting documentation, and her failure to demonstrate good cause -- the court did not abuse its discretion. Similarly, the court's denial of a continuance for Moore to file a written anti-SLAPP motion was not an abuse of discretion. Moore did not justify her failure to bring the motion earlier. For instance, there was no indication that she did not know the facts supporting such a motion earlier. She did not explain why she could not have filed the motion previously, such that a continuance was justified. In sum, we find no error here.

4. The Court's Consolidation of the Cases for Hearing

Next, Moore contends that the trial court erred in consolidating the cases for hearing without giving proper notice to the parties. Moore has forfeited the contention.

The forfeiture doctrine applies generally in all civil and criminal proceedings. (*Keener v. Jeld-Wen, Inc.* (2009) 46 Cal.4th 247, 264.) We will not consider asserted errors when an objection could have been made but was not raised in the trial court by some appropriate method. (*Children's Hospital & Medical Center v. Bontá* (2002) 97 Cal.App.4th 740, 776.) The purpose of the doctrine is to encourage a party to bring errors to the attention of the trial court, so that they may be corrected or avoided. (*Keener v. Jeld-Wen, Inc.*, *supra*, at p. 264.)

This case demonstrates the soundness of the forfeiture rule. Moore does not assert that she was unaware of the consolidation, and it is difficult to imagine how she could have been ignorant of it. Instead, she cites to numerous points in the reporter's transcript in which the court makes clear that all the petitions have been consolidated before it for purposes of the evidentiary hearing. In none of those instances does Moore object to the consolidation, nor were we able to find any other point at which she objects from our review of the entire record. Had she objected to the consolidation of the cases for the evidentiary hearing, the court could have dealt with the issue before committing alleged error. Moore's belated objection to the consolidation amounts to a forfeiture of the issue.

5. Sufficiency of the Evidence

Moore additionally argues that the evidence was insufficient to support the court's orders granting Fox's petition and denying her petitions. In particular, Moore contends that the court misconstrued and took out of context her comments in the November 17, 2010 email, in which she called Fox a "b----," referenced putting a foot in one's neck, and referenced a "whooping." She asserts that her First Amendment right to freedom of speech protected these comments. We reject this challenge. Substantial evidence supported the trial court's orders.

Section 527.6 supplements the common law torts of invasion of privacy and intentional infliction of emotional distress by providing harassment victims with an expedited procedure for "limited-scope" and "limited-duration" injunctions. (*Byers v. Cathcart* (1997) 57 Cal.App.4th 805, 807.) The statute "'authorizes a "person who has suffered harassment" to obtain a [TRO] and injunction against the harassing conduct and provides an expedited procedure to obtain such an injunction. . . .' . . . The elements of unlawful harassment, as defined by the language in section 527.6, are as follows: (1) 'a knowing and willful course of conduct' entailing a 'pattern' of 'a series of acts over a period of time, however short, evidencing a continuity of purpose'; (2) 'directed at a specific person'; (3) 'which seriously alarms, annoys, or harasses the person'; (4) 'which serves no legitimate purpose'; (5) which 'would cause a reasonable person to suffer substantial emotional distress' and 'actually cause[s] substantial emotional distress to the plaintiff'; and (6) which is not a '[c]onstitutionally protected activity.'" (*Schild v. Rubin* (1991) 232 Cal.App.3d 755, 762, citations omitted.) A "course of conduct" includes sending harassing correspondence to an individual by any means. (§ 527.6, subd. (b)(1).)

On appeal, we review whether the trial court's findings regarding restraining orders are supported by substantial evidence in the record. (*R.D. v. P.M.* (2011) 202 Cal.App.4th 181, 188.) "We resolve all factual conflicts and questions of credibility in favor of the prevailing party and indulge in all legitimate and reasonable inferences to uphold the finding of the trial court if it is supported by substantial evidence which is reasonable, credible and of solid value." (*Schild v. Rubin, supra*, 232 Cal.App.3d at

p. 762.) Credibility is an issue for the fact finder, and as such, we do not reweigh evidence or reassess the credibility of witnesses. (*Cowan v. Krayzman* (2011) 196 Cal.App.4th 907, 915.) "Conflicts in the evidence, conflicting interpretations thereof and conflicting inferences which reasonably may be drawn therefrom, present issues of fact for determination by the trier of fact who 'is the sole judge of the credibility of the witnesses' . . . ." (*Church of Merciful Saviour v. Volunteers of America, Inc.* (1960) 184 Cal.App.2d 851, 856-857.)

Here, substantial evidence supported the court's orders. The court's findings that Fox had suffered unlawful harassment and Moore had not so suffered ultimately turned on credibility calls. Having observed Fox, Moore, and Warner testify, the court did not believe that Moore was credible, particularly when she said that her email comments to Fox were merely idioms in her culture and did not convey an actual threat of violence. Similarly, the court did not believe that Moore and Warner were credible witnesses for purposes of Moore's allegations that respondents harassed, threatened, and followed her and T. The court found Moore's allegations -- supported solely by her own testimony, that of Warner, or T.'s declaration -- to be unfounded and, in some cases, inexplicable. It appeared that the cases in which Moore or Warner alleged they were followed or "stalked" by respondents were attempts to personally serve Moore with Fox's TRO papers. By contrast, the court found Fox to be credible and believed her when she said she found Moore's comments to be threatening, she did not know they were idioms in the African-American culture, and she feared Moore. All that was required was that Moore engaged in a knowing and willful course of conduct that "seriously alarm[ed]" or "annoy[ed]" Fox. (§ 527.6, subd. (b)(3).) The statute does not require that Moore have engaged in actual violent behavior in the past, as Moore seems to suggest would be necessary for an injunction to issue against her. Moore's challenge essentially asks us to reweigh the evidence and make credibility determinations contrary to the trial court's. This we cannot do.

As for Moore's argument that the court erred because her comments to Fox were constitutionally protected activity, we disagree. Not all speech is of equal First

Amendment importance. (*Brekke v. Wills* (2005) 125 Cal.App.4th 1400, 1409.) Only speech on matters of public concern are at the heart of First Amendment protection. (*Ibid.*) Speech between purely private parties, about purely private parties, and on matters of purely private interest are "'"wholly without . . . First Amendment concerns."'" (*Ibid.*) A court can properly consider such speech in determining whether to issue injunctive relief under section 527.6 (*Brekke v. Wills, supra*, at p. 1409.) Moore has not shown how calling Fox a profane name and referring to putting a foot in one's neck or whooping a person is speech on a matter of public concern deserving of First Amendment protection. The cases on which Moore relies are inapposite inasmuch as they dealt with the criminalization of speech. This is obviously not the case here. The state is not criminally prosecuting and subjecting Moore to criminal punishment for her speech. The purpose of an injunction under section 527.6 is not to punish for past acts of harassment, but rather to provide quick relief and prevent future harassment. (*Russell v. Douvan* (2003) 112 Cal.App.4th 399, 403.) The restraining order does not even restrain her speech; it only prohibits her from contacting or going near Fox and her family members.

6. Judicial Misconduct or Bias

Lastly, Moore urges that the court committed judicial misconduct or was biased in a number of ways, including that it vindictively prosecuted her, made erroneous evidentiary rulings, advocated on behalf of respondents by taking over witness examinations and limiting Moore's questioning, and conveyed a negative attitude toward Moore. We decline to reverse on these grounds.

First, regarding her claim of "vindictive prosecution," Moore relies solely on federal Ninth Circuit cases involving claims that the defendants in the lawsuit had been vindictively prosecuted by government law enforcement agencies. The court is not a law enforcement agency and does not prosecute individuals. One private party's civil suit against another is not a government prosecution. Moore's claim of vindictive prosecution therefore does not apply here.

Second, Moore's claim that she did not receive a fair trial because the court was biased against her, as evidenced by its erroneous evidentiary rulings, is without merit. A trial court's numerous rulings against a party, even when erroneous, "'do not establish a charge of judicial bias, especially when they are subject to review.'" (*People v. Fuiava* (2012) 53 Cal.4th 622, 732.) Moore identifies some rulings that she asserts were incorrect in a conclusory manner, and at other times she simply refers generally to erroneous rulings or the court's failure to provide for the "completeness of the record." (Capitalization omitted.) Even when she identifies specific rulings that were purportedly incorrect, she does not explain *why* they were incorrect, or why they constituted prejudicial error, with citations to the law and cogent argument. We are "'not required to make an independent, unassisted study of the record in search of error or grounds to support the judgment.'" (*McComber v. Wells* (1999) 72 Cal.App.4th 512, 522.) A party's contentions must be supported by argument and citation to authority, or we may deem them waived. This principle applies equally to appellants acting in pro. per. (*Id.* at pp. 522-523.) Moore has effectively waived her contentions according to these principles.

Third, the court is not biased because it conducted witness questioning and limited the parties' questioning at times. It is well settled that a trial judge may examine witnesses to elicit or clarify testimony. (*People v. Rigney* (1961) 55 Cal.2d 236, 241.) Indeed, such questioning comes within "'the right and duty of a judge to conduct a trial in such a manner that the truth will be established in accordance with the rules of evidence.'" (*Ibid.*) Additionally, section 527.6 expressly permits the court to "make an independent inquiry" of witnesses at the evidentiary hearing. (§ 527.6, subd. (i).) Our review of the entire reporter's transcript reveals that the court examined and cross-examined all witnesses who testified, not just one party's witnesses, and it limited the questioning of both Fox and Moore at times. In other words, the court was acting in an evenhanded manner and did not appear to advocate for one side over the other. It was evident that the court was simply acting to move the proceedings along and minimize undue delay.

Fourth, and finally, Moore asserts that the court had a negative attitude toward her because it did not prevent Fox and Brief-Mueller from being represented by their respective counsel. Fox was represented by Lisa Marie Fox, who Moore asserts was an attorney with the Children's Law Center (CLC), although the record identifies her affiliation as "Law Offices of Lisa Marie Fox." Moore contends this created a conflict of interest because the CLC represented T. in a case, and the court was aware of this. Brief-Mueller was represented at the March 30 hearing only by a deputy public defender from her office. Moore contends that the public defender's office had no interest in the case "just because one of its employees was involved as a private citizen/parent at Dixie." Despite Moore's contention of error, none of the very limited citations in her argument demonstrates why it was error for the court to permit the parties to be represented by these attorneys. We noted in a foregoing paragraph that a party's contentions must be supported by argument and citation to authority. (*McComber v. Wells*, *supra*, 72 Cal.App.4th at pp. 522-523.) Because Moore does not so support her contention here, the contention is deemed waived and is unavailing.

DISPOSITION

The judgment is affirmed. Respondents to recover costs on appeal.

FLIER, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.