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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

PHILIP FIELDS,

Plaintiff and Appellant,
v.

VENTURA COUNTY SUPERIOR
COURT,

Defendant and Respondent;

ROBERT STONE,

Respondent and Real Party in Interest.

2d Civil No. B253852
(Super. Ct. No. 56-2013-
00439744-CU-HR-VTA)
(Ventura County)

This is an appeal in propria persona of a civil harassment restraining order. There is no appearance by respondents. Nevertheless we affirm the order.

FACTS

On July 26, 2013, Robert L. Stone filed a petition for a civil harassment restraining order against Philip Fields. Stone alleged that Fields approached him from across the street in a threatening manner. Fields was travelling at a fast pace and came onto his property. Fields had some papers in one hand and a knife by his side. When Stone saw the knife, he called the police. While Stone was on the call, Fields "jolted toward [him] and threw a fit in [his] driveway." Stone ran away.

Since December 2012 Fields has been continuously coming by Stone's house, talking and staring at Stone. Fields also approaches Stone while Stone is on his walks, making him nervous.

On August 1, 2013, Fields filed a response denying he was harassing Stone. He said he only went to Stone's property to serve him with court papers. Fields denied he had knife or any other weapon. Fields declared "[he is] a physically and mobility disabled crime victim and law-abiding citizen defamed by Stone."

Stone obtained a temporary restraining order and the matter was set for a hearing on the permanent order. Fields applied for numerous continuances claiming that he is physically disabled and his wheelchair is broken. As an accommodation, the trial court offered to allow Fields to appear by telephone. Fields rejected the accommodation as denying him due process. Nevertheless, the trial court granted Fields multiple continuances. Finally, on October 22, 2013, Fields submitted another request to continue the hearing set for November 5, 2013, until January 2014. The trial court granted a continuance until December 17, 2013. The court found that granting any further continuances would fundamentally alter the nature of the proceedings. (Cal. Rules of Court, rule 1.100(f)(3).)

Fields did not appear at the hearing. After hearing testimony from Stone and an additional witness, the trial court granted Stone a three-year restraining order ("permanent order").

DISCUSSION

I.

Much of what is contained in Fields' brief on appeal is incomprehensible, irrelevant or both. It is difficult, if not impossible, to determine what contentions he is raising and what, if any, argument he is making in support of his contentions. Where an appellant in a civil action fails to articulate any pertinent or intelligible argument in an opening brief, we may deem the appeal abandoned and dismiss it. (*Berger v. Godden* (1985) 163 Cal.App.3d 1113, 1119.) As a matter of largess we decline to do so here. Instead, we will use our best efforts to determine what issues relevant to this case Fields

is trying to raise and resolve them. If in spite of our best efforts we fall short, Fields will not be heard to complain.

II.

Fields apparently claims that he was denied notice of the hearing on the permanent restraining order.

But Fields made numerous motions for continuances. He was well aware of when the hearing was scheduled. The record shows that the trial court's order denying a further continuance and confirming the hearing set for December 17, 2013, was served by the court clerk by mail on December 11, 2013. Fields even filed an emergency request for a stay in this court which we denied.

It may be true that the renewed temporary restraining order was not personally served on Fields. But that issue is now moot. The temporary order has been replaced by the permanent order.

Fields also apparently complains that the trial court refused to grant him continuances beyond December 17, 2013. He claims the refusal to grant such continuances was a violation of the Americans with Disabilities Act (ADA) and due process. He also claims the denial was the result of retaliation by and the incompetence of the trial court judges and other court officers as well as bias against the disabled.

Stone filed his petition for a restraining order in July 2013. After granting Fields numerous continuances, the court determined that granting a continuance beyond December 17, 2013, would deprive Stone of his right to a reasonable expeditious hearing on the matter. The court found that the ADA did not require the court to grant a further continuance because it could "fundamentally alter the nature of the service, program or activity." (Cal Rules of Court, rule 1.100(f)(3).) The court is correct. Fields' requests for continuances appeared to have no end. Granting further continuances would deny Stone the hearing to which he is entitled.

The trial court offered to accommodate Fields by allowing him to appear by telephone. That was a reasonable accommodation. Fields' claim that appearing by telephone would deny him due process is unsupported by any authority.

Due process is flexible and calls for such procedural protections as the circumstances demand. (*Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1276.) Under the circumstances here, where a party is unable to physically appear in court within a reasonable time, an appearance by telephone fully satisfies due process.

The judgment (order) is affirmed. Fields is to bear his own costs.

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GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.

Roger L. Lund, Judge
Superior Court County of Ventura

Philip Fields, in pro. per. for Plaintiff and Appellant.

No appearance for Respondent.

No appearance for Respondent and Real Party in Interest.