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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

CHERYL OSTERKAMP, Plaintiff and Respondent, v. MYTCHELL MORA, Defendant and Appellant.	B257707 (Los Angeles County Super. Ct. No. BS147988)

APPEAL from an order of the Superior Court of Los Angeles County, Reva G. Goetz, Judge. Affirmed.

Mytchell Mora, in pro. per., for Defendant and Appellant.

William R. Burkitt and Janette Freeman Cochran for Plaintiff and Respondent.

The trial court issued a protective order under section 15657.03 of the Welfare and Institutions Code, part of the Elder Abuse and Dependent Adult Civil Protection Act (§ 15600 et seq.), restraining appellant Mytchell Mora from contacting respondent Cheryl Ostercamp, her husband Horst, and her granddaughter K. for five years.[1] Appellant, who represented himself below and is representing himself on appeal, filed an opening brief consisting almost entirely of a string of propositions without supporting argument or citation to authority. Only in his reply does he clearly assert that substantial evidence does not support issuance of the protective order. Generally, an appellant must raise the points he or she wishes the appellate court to address in the opening brief and support the points raised with cogent legal argument and citations to authority; failure to do so allows this court to treat his or her contentions as waived. (*Cahill v. San Diego Gas & Electric Co*. (2011) 194 Cal.App.4th 939, 956; *Reichardt v. Hoffman* (1997) 52 Cal.App.4th 754, 764.) Nonetheless, we have conducted a substantial evidence review. Finding sufficient evidence to support the issuance of the protective order, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Background Facts*

Respondent Osterkamp's son, J.T., was involved in a relationship with Crystabel Funes which resulted in the birth of a daughter, K., in 2007. Funes named another man as father on the birth certificate, but J.T. was able to establish his paternity through DNA testing and a petition to the court, and obtained custody and visitation rights. Funes refused to honor court orders regarding the custody

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[1] Unless otherwise designated, statutory references are to the Welfare and Institutions Code.

and visitation schedule. After Funes's June 2008 arrest for child abduction, the court placed physical custody of K. with J.T. When J.T. died shortly thereafter, respondent petitioned for and obtained guardianship of the child. In November 2010, respondent learned that Funes had abducted K.'s half-sister, who was then in foster care. Respondent obtained a protective order requiring Funes to keep away from her, her husband and K. until March 2014.

B. *Application for TRO*

On April 11, 2014, respondent, then 67, applied for and received a temporary restraining order (TRO) under section 15657.03, restraining appellant from contacting her, her husband or K., and requiring him to stay 100 yards from them. In her declaration in support of the application, respondent stated that on March 30, 2014, at 12:54 p.m., she received a text message on her cell phone stating "I'm following you. . . ," accompanied by a photograph of her car.[2] She claimed to have received another text approximately 10 minutes later, stating "'im [*sic*] coming after you Cheryl . . . lets [*sic*] talk or dance.'" She stated that an internet search uncovered information indicating that the cell phone number from which the texts were sent belonged to appellant, and that appellant had been in contact with Funes.[3]

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[2] A copy of the texts was attached as an exhibit to her declaration.

[3] In her declaration, respondent stated she or someone working on her behalf located "emails" between appellant and Funes. Attached as exhibits were documents that appeared to be printouts of a social media exchange between appellant and Funes. In the documents, Funes thanked appellant for his help in her quest to reunite with her daughters. Appellant responded: "Soon, sooner than yesterday you will be with your daughters again. And I will expose the animals that broke all kinds of laws and bring them to justice."

(Fn. continued on next page.)

Appellant filed a declaration stating he was a "News Producer" and that he was working on a story about K.'s custody. He claimed that after a story about the custody dispute appeared in a local newspaper, respondent called him and stated she was "powerful" and had "'many friends.'"

C. *Hearing on Protective Order*

A hearing on the protective order was held on May 22, 2014. Respondent testified that on March 30, 2014, following receipt of the texted photo of her car and the message stating "'I'm following you'" described in her declaration, she received a telephone call from an angry man who screamed at her, saying "'I'm coming after you, I'm following you. You're being filmed as we speak. . . . If you get her arrested, I will destroy you. I will come after you. I will kill you.'" This caused respondent, who was home alone with six-year old K., to lock all the doors and to hide in the back of the house with the girl, after peering out a window to see if anyone was there. Respondent described herself as "terrified" after receiving the call and texts, and said she had been "living in fear" since then.

Respondent testified that her husband Horst, through an internet search, was able to identify appellant as the owner of the number from which the texts were sent, and to locate Twitter and Facebook communications between appellant and Funes. Respondent claimed to have logged a total of 18 texts and calls from appellant's phone. According to her log, the first was the text on March 30 at

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The application for the TRO also was supported by a declaration from a licensed private investigator, whose independent investigation had determined that the number from which the texts were sent belonged to appellant.

12:54 p.m.; the last was a telephone call on April 24 at 8:29 a.m.[4] Respondent also heard from the trustees of K.'s estate that appellant had called, seeking financial information about the estate.

Respondent's attorney placed into evidence copies of two text messages dated April 19, sent from appellant's phone number.[5] In the first, the sender claimed to have Funes's power of attorney and demanded she be permitted to see K. In the second, the sender said he would "call [respondent] everyday until [she] allow[ed] K. to see her Mother."

Appellant admitted contacting the trustees of K.'s estate. He testified he had sent respondent only one text, the photo of her car on March 30, contending that he had sent the photo -- allegedly taken by Funes -- because the Osterkamps had been following Funes. He admitted calling respondent after sending the photo, but said it was merely to explain that he was investigating allegations made by Funes. He testified they had "a talk," during which respondent threatened to cause problems for him. He also claimed respondent had called him multiple times thereafter trying to set up a meeting with him. The court inquired whether he had any records to support that he had had a lengthy conversation with respondent on March 30 or multiple other calls from her in the days that followed. Appellant had none.[6] Asked specifically whether he had sent the two texts dated April 19,

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[4] The other calls respondent received were on March 30 at 1:04 p.m.; April 19 at 10:54 a.m., 11:39 a.m. and 3:06 p.m.; April 20 at 10:38 a.m. and 10:44 a.m.; April 21 at 10:40 a.m.; April 22 at 9:11 a.m.; April 23 at 9:36 a.m.; and April 24 at 8:29 a.m.

[5] The exhibits were attached to respondent's July 16, 2015 motion to augment, which this court granted August 3, 2015.

[6] After hearing appellant's testimony, the court asked respondent whether she ever called appellant. She admitted dialing his number once accidentally when reaching for something in her purse, but denied saying anything to him on that occasion or any other, or having answered more than one or two of his calls. The court provided appellant an opportunity to cross-examine respondent. Appellant asked her whether she had ever lied
(Fn. continued on next page.)

appellant replied he would need to "investigate" and "get them forensically tested" to prove whether they were his. When asked whether he had Funes's power of attorney as represented in one of the texts, appellant acknowledged that he did. Asked about the phone calls to respondent recorded in her log, appellant initially responded: "I'm going to say that I did not make those phone calls; that I want to see her proof of the phone calls . . . ." He ultimately denied making the calls.

Respondent's attorney showed the court her cell phone to support her testimony concerning the multiple phone calls she received from appellant's number. After viewing the phone, the court noted for the record that the April 19 texts were still there.

Respondent also called an internet retrieval expert who testified he found appellant's cell phone number on a Web site, and that it matched the number from which the calls and texts to respondent originated. In cross-examination, appellant asked the expert a number of questions pertaining to whether his cell phone number could have been faked or "spoofed," but the expert had no knowledge of that subject. Appellant sought to call Funes to testify to "what she was thinking" when she took the picture of the Osterkamps' car and sent it to appellant. The court excluded the testimony.

After hearing the evidence, the court issued a five-year protective order.[7] The court stated it was persuaded primarily by the contents of the first text message sent March 30 and the phone call respondent received ten minutes later, noting that appellant had not denied that he sent the photo or that he called respondent ten minutes after it was sent. Observing that appellant's sole defense

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under penalty of perjury, whether she had called or emailed him, and whether she had recently contacted Funes. She denied having done any of those things.

[7] The protective order is not in our record.

was that his phone was hacked or spoofed, the court pointed out that he had offered no evidence to support that claim, and found that "given the strength of [appellant's] convictions with regard to . . . how Ms. Funes was treated," it was "credible that [he] did, in fact, generate phone calls to Ms. Osterkamp." Appellant appealed the order.

DISCUSSION

Section 15657.03 provides that "an elder or dependent adult who has suffered abuse as defined in section 15610.07" may seek a protective order "for the purpose of preventing a recurrence of abuse, if a declaration shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse of the petitioning elder or dependent adult."[8] (§ 15657.03, subds. (a)(1) & (c).) A protective order issued under section 15657.03 may have a duration of up to five years. (§ 15657.03, subd. (i)(1).) The order may enjoin the responding party from "abusing, intimidating, . . . stalking, threatening, . . . harassing, telephoning, . . . contacting, either directly or indirectly, by mail or otherwise, or coming within a specified distance of, or disturbing the peace of, the petitioner, and, in the discretion of the court, on a showing of good cause, of other named family or household members . . . of the petitioner." (*Id.*, subd. (b)(3)(A).)

The facts necessary to support the protective order need be established by only a preponderance of the evidence. (*Gdowski v. Gdowski* (2009) 175

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[8] Section 15610.07 defines "[a]buse of an elder or dependent adult" to include "mental suffering." "Mental suffering" is defined in section 15610.53 as "fear, agitation, confusion, severe depression, or other forms of serious emotional distress that is brought about by forms of intimidating behavior, threats, harassment, or by deceptive acts performed or false or misleading statements made with malicious intent to agitate, confuse, frighten, or cause severe depression or serious emotional distress of the elder or dependent adult." An "[e]lder" is anyone 65 or older. (§ 15610.27.)

Cal.App.4th 128, 137; *Bookout v. Nielsen* (2007) 155 Cal.App.4th 1131, 1139-1140.) A protective order may issue under section 15657.03 without a finding of reasonable certainty that the wrongful acts will be continued or repeated. (*Gdowski v. Gdowski*, *supra*, 175 Cal.App.4th at p. 136.) "[S]ection 15657.03 require[s] a showing of past abuse, not a threat of future harm" and "may issue on the basis of evidence of past abuse, without any particularized showing that the wrongful acts will be continued or repeated." (*Gdowski v. Gdowski*, *supra*, at p. 137.)

On appeal, we review the issuance of a protective order under an abuse of discretion standard. (*Gdowski v. Gdowski*, *supra*, 175 Cal.App.4th at p. 135; *Bookout v. Nielsen*, *supra*, 155 Cal.App.4th at p. 1137.) We will find an abuse of discretion only when the trial court exceeded the bounds of reason. (*Bookout v. Nielsen*, *supra*, at p. 1140.) We review the factual findings sustaining the order for substantial evidence, "resolv[ing] all conflicts in the evidence in favor of . . . the prevailing party, and indulg[ing] all legitimate and reasonable inferences in favor of upholding the trial court's findings." (*Id.* at pp. 1137-1138.)

The evidence elicited at the hearing provided substantial evidence to support the trial court's issuance of the protective order. Respondent testified she received an alarming text from appellant on March 30, 2014 -- a photo of her car and the message "I'm following you." She further testified that the text was immediately followed by a phone call from any angry man who screamed at her and said such things as: "'I'm coming after you'"; "'I'm following you'"; "'You're being filmed as we speak'"; "'I will destroy you'"; and "'I will come after you [and] kill you.'" Respondent attested to being terrified and trying to hide with K. after receiving the text and calls. The court could reasonably conclude that the March 30 text and phone call by themselves caused respondent, an elderly woman alone with her six-year old granddaughter, serious emotional distress as defined by

section 15610.53. But this was not the end of the matter. Over the course of the next few weeks, respondent received at least two additional texts, including one threatening to call every day until respondent acceded to appellant's demands, and nine other phone calls. The fear and distress induced by this additional harassing conduct further supported issuance of the order.[9]

Appellant attempts to cast doubt on the court's findings by pointing to the inconsistencies between respondent's testimony and her declaration, and to his own testimony denying that he sent any texts other than the photograph of the car, and denying that he made any calls other than the March 30th one.[10] The court acknowledged some discrepancies between the declaration and the testimony, but found respondent's testimony largely credible. We do not reweigh the credibility determinations of the trier of fact. (See *Lenk v. Total-Western, Inc*. (2001) 89 Cal.App.4th 959, 968 [""[I]t is the exclusive province of the [trier of fact] to determine the credibility of a witness . . . ."""]; *People v. Leigh* (1985) 168 Cal.App.3d 217, 221 ["[T]he testimony of a single witness is sufficient to uphold a

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[9] Appellant contends respondent's testimony that she was home alone was contradicted by her statements that her husband researched appellant's number on his computer. There was nothing in the testimony to suggest the internet research occurred immediately after the call and texts were received. Appellant also points out that respondent's TRO application form, filled out by her attorneys, contained entries indicating Horst was there "[w]hen [the March 30 harassment] happen[ed]." This discrepancy presented a basis for cross-examining respondent, but does not establish the untruthfulness of her testimony at the hearing.

[10] Appellant also suggests the trial court relied on illegally obtained evidence, claiming that his communications with Funes attached as exhibits to the TRO application were "private not public and therefore . . . not legally found." In making its ruling, the court relied primarily on the evidence submitted at the hearing. In any event, the communications to which appellant refers were clearly not emails and appear to have been obtained from public social media, Facebook and Twitter.

judgment even if it is contradicted by other evidence, inconsistent or false as to other portions."].)

The record further supported the court's implicit finding that appellant's testimony denying that he engaged in the harassing conduct was not credible. When asked whether he had sent certain texts to respondent or called her multiple times, appellant was initially evasive, stating he wanted to "investigate" and "see her proof." Though he later denied sending the two texts on April 19, appellant offered no explanation as to how anyone seeking to manufacture evidence that he was harassing respondent would have known he had Funes's power of attorney. He presented no documentary support for his contentions that he had texted and called respondent only once, or that she called him multiple times. He offered no evidence to support his contention that his phone had been hacked or spoofed. Respondent, in contrast, introduced the log she prepared as calls and texts came in, copies of the texts, and her phone, still showing the original texts and phone calls received from appellant's number. In short, substantial evidence supported the court's order.

DISPOSITION

The order is affirmed. Respondent is awarded costs on appeal.

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MANELLA, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.