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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

JENA SCACCETTI, Plaintiff and Respondent, v. YEHUDA BERG et al., Defendants and Appellants.	B276155 (Los Angeles County Super. Ct. No. BC533556)

APPEAL from a judgment of the Superior Court of Los Angeles County. Richard Fruin, Judge. Affirmed.

Law Office of John D. Cline and John D. Cline; Boersch Shapiro and Lara Kollios for Defendant and Appellant Yehuda Berg.

Cooley, Williams P. Donovan, Jr. and Jonathan Bach; Berman, Berman, Berman, Schneider & Lowary and Mark E. Lowary for Defendant and Appellant Kabbalah Centre International.

Law Offices of Alain V. Bonavida and Alain V. Bonavida for Plaintiff and Respondent.

Defendants and appellants Yehuda Berg (Berg) and Kabbalah Centre International (KCI)[1] appeal from the order denying their respective motions for judgment notwithstanding the verdict (JNOV), and from the judgment entered in favor of plaintiff and respondent Jena Scaccetti (plaintiff) after a jury awarded plaintiff $85,000 in compensatory damages and $50,000 in punitive damages on her claim against Berg for intentional infliction of emotional distress and $42,500 in compensatory damages on her claim for negligent supervision against KCI. Substantial evidence supports the jury's verdicts and we therefore affirm the judgment.

BACKGROUND

KCI is a nonprofit religious corporation organized under the laws of the State of California. Berg was the co-director of KCI in 2012. Plaintiff is a former member of KCI.

Berg and plaintiff were both in New York City on October 25 and 26, 2012. The two had communicated by text message for approximately two years and had tried, unsuccessfully, to get together on previous occasions. Plaintiff initially accepted an invitation by Berg to join him for dinner on October 25, 2012. Before accepting the dinner invitation, plaintiff texted Shalom Sharabi, a KCI teacher whom she considered her spiritual advisor, and asked whether she could attend the dinner. Sharabi texted back saying that plaintiff could do so. Plaintiff began feeling unwell later in the evening and texted Berg that she could not make it to dinner. Berg then invited her to meet him for drinks later that night at his apartment. Plaintiff again texted Sharabi to ask whether she could go to Berg's apartment. When Sharabi did not immediately respond, plaintiff accepted Berg's invitation.

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[1] Berg and KCI are referred to collectively as defendants.

Plaintiff arrived at Berg's apartment sometime after midnight. Berg, who had a longstanding substance abuse problem, had taken Vicodin earlier that evening and was drunk when plaintiff arrived. When plaintiff complained of pain as the result of kidney stones, Berg gave her two or three Vicodin tablets and a glass of vodka and insisted that she take the pain medication. Plaintiff took one Vicodin tablet and a sip of vodka.

Berg then sat on the couch beside plaintiff and began touching her legs. He embraced her for a few minutes, saying, "you're so weak," and promised that he would not get her pregnant. Berg then gave plaintiff more Vicodin tablets and demanded that plaintiff take them. Plaintiff did not do so.

At some point, Sharabi sent a responsive text message to plaintiff's inquiry about going to Berg's apartment. Sharabi asked whether plaintiff was at the apartment. When plaintiff told Berg about Sharabi's text message, Berg took plaintiff's phone away from her and told plaintiff, "if you f*** tell one person that you were here tonight, I will beat the shit out of you. . . . I'll f*** kill you and beat the whole right side of your body until you're blue."

Berg then scrolled through the text messages and photographs stored on plaintiff's phone, made lewd comments about certain photos, and deleted all of the text messages. He refused plaintiff's requests to return her phone. After deleting all of the text messages, Berg returned plaintiff's phone to her and admonished her not to tell anyone that she had been in his apartment.

Plaintiff thereafter remained in the apartment, and she and Berg conversed about various subjects for the next few hours. At approximately 4:00 a.m., plaintiff told Berg she had to leave. Berg took the elevator down with her, hailed her a taxi, and asked her to text him when she reached home. Plaintiff did so,

and Berg responded by text: "Can't believe you not into me at all. LOL. As long as you home. I had blast tonight." Plaintiff responded: "It's not true. You're an incredible person and so special and handsome but you are married. I had so much fun. . . . Loved hanging with you. Please move to New York." Over the next several days, plaintiff and Berg exchanged a series of friendly text messages.

Plaintiff testified that she subsequently became ill and was depressed for several months following the incident with Berg. On February 4, 2013, plaintiff sent Berg a text message stating that the way he had treated her during the October incident was "disgusting and awful" and warned him to never "cross the line" with her or threaten her again. Berg and plaintiff then exchanged a series of text messages. In one of these messages, Berg thanked plaintiff and stated that he was "deeply sorry."

Plaintiff filed the instant action in January 2014. In the operative third amended complaint, she asserted causes of action against Berg for battery, intentional infliction of emotional distress, breach of fiduciary duty, and negligence, and against KCI for negligence, and negligent hiring and supervision. She sought $15 million in compensatory damages and $40 million in punitive damages.

The matter proceeded to a jury trial. At the close of evidence, the trial court granted a directed verdict in Berg's favor on the breach of fiduciary duty claim. The jury found in favor of Berg on the battery claim and in favor of plaintiff on the intentional infliction of emotional distress claim. The jury also found in plaintiff's favor on the negligent supervision claim against KCI.

The trial court denied defendants' respective motions for JNOV, and all parties appealed. Plaintiff subsequently dismissed her appeal.

DISCUSSION

I. Standard of review

A trial court must render judgment notwithstanding the verdict whenever a motion for a directed verdict for the aggrieved party should have been granted. (Code Civ. Proc., § 629.) "A motion for judgment notwithstanding the verdict may be granted only if it appears from the evidence, viewed in the light most favorable to the party securing the verdict, that there is no substantial evidence in support. [Citation.] [¶] The moving party may appeal from the judgment or from the order denying the motion for judgment notwithstanding the verdict, or both. [Citation.] As in the trial court, the standard of review is whether any substantial evidence -- contradicted or uncontradicted -- supports the jury's conclusion. [Citations.]" (*Sweatman v. Department of Veterans Affairs* (2001) 25 Cal.4th 62, 68.)

II. Intentional infliction of emotional distress

"The elements of a cause of action for intentional infliction of emotional distress are (i) outrageous conduct by defendant, (ii) an intention by defendant to cause, or reckless disregard of the probability of causing, emotional distress, (iii) severe emotional distress, and (iv) an actual and proximate causal link between the tortious conduct and the emotional distress. [Citation.]" (*Nally v. Grace Community Church* (1988) 47 Cal.3d 278, 300.) Berg contends there was insufficient evidence to establish any outrageous conduct by him, that plaintiff suffered severe or extreme emotional distress, or that his conduct was a substantial factor in causing plaintiff severe emotional distress. As we discuss, substantial evidence supports the jury's findings as to each of these elements.

A. Outrageous conduct

Outrageous conduct which is sufficient to support an intentional infliction of emotional distress claim "must be so extreme as to exceed all bounds of that usually tolerated in a civilized community. [Citations.]" (*Cervantez v. J. C. Penney Co.* (1979) 24 Cal.3d 579, 593, superseded by statute on other grounds as stated in *Melendez v. City of Los Angeles* (1998) 63 Cal.App.4th 1, 5.) "Liability for intentional infliction of emotional distress "'does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities." [Citation.]' [Citations.]" (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1051.)

Substantial evidence supports the jury's determination that Berg's conduct was sufficient to support a claim for intentional infliction of emotional distress. Berg's conduct included making an unwanted sexual advance, seizing plaintiff's cell phone and scrolling through text messages and photographs stored on the phone, making lewd comments about certain photographs, deleting all of plaintiff's text messages, and making graphic threats to kill plaintiff and to beat "the whole right side of your body until you're blue" if she disclosed their encounter to anyone. The evidence supports the jury's finding that Berg's conduct exceeded the bounds of that normally tolerated in a civilized society. (See *Delfino v. Agilent Technologies, Inc.* 2006) 145 Cal.App.4th 790, 809 [repeated threats of physical harm, stated in graphic terms, sufficiently outrageous conduct to support claim for intentional infliction of emotional distress]; *Kiseskey v. Carpenters' Trust for So. California* (1983) 144 Cal.App.3d 222, 229-230 [threats of harm or death to plaintiff and his family constitute outrageous conduct]; *State Rubbish Collectors Asso. v. Siliznoff* (1952) 38 Cal.2d 330, 335-337 [threats to beat up cross-

complainant sufficiently outrageous to support intentional infliction of emotional distress].)[2]

B. Severe emotional distress and causation

Plaintiff's testimony that the incident with Berg caused her months of sleeplessness, anxiety, and depression, and that she is still anxious and fearful for her safety supports the jury's determination that plaintiff suffered severe emotional distress and that Berg's conduct was an actual and proximate cause of that distress. That there was conflicting evidence, such as subsequent friendly text message exchanges between plaintiff and Berg, does not alter the result. When resolving challenges to a verdict based on sufficiency of the evidence, all conflicts in the evidence are resolved in favor of the verdict. "If there is substantial evidence, contradicted or uncontradicted, that will support the finding, it must be upheld regardless of whether the evidence is subject to more than one interpretation. [Citations.]" (*Mardirossian & Associates, Inc. v. Ersoff* (2007) 153 Cal.App.4th 257, 273-274, fn. 7.)

III. Negligent supervision

Under California law, an employer can be liable to a third party for negligently hiring, supervising, or retaining an unfit employee. Liability is premised on the facts that the employer knew or should have known that hiring or retaining the employee created a particular risk or hazard and that particular harm occurs. (*Doe v. Capital Cities* (1996) 50 Cal.App.4th 1038, 1054 (*Doe*).)

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[2] We find *Cochran v. Cochran* (1998) 65 Cal.App.4th 488 to be factually distinguishable from this case where Berg made a face-to-face threat to plaintiff that were she to disclose his activities of their evening together he would "beat the shit out of you. . . . I'll f*** kill you and beat the whole right side of your body until you're blue."

KCI challenges the sufficiency of the evidence supporting the jury's determination that KCI knew or should have known of Berg's propensity to engage in the tortious conduct for which he was found liable. Substantial evidence supports that determination. Berg testified that several KCI board members knew about his substance abuse and that he behaved inappropriately when intoxicated, and that before the October 26, 2012 incident with plaintiff, he had met with individual board members two or three times to discuss inappropriate behavior resulting from his substance abuse problem. According to Berg, the meetings were prompted by the Board's knowledge concerning an incident that predated the October 26, 2012 incident with plaintiff:

> "Q: They [people at KCI] knew you behaved out of control because of substance abuse; correct?"
>
> "[Berg]: They knew one time when I drank, something inappropriate may have happened."

Berg further testified that sometime before 2010 the KCI Board placed him on a one-year probation during which he was required to reduce his involvement with KCI and to focus on self reflection and self improvement.

We reject KCI's contention that the foregoing evidence is insufficient to establish that KCI knew or should have known that Berg had a propensity to engage in the type of conduct for which he was held liable -- attempting to seduce a KCI member or threatening another person with death or great bodily harm. Based on Berg's testimony about a previous incident in which he was drunk and "something inappropriate may have happened," the jury could reasonably infer that KCI knew or reasonably should have known of Berg's propensity to make unwanted advances or threats while intoxicated. Inferences that are the

product of logic and reason may constitute substantial evidence. (*Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 651.) The jury's inference in this case was neither illogical nor unreasonable.

Doe on which KCI relies, is distinguishable. The court in that case, in affirming the sustaining of a demurrer to a negligent supervision claim, concluded that an entertainment company's alleged knowledge that a casting director personally used "'serious mind-altering drugs'" did not constitute knowledge that the director would surreptitiously use those drugs to incapacitate and then brutally sexually assault an aspiring actor. (*Doe, supra*, 50 Cal.App.4th at p. 1054.) In this case, KCI was aware not only of Berg's substance abuse, but also his propensity to do "something inappropriate" while intoxicated.

KCI joins in Berg's challenge to the sufficiency of the evidence supporting Berg's tortious conduct and whether that conduct was a substantial factor in causing plaintiff severe emotional distress as additional grounds for KCI's challenge to the jury's negligent supervision verdict. As discussed, substantial evidence supports the challenged findings as well as the jury's verdict on the negligent supervision claim.

DISPOSITION

The judgment is affirmed. Plaintiff is awarded her costs on appeal.

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_____, J.
CHAVEZ

We concur:

_____, P. J.
LUI

_____, J.
ASHMANN-GERST