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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

CYNTHIA ROMAN AARONSON, Plaintiff and Respondent, v. NADIA HESHMATI, Defendant and Appellant.	B279469 (Los Angeles County Super. Ct. No. SS026275)

APPEAL from an order of the Superior Court of Los Angeles County. Mitchell Beckloff, Judge. Affirmed.

Nadia Heshmati, in pro. per., for Defendant and Appellant.

Aaronson & Aaronson, Arthur Aaronson for Plaintiff and Respondent.

Respondent Cynthia Aaronson obtained a restraining order against her neighbor, appellant Nadia Heshmati. Heshmati, who is self-represented, challenges the restraining order on appeal, asserting (1) the trial court erroneously refused to allow her witnesses to testify at the hearing; and (2) the trial judge was biased and should have disqualified himself. We affirm. We also deny Aaronson's motion to dismiss and request for sanctions.

FACTUAL AND PROCEDURAL BACKGROUND

Aaronson and Heshmati are neighbors. Since 2014, they have had frequent disputes, primarily related to a fence and vegetation separating their properties.

On July 12, 2016, Aaronson filed a request for a civil harassment restraining order seeking protection for her and her husband from Heshmati. In support of her request, Aaronson submitted evidence that Heshmati frequently sent her and her husband threatening letters falsely accusing them of vandalizing and destroying her property, shouted obscenities at Aaronson and her husband, left trash on Aaronson's property, and placed a note on Aaronson's car containing an obscenity. Aaronson further submitted evidence that, during a confrontation in May 2015, Heshmati stated, "Why don't you fucking Jews go back to Woodland Hills. If Hitler had done his job we would not be talking right now."

The trial court granted a temporary restraining order pending a hearing on the request. Sometime thereafter, Heshmati filed her own requests for restraining orders against Aaronson and her husband.

The trial court conducted a hearing on all three requests on August 16 and 17, 2016. Heshmati testified on her own behalf and called two additional witnesses. At the conclusion of the

hearing, the court granted Aaronson's request and issued a restraining order against Heshmati. The court denied Heshmati's requests for restraining orders.

On September 1, 2016, Heshmati moved for a new trial, which the court denied on October 26, 2016. Thereafter, Heshmati appealed.[1]

While this appeal was pending, Aaronson filed a motion to dismiss and for sanctions. We deferred ruling on the motion.

DISCUSSION

I. Heshmati's Arguments Lack Merit

Heshmati asserts two arguments on appeal: (1) the trial court erroneously refused to allow her witnesses to testify at the hearing; and (2) the trial judge was biased and should have disqualified himself. Neither contention has merit.

A. The Trial Court Did Not Refuse to Allow Heshmati's Witnesses to Testify

Heshmati argues the trial court erroneously refused to allow her witnesses to testify at the hearing. Specifically, she asserts that on August 16, 2016, the trial court ordered that her witnesses not return to court the next day. She further asserts

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[1] The notice of appeal refers only to the October 26, 2016 order denying the motion for a new trial, which is a nonappealable order. (*Walker v. Los Angeles County Metropolitan Transportation Authority* (2005) 35 Cal.4th 15, 18.) Nonetheless, we treat the notice as an appeal from the underlying restraining order because it is reasonably clear what Heshmati was trying to appeal from and there is no prejudice to Aaronson. (*Ibid.*) In addition, based on Heshmati's opening brief and the record on appeal, it is evident Heshmati is challenging only the order granting Aaronson's request for a restraining order.

the court subsequently admitted this was an error, but did not grant a continuance.

It is the "cardinal rule of appellate review that a judgment or order of the trial court is presumed correct and prejudicial error must be affirmatively shown. [Citation.] 'In the absence of a contrary showing in the record, all presumptions in favor of the trial court's action will be made by the appellate court.' " (*Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 187.)

Here, Heshmati's argument finds no support in the record. Contrary to her assertions, the record shows the trial court fully heard from each witness Heshmati called to testify. In addition, the record does not reflect that the court ordered Heshmati's witnesses not to return on August 17.

Nor does the record show the trial court committed error or denied a request for a continuance. Heshmati contends this occurred during a portion of the August 17 hearing that was not transcribed due to a technical problem. After the court was notified of the technical issue, however, it attempted to summarize the earlier proceedings, which it estimated to be roughly 40 minutes. In its summary, the court did not mention any error related to Heshmati's witnesses, nor did it mention any request for a continuance. There is simply no support in the record for Heshmati's argument, and she has failed to meet her burden of demonstrating error.[2] (See *Winograd v. American*

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[2] To the extent Heshmati's argument could be construed as a challenge to the trial court's rulings sustaining objections to her witnesses' testimony, we need not consider such claims because Heshmati failed to specifically identify the challenged rulings or explain why they were erroneous. (See *Salas v. Department of*

Broadcasting Co. (1998) 68 Cal.App.4th 624, 632 ["The burden of demonstrating error rests on the appellant"].)

B. The Trial Judge Was Not Disqualified

Heshmati contends the trial judge was biased and should have disqualified himself.[3] According to Heshmati, the trial judge's impartiality may have reasonably been questioned because he is "an active member in the Jewish community as an outspoken person of Jewish religious faith,"[4] and Heshmati was accused of making anti-Jewish comments. We disagree.

A judge shall be disqualified if "[a] person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial." (Code Civ. Proc., § 170.1, subd. (a)(6)(A)(iii).) "The applicable disqualification standard is an objective one: if a fully informed, reasonable member of the public would fairly entertain doubts that the judge is impartial, the judge should be disqualified." (*Wechsler v. Superior Court* (2014) 224 Cal.App.4th 384, 391.) The party claiming judicial bias has the burden to establish facts supporting her position. (*Betz v. Pankow* (1993) 16 Cal.App.4th 919, 926.)

Heshmati's claim of judicial bias, whether real or perceived, lacks merit. We can confidently say that a fully informed, reasonable member of the public would not doubt the trial judge's ability to be impartial in this case simply because of his

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Transportation (2011) 198 Cal.App.4th 1058, 1074; *Roe v. McDonald's Corp.* (2005) 129 Cal.App.4th 1107, 1114.)

[3] Heshmati did not move to disqualify the trial judge. Aaronson, however, does not argue forfeiture, and we exercise our authority to consider the merits of her argument.

[4] Heshmati cited no evidence for these assertions.

religious affiliation. Indeed, it is generally not a ground for disqualification that a judge is a member of a religious group and the proceeding involves the rights of such a group. (Code Civ. Proc., § 170.2, subd. (a).) We have also reviewed the entire transcript of the hearing, and find no evidence of bias or anything that would raise doubts about the trial judge's impartiality. As a result, the trial judge was not disqualified.

II. Sanctions Are Not Warranted

While this appeal was pending, Aaronson filed a request for sanctions on the bases that Heshmati unreasonably violated court rules and filed a frivolous appeal. We decline to award sanctions.[5]

Aaronson maintains sanctions are warranted because Heshmati "committed an unreasonable infraction of the rules governing appeals." Aaronson does not, however, specify what rules she violated. Moreover, contrary to Aaronson's assertion that Heshmati failed to support her factual and legal contentions "with any citation to the record or any legal authority whatsoever," Heshmati's opening brief contains a handful of relevant citations to the record. Heshmati also supported her bias argument with relevant legal authority. Although far from a model of an opening brief on appeal, we do not think Heshmati's brief is so deficient as to warrant sanctions.

Nor do we find the appeal frivolous. We may find an appeal frivolous "when it is prosecuted for an improper motive—to harass the respondent or delay the effect of an adverse judgment—or when it indisputably has no merit—when any

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[5] Aaronson moved to dismiss the appeal on the same bases. We decline to dismiss the appeal for the reasons we decline to award sanctions.

reasonable attorney would agree that the appeal is totally and completely without merit." (*In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 650.) However, "[a]n appeal that is simply without merit is *not* by definition frivolous and should not incur sanctions . . . the punishment should be used most sparingly to deter only the most egregious conduct." (*Id.* at pp. 650–651.)

Although it is difficult to see how a reasonable attorney could conclude this appeal had merit, we are mindful that Heshmati is not an attorney. (See *Kabbe v. Miller* (1990) 226 Cal.App.3d 93, 98 ["We do not believe it is appropriate to hold a propria persona appellant to the standard of what a 'reasonable attorney' should know is frivolous unless and until that appellant becomes a persistent litigant."].) Aaronson has not presented any clear evidence of subjective bad faith, and this appeal does not appear to fall into the category of the "most egregious conduct." Under these circumstances, we decline to impose sanctions against Heshmati for filing a frivolous appeal.

DISPOSITION

The order is affirmed. Aaronson's motion to dismiss and for sanctions is denied. Aaronson shall recover her costs on appeal.

BIGELOW, P.J.

We Concur:

RUBIN, J.

GRIMES, J.