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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

STEVEN ANTHONY VELKEI,

Plaintiff and Respondent,

v.

KEITH ALLEN KOHOYDA,

Defendant and Appellant.

B279506

(Los Angeles County
Super. Ct. No. BS164150)

APPEAL from an order of the Superior Court of
Los Angeles County. Laura Hymowitz, Commissioner. Affirmed.

Kenneth H. Lewis for Defendant and Appellant.

Steven Anthony Velkei, in pro. per., for Plaintiff and
Respondent.

Defendant and appellant Keith Allen Kohoyda (Kohoyda) challenges the trial court's October 4, 2016, issuance of a civil harassment restraining order against him and in favor of plaintiff and respondent Steven Anthony Velkei (Velkei), as well as the subsequent order denying Kohoyda's motion to dissolve, revoke, reconsider, or modify the restraining order.

Because the trial court's order is amply supported by substantial evidence, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The Parties

Velkei resides on Chelan Way in Los Angeles. He currently lives there with his husband, Jhamal Robinson (Robinson). Velkei has owned the property since April 2001, and he and Robinson have lived together there for 11 years.

Kohoyda is a self-described handyman for Gina and Darla Vincent, two sisters who own the property adjoining Velkei's property (the Vincent property). Kohoyda started working at the Vincent property in 2012 and, by his admission, visited the property "maybe twice a month at the most."

Prior Alleged Harassment

According to Velkei, "[t]here has been a pattern of harassment and violence that dates back to 2012 when Kohoyda destroyed substantial property of mine at the direction of the owners of the adjoining property in a boundary dispute. The LAPD referred the matter for prosecution of felony vandalism, though prosecution did not occur. I brought and ultimately settled a civil suit that included claims for harassment and trespass against Kohoyda. . . . [¶] Since resolution of that litigation, Kohoyda has become increasingly provocative. He comes out on the street or on areas of my property where the

neighbor has an easement and tries to stare me down and makes taunts at me. He has done the same to my father. He even came close to me in a threatening manner one time.”

Current Alleged Harassment

On August 21, 2016, while Velkei was setting up for his birthday celebration, Kohoyda, who appeared “amped up” and “completely irrational,” “jumped out of some bushes” and shouted to Velkei: “You queer bitch. I’m going to fuck you up. You aren’t going to know what hit you. You don’t know what I’m capable of.” Kohoyda claimed that Velkei had tried to run him over an hour before as Velkei was driving to the house with his 78-year-old mother. Efforts to diffuse the situation did not work; Kohoyda “kept screaming threats and using homophobic slurs.”

A police report was made, but once the police left, the harassment recommenced. Kohoyda taunted Velkei, shouting at him and making fun of him, and then began to drive up and down the street, photographing the license plate of every car that arrived to attend Velkei’s birthday party.

Velkei’s Request for a Restraining Order

As a result of Kohoyda’s behavior, on August 29, 2016, Velkei filed a request for a civil harassment restraining order against Kohoyda. The trial court granted Velkei’s request, issued a temporary restraining order, and set the matter for a full hearing on September 19, 2016.

Kohoyda retained counsel and, at his request, the matter was continued to October 4, 2016.

October 4, 2016, Hearing

At the October 4, 2016, hearing, Velkei testified on his own behalf, informing the court of Kohoyda’s misconduct on August 21, 2016, and his consequential fear and emotional

distress. As part of his evidence, Velkei introduced evidence that demonstrated Kohoyda's open hostility toward gay people. Specifically, he introduced a series of messages that Kohoyda posted on his public Facebook page. The postings remained on Kohoyda's Facebook page at the time of the October 4, 2016 hearing. The postings described gays as an "abomination" in God's sight and likened them to dogs for which it is "understandable" that Christians should beware. The postings also referred to "inordinate [a]ffection" as "homosexuality," and even seemed to suggest that people who "commit such things are worthy of death."

Kohoyda did not object to the admissibility of the Facebook postings.

Kohoyda testified as well. Later, he attempted to introduce limited portions of a videotape from August 24, 2016 (three days after the incident). But, as Kohoyda conceded, the videotape did not capture the August 21, 2016, incident at issue, and did not show any kind of interaction between the parties. Kohoyda claimed that the videotape was significant because of the very lack of interaction between the parties three days after the August 21, 2016, incident. The trial court indicated that if the videotape did not show the parties arguing, then she did not need to see it.

Trial Court Order

After the presentation of evidence and argument, the trial court granted a 50-yard stay away order from Velkei's person, home, or office for a period of two years, expiring on October 4, 2018. In so ruling, the trial court stated: "This is a tough case because clearly [Velkei] is very, very upset. I believe there's substantial emotional distress. But I'm not sure if [Kohoyda] is

capable of fucking up [Velkei] and causing real harm to him. But I'm not going to tolerate hate crime and hate statements. . . . [H]e comes to court and he's saying that this is really upsetting to him. And [Kohoyda] threatened him and he believed it. Then I believe it.

"I think legally it's a very close case, but I think [Velkei] at least has shown me that he is really, really shaken up by this. And I think [Kohoyda] has acted pretty poorly and scared this gentleman."

Motion for Reconsideration

On October 14, 2016, Kohoyda, represented by new counsel, filed a motion for order to dissolve, reconsider and revoke, or modify the October 4, 2016, restraining order.

In connection with that motion, Kohoyda's counsel argued that an objection could have been raised on October 4, 2016, to the Facebook posts had counsel been given more time to consider the evidence.

After entertaining oral argument, the trial court denied Kohoyda's motion, noting that she felt "even stronger" that the injunction needed to remain the way it was.

Appeals

Kohoyda timely appealed from the trial court's October 4, 2016, restraining order and its October 14, 2016, order denying his motion for reconsideration.

January 9, 2017, Ex Parte Hearing

Velkei returned to court on January 9, 2017, because Kohoyda violated the restraining order. At that time, the trial court clarified that Kohoyda was required to remain 50 yards away from Velkei, even if that meant that Kohoyda was

prohibited from going to or from his place of employment, namely the Vincent property.

DISCUSSION

I. *Standard of review*

An appellate court reviews a trial court's decision to grant a restraining order for substantial evidence. (*Harris v. Stampolis* (2016) 248 Cal.App.4th 484, 497.) We are required to 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 that is reasonable, credible and of solid value. (*Id.* at p. 499.) “But whether the facts, when construed most favorably in [Velkei’s] favor, are legally sufficient to constitute civil harassment under [Code of Civil Procedure] section 527.6, and whether the restraining order passes constitutional muster, are questions of law subject to de novo review.’ [Citation.]” (*Id.* at p. 497.)

II. *The restraining order is amply supported by substantial evidence*

Code of Civil Procedure section 527.6, subdivision (a), provides, in relevant part, that a person “may seek a temporary restraining order and an order after hearing prohibiting harassment as provided in this section.” Subdivision (b) of section 527.6 defines “harassment” as either (1) unlawful violence, (2) a credible threat of violence, or (3) a course of conduct, “directed at a specific person that seriously alarms, annoys or harasses the person, and that serves no legitimate purpose.” To constitute harassment, the requisite conduct must also be such as “would cause a reasonable person to suffer substantial emotional distress, and must actually cause

substantial emotional distress to the petitioner.” (Code Civ. Proc., § 527.6, subd. (b); see also *R.D. v. P.M.* (2011) 202 Cal.App.4th 181, 188.)

Substantial evidence, namely Velkei’s October 4, 2016, testimony, supports the trial court’s conclusion that Velkei needed protection from Kohoyda’s harassment.

We reject Kohoyda’s contention that the restraining order violates his First Amendment right to religious freedom. The restraining order does no such thing—it simply keeps Kohoyda away from Velkei because of Kohoyda’s credible threat of violence against him.

To the extent Kohoyda argues that the trial court committed an evidentiary error by admitting evidence of his hateful Facebook posts, that objection has been forfeited; Kohoyda never raised it at the October 4, 2016, hearing. (*People v. Saunders* (1993) 5 Cal.4th 580, 589–590; *Drake v. Dean* (1993) 15 Cal.App.4th 915, 933 [“Because there was no objection based on Evidence Code section 789, that issue has been waived on appeal”].)

Even if Kohoyda had timely objected, we would conclude that the trial court did not abuse its discretion in considering the Facebook posts. (*People v. Harris* (1989) 47 Cal.3d 1047, 1095.) The posts were highly relevant as they showed Kohoyda’s homophobia; his suggestion that gay people deserve death confirms the trial court’s belief that Kohoyda posed a credible threat of violence against Velkei.

Finally, we conclude that the trial court did not abuse its discretion in failing to consider the videotape clip from three days after the August 21, 2016, incident. Kohoyda has not shown how the videotape, which purportedly showed a lack of interaction

between the parties, would have made a difference in the trial court's decision.

DISPOSITION

The order is affirmed. Velkei shall recover his costs on appeal.

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_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
LUI

_____, J.
HOFFSTADT