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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

MANOELLA NARIAN,

Plaintiff and Respondent,

v.

AITAJ SANDUCCI,

Defendant and Appellant.

B286152

(Los Angeles County  
Super. Ct. No. 17TRRO00279)

APPEAL from an order of the Superior Court of Los Angeles County, Maria Puente Porras, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Lieber & Galperin, Yury Galperin and Collin Grant for Appellant and Defendant.

Kosnett Law Firm and Louis V. Kosnett for Plaintiff and Respondent.

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Appellant Aitaj Sanducci challenges the issuance of a one-year restraining order protecting respondent Manoella Narain. Because there is substantial evidence to support the issuance of the order, we affirm.

## **FACTUAL AND PROCEDURAL SUMMARY**

Aitaj Sanducci and Manoella Narain were friends; after their friendship ended, Narain asserted that Sanducci began stalking and harassing her, making threats and negative comments about her and her family, and posting a disturbing YouTube video. Narain petitioned for a civil restraining order (Code of Civ. Proc., § 527.6<sup>1</sup>). At the hearing, both parties testified, and the court reviewed emails and the challenged video. After reviewing the evidence, the court determined that Narain had met her burden, and that Sanducci's testimony was not credible. The court issued a protective order of one year duration.<sup>2</sup>

Sanducci appeals, arguing that the trial court did not apply 527.6, but instead issued the order pursuant to the Domestic Violence Prevention Act, Family Code section 6200, et. seq. This argument relies on the trial court's statement that its ruling, in

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<sup>1</sup> All future statutory citations, unless otherwise noted, are to the Code of Civil Procedure.

<sup>2</sup> The order was to expire by its terms on September 26, 2018. We take judicial notice, as requested by Sanducci, that Narain has filed a petition to extend the order and that, pending a determination of that petition, the original order remains in effect.

part, was based on the fact that it found Sanducci had disturbed Narain's peace. Sanducci further argues that the record does not contain sufficient evidence to support the ruling. Finally, Sanducci argues that the order infringes her First Amendment rights.

## DISCUSSION

### A. The Standard of Review

A person who has suffered harassment may seek a temporary restraining order and injunctive relief under section 527.6. There are three possible grounds for finding actionable harassment under this statute: (1) "[u]nlawful violence," (2) a "credible threat of violence," and (3) "a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose." (§ 527.6, subd. (b).)

After a plaintiff files a petition for an injunction under section 527.6, the court must receive relevant testimony and may issue an injunction only if it finds, by clear and convincing evidence, that harassment exists. (§ 527.6, subd. (d).) "Clear and convincing" evidence requires a finding of high probability." (*In re Angelia P.* (1981) 28 Cal.3d 908, 919). We review the court's decision to determine whether there is sufficient evidence to support the trial court's determination; "we review the evidence before the trial court in accordance with the customary rules of appellate review. 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* (1991) 232 Cal.App.3d 755, 762 (*Rubin*).) We review de novo whether the facts are legally sufficient to satisfy the statutory requirements. (*Harris v. Stampolis* (2016) 248 Cal.App.4th 484, 497.) Here, the record contains evidence that supports the issuance of the requested relief, and we affirm.

#### B. The Court Applied the Code of Civil Procedure

Sanducci argues that the trial court’s reference to “disturbing [Narain’s] peace” demonstrates that the court analyzed this case under the Family Code, rather than the Code of Civil Procedure. That assertion fails, for two reasons.

First, “[a]bsent any evidence to the contrary, we presume that the trial court applied the proper legal standard.” (*Cueto v. Decker* (2015) 241 Cal.App.4th 550, 561.) Neither the documents filed with the court, nor the arguments during the hearing, referred to or relied on the Family Code. The unsupported argument to the contrary on appeal is not evidence.

Second, the trial court’s ruling fell squarely within the terms of the statute. Section 527.6, subdivision (b)(6)(A) specifically provides that a restraining order can, among other actions, enjoin a party from disturbing the peace of the protected party. The order issued by the trial court in this case did precisely that.

C. The Record Contains Substantial Evidence to Support the Order

The first ground for relief under section 527.6 is unlawful violence, defined as “any assault or battery, or stalking as prohibited in Section 646.9 of the Penal Code, but [does] not include lawful acts of self-defense or defense of others.” (§ 527.6, subd. (b)(1).) Narain’s petition, which she adopted at trial and expanded in her testimony, constituted evidence that Sanducci had repeatedly threatened Narain and her mother, placing Narain in fear. While Sanducci denied the allegations, it was for the trial judge to determine credibility. (*Rubin, supra*, 232 Cal.App.3d at p. 762; *Parisi v. Mazzaferro* (2016) 5 Cal.App.5th 1219, 1226.)

The evidence does not demonstrate unlawful violence, as defined by the statute. Threats alone, and isolated incidents of stalking, do not satisfy this prong. The evidence does, however, require evaluation under the remaining portions of the statute.

The second ground under section 527.6 is a credible threat of violence, defined as “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.” (See, e.g., *USS-Posco Industries v. Edwards* (2003) 111 Cal.App.4th 436 [party told coworkers that he had a gun and would kill them].) As set forth above, Narain presented evidence, deemed credible by the trial court, of Sanducci’s threats of violence against her, including threats of assault, sufficient to satisfy this prong.

The third ground under section 527.6 is a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. (§ 527.6, subd. (b).) The course of conduct is “a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose.” (§ 527.6, subd. (b)(3).) The conduct “must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the plaintiff.” (§ 527.6, subd. (b).) Narain’s testimony also established acts meeting this prong, including, but not limited to, the emails and video posts specifically relied on by the trial court.

#### D. Sanducci Has Not Established A First Amendment Claim

With respect to the YouTube video, and Sanducci’s efforts as a social media persona, Sanducci argues that the restraining order violates her rights of free speech and expression. We analyze the restrictions placed on the order as we do any injunctive restriction, and seek to determine whether the injunctions “imposes no more burden than is necessary to serve its legitimate governmental interests and whether it is thus a reasonable ‘time, place and manner’ restriction in light of the importance of those interests.” (*R.D. v. P.M.* (2011) 202 Cal.App.4th 181, 192, quoting *Madsen v. Women's Health Ctr.* (1994) 512 U.S. 753, 765-766.)

The trial court ordered Sanducci to refrain from any postings or mentions of the protected parties on social media. This is an incidental restraint, one that does not restrict

Sanducci's ability to post or comment on any other matters. It does not affect in any manner Sanducci's ability to comment on matters of public interest or which concern public issues. To the contrary, the speech that is affected, harassing speech relating solely to private concerns, is entitled to more limited protection under the First Amendment. (*R.D., supra*, 202 Cal.App.4th at p. 192; *DVD Copy Control Assn., Inc. v. Bunner* (2003) 31 Cal.4th 864, 882-883.) The order, in contrast, serves the purpose of 527.6: preventing violence and harassment, and protecting safety and privacy. (See *Brekke v. Wills* (2005) 125 Cal.App.4th 1400, 1412.)

Because there was clear testimony, judged by the trial court to be credible, that constituted substantial evidence supporting the issuance of a restraining order based on section 527.6, the order was properly issued.

### **DISPOSITION**

The order is affirmed. Narain is to recover her costs on appeal.

ZELON, Acting P. J.

We concur:

SEGAL, J.

FEUER, J.