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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

SEAN RICHARD WEBER,

Plaintiff and Respondent,

v.

BRETT T. HADDOCK,

Defendant and Appellant.

B284011

(Los Angeles County
Super. Ct. No. BS168929)

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

Brown White & Osborn, and Kenneth P. White for Defendant and Appellant.

Scott & Cyan Banister and Eugene Volokh for Electronic Frontier Foundation as Amicus Curiae on behalf of Defendant and Appellant.

Floyd Skeren Manukian Langevin and Robert Dudley for Plaintiff and Respondent.

Brett Haddock appeals a two-year civil harassment restraining order entered in favor of Sean Richard Weber and his family members pursuant to Code of Civil Procedure section 527.6.¹ Haddock and Weber were unsuccessful applicants for a Santa Clarita City Council position in January 2017. Haddock thereafter took it upon himself to “write about [Weber] and expose his prior and current conduct” in a public Internet blog post. Although the text of the post is nowhere in the record, it apparently included Weber’s phone number, address, date of birth, and a photograph of his license plate, as well as his parents’ address and phone number, which led to prank calls and harassment. The post also apparently included court records of an expunged conviction Weber had sustained.

Fearing for his and his family’s safety, Weber sought the restraining order at issue here, which the trial court granted.

Haddock claims the order was improperly based on his public Internet blog post criticizing Weber, which he argues was protected speech. We certainly agree he has a First Amendment right to publicly criticize a candidate for public office. The problem with his argument is that he has not included a sufficient appellate record for us to evaluate his claim. Even on a sufficient record, however, we would reject his argument because the evidence before the trial court demonstrated that Haddock *also* engaged in a course of *private* harassing conduct toward Weber and his family, which justified the restraining order notwithstanding any claimed protected speech. The order was

¹ All statutory citations refer to the Code of Civil Procedure.

narrowly drawn to avoid restricting Haddock's right to publicly discuss and criticize Weber. We therefore affirm.²

BACKGROUND

We summarize the facts in the light most favorable to the judgment. (*Brekke v. Wills* (2005) 125 Cal.App.4th 1400, 1405.)

1. *Weber's Petition*

On May 9, 2017, Weber filed a form request for a civil harassment restraining order against Haddock in favor of himself, his mother, his father-in-law, and his brother. In the petition signed under penalty of perjury, he explained he and Haddock had sought appointment for a vacant Santa Clarita City Council position in January 2017. Since then, "Respondent HADDOCK has been engaging in a course of conduct, harassing, and stalking Pet. WEBER by posting, sending, delivering harassing and derogatory electronic messages to Petitioner and his family and friends, in public and private forums who have asked him to stop to no avail. The tone and volume of the messages have increased to the point where Petitioner is fearful for his safety and that of his family. Respondent has posted private information including information that could only be obtained in 'stakeout' or via 'stalking' including photos, the license plate, address, telephone numbers of Petitioner AND his family after repeated requests to remove the information. They are now receiving crank calls after posting."

² We grant the request from the Electronic Frontier Foundation to file an amicus curiae brief in favor of Haddock. We thank Professor Eugene Volokh and UCLA School of Law students Matthew Delbridge, Terran Hause, and Brigid Mahoney for their excellent brief.

Weber further wrote, “The harassment and course of conduct began somewhat benign in January 2017 but has snowballed to the point of incessant day and night cyber harassment that will hopefully stop with Court intervention. Repeated requests to stop have been unsuccessful. Pictures and license plates and addresses have been posted publicly and in a false negative light, Petitioner hopes Court protects via this order.”

In describing who else was present when Haddock last harassed him, Weber wrote, “[t]he Petitioner HADDOCK has posted in [Santa Clarita Valley] groups of more than 10,000 people but also is persistently sending individual messages to Respondent WEBER and his friends and family after repeatedly being asked to stop. Family listed in Item #3 asked for addresses and phone numbers to be removed to no avail.”

Weber also described the harm he and his family suffered: “Petitioner and family have had to change/mask telephone numbers, are considering moving residences, Petitioner and family have installed extra security measures and contracted with security firms and lawyers about remedial actions available. Respondent HADDOCK is claiming a Psych-related injury in two non-related lawsuits[.]”

Finally, Weber sought protection for his family members because “[t]here has been a persistent pattern of online ‘cyber’ harassment that has been increasing in volume and a harassing course of conduct including but not limited to posting of the private home addresses and telephone numbers of Petitioner’s family. Continual cyber bullying in a gang-like method has also put the uninvolved family at fear for their personal safety.

Respondent HADDOCK is claiming a Psych-related injury in two non-related lawsuits.”

Weber submitted a statement from his mother, stating: “1. Between May 3 and May 8, 2017 I noticed harassing and threatening posts on Facebook directed toward my son, Sean Weber, from Brett Haddock and some others affiliated with him. The postings became nastier every day. [¶] 2. Brett Haddock posted an old expunged misdemeanor case from early 2004, together with photo of Sean [Weber] and his car’s license plate and was referring to Sean Weber as a criminal felon. This posting also contained my name, address and phone number, as well as similar information on other people. [¶] 3. I asked Brett Haddock to remove my information from his posts, but he has not. Instead, he started to engage and challenge me. I did not respond to his challenges. I fear for myself, my family, my grandchildren and my business. Late at night I heard noises outside and wondered if someone is stalking us.”

Weber sought orders that would order Haddock not to “[h]arass, intimidate, molest, attack, strike, stalk, threaten, assault (sexually or otherwise), hit, abuse, destroy personal property of, or disturb the peace of the person,” or “[c]ontact the person, either directly or indirectly, in **any** way, including, but not limited to, in person, by telephone, in writing, by public or private mail, by interoffice mail, by e-mail, by text message, by fax, or by other electronic means.” Weber also sought stay-away orders in favor of himself, his family, his home, his job, his vehicle, and his parents’ home. He also sought \$7,500 in attorney’s fees and investigative fees.

2. *Haddock's Opposition*

Haddock opposed Weber's petition. He apparently attached his own declaration and exhibits to his opposition, but they are not included in the appellate record.

In his brief, he argued Weber was "upset that a political competitor for a city council position has published truthful, but unflattering, information concerning Petitioner's criminal record concerning a witness intimidation conviction," so Weber was using a civil harassment petition to restrain his critics. Haddock claimed the petition was unsupported by evidence and was based on his constitutionally protected speech. Haddock also claimed he had edited his posting to remove Weber's and his parents' addresses and phone numbers. Haddock admitted contacting Weber on April 12, 2017, but he claimed he was seeking Weber's comment about an article Haddock was drafting. He asserted the contact was for a legitimate purpose because he was attempting to forestall a defamation action, despite Weber's request not to contact him. Haddock further explained that the references to his "Psych-related injury" involved a worker's compensation claim for a work-related injury. His attorney had added a psych-related component because Haddock had stress and difficulty sleeping. Haddock argued Weber had mischaracterized the nature of the claim in order to show a reason for Weber to be fearful of him.

3. *Weber's Reply*

In reply, Weber contended that Haddock mischaracterized the conduct at issue. He noted that, although Haddock had attempted to redact his and his parents' addresses and phone numbers posted publicly, his parents had been subject to harassing phone calls and other alarming conduct due to the

disclosure of their address and phone number. Weber also noted that Haddock had posted a photograph of Weber's license plate. Apparently Haddock had claimed in his declaration that he posted the photograph with "consent," but it was not clear what that meant.

To support his fear of Haddock, Weber continued to rely on Haddock's worker's compensation claims, and he submitted posts from Haddock's Twitter account. Several dated from 2015 and did not involve Weber. Those posts included the comments, "I'm to the point of frustration with bullshit bureaucracies that the only plausible option to get something done seems to be self immolation"; "I'm thoroughly convinced that I'm locked into a system designed to make me go on a murderous rampage"; and "My therapist tells me I'm fine, but she's also imaginary." Haddock also posted a image of the baby character Stewie from the animated television show *Family Guy* with a gun in his mouth.

Weber also submitted a set of Haddock's Twitter posts dated between February and April 2017. In two of them, Haddock referred to a "target": "When you discover your target blocked you on a social media platform you've never interacted on"; and "Target made their profile private. Good thing I already grabbed a copy of everything." Weber believed the references to a "target" referred to him.

Weber also submitted partial screen captures of what appeared to be Haddock's blog post. The textual content of the post was not included. The screen captures showed the title "Sean Weber: Charlatan, Bully, and Criminal" with the visible text: "Preface As my friends and family can attest, I've made something of a second career helping to expose frauds and

bullies.” It also had a photograph of an individual (presumably Weber) and photograph of a California license plate with the words “MR WEBER” on it.

4. *Hearing on Petition*

At the hearing, Weber testified that he was afraid Haddock would hurt or kill his family, citing the Twitter posts from 2015 referring to a “murderous rampage” and “self-immolation.”

Weber’s counsel cited Haddock’s worker’s compensation psych-related claim, Haddock’s references to Weber as his “target,” and Haddock’s incomplete redaction of Weber’s and his family’s personal information. Counsel further noted that Haddock had reposted the information while a temporary restraining order was in place. Weber had filed a police report regarding Haddock’s conduct. Counsel specifically noted that Weber was not asking to restrain Haddock from posting anything that would be constitutionally protected, but only that Haddock stay away from his family and residence.

Haddock’s counsel explained the “murderous rage” post was taken out of context and referred to Haddock’s “blowing off steam” about his worker’s compensation insurance company. He also explained that the picture of Stewie from the show *Family Guy* was a “meme,” and the court noted it was familiar with it.

Haddock testified that Weber had threatened people with libel and bullying, sending “messages to individuals telling them not to engage in certain types of behavior by questioning him.” He said, “I believe I have a moral[] obligation to stand up for people who abuse their public citizens.” He discussed the situations in which he had gone after other people for perceived wrongdoing, including a dentist and a previous boss. He stated,

“I am not a violent person. I am adamantly a pain in the ass, but I’m just using my First Amendment rights to stand up for people that are being bullied.” He also explained that his two worker’s compensation claims were related to the same case in which a chair broke and he suffered nerve damage. He was not on psychiatric medication. His condition made it “difficult to sleep and think.”

Haddock’s counsel claimed he would take down all the references to Weber’s and Weber’s family’s personal information. Weber’s counsel claimed that Weber’s mother had asked Haddock to take it down, but he had refused.

The court granted the restraining order, reasoning: “You know, this is an unusual case. I have to say the petitioner is here for needing of a restraining order but most of what Mr. Haddock is doing just doesn’t quite reach that standard, I think, of the case. However, if I take it all in the totally [*sic*], even though there’s nothing really specific to hang my hat on in terms of specific act that he—he obviously has not come near Mr. Weber.

“You know, a lot of it is the fear of the petitioner. This conduct is it at least annoying and is definitely harassing. And you know, would a reasonable person be upset about that? And I could understand how Mr. Weber is concerned. He is concerned about his family. And I actually appreciate the fact that he is going, you know, he can put whatever he wants up there but what I’m really concerned about is the safety of my family.

“I have to say that I think Mr. Haddock’s behavior is a bit unusual. And it does concern me when somebody is self-appointed to being the person who—you know, who is identifying a dentist as being bad, and going after his boss, and going after

bullies. I think when a private person does that it's of concern. He may be totally legitimate in doing this, or he may be working with lawyers and all these people, but I find it unusual and I would be very concerned if I was the so-called target of someone who behaves in that way.

“So although it is hard to say exactly what Mr. Haddock is doing, if you look at the whole—all of the conversations here, these pictures, people who are putting pictures up with a gun in somebody—even if it is a cartoon is of concern. I certainly wouldn't want anything to happen to Mr. Weber on my watch. And I would hope that this would keep Mr. Haddock away from Mr. Weber. It also does concern me that he has had—we didn't really go into it—the untreated psychiatric injuries. I don't know what that is about too. But I think there could be some kind of underlying issues here that we are not seeing.”

The court granted a two-year restraining order for Haddock not to “harass, intimidate, strike, stalk, threaten, destroy personal property, disturb the peace” of Weber and his family members. The court also ordered Haddock not to contact Weber or his family and stay 100 yards away from Weber, his family, his home, his workplace, his vehicle, and his parents' home, with the exception that Haddock had to stay 20 yards away from Weber at any public gathering. The court made clear the order did not “control what [Haddock] wants to write or say in general about” Weber. The court awarded Weber \$3,000 in attorney's fees.

DISCUSSION

I. Legal Standard

We review the granting of a restraining order for substantial evidence. (*Harris v. Stampolis* (2016) 248 Cal.App.4th 484, 497.) “The appropriate test on appeal is

whether the findings (express and implied) that support the trial court's entry of the restraining order are justified by substantial evidence in the record. [Citation.] But whether the facts, when construed most favorably in [the petitioner's] favor, are legally sufficient to constitute civil harassment under section 527.6, and whether the restraining order passes constitutional muster, are questions of law subject to de novo review.' ” (*Ibid.*, quoting *R.D. v. P.M.* (2011) 202 Cal.App.4th 181, 188 (*R.D.*).

Section 527.6, subdivision (a)(1) provides, “A person who has suffered harassment as defined in subdivision (b) may seek a temporary restraining order and an order after hearing prohibiting harassment as provided in this section.”

“Harassment” is defined as “unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be that which would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner.” (§ 527.6, subd. (b)(3).)

“Course of conduct” is defined as “a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including following or stalking an individual, making harassing telephone calls to an individual, or sending harassing correspondence to an individual by any means, including, but not limited to, the use of public or private mails, interoffice mail, facsimile, or email. Constitutionally protected activity is not included within the meaning of ‘course of conduct.’ ” (§ 527.6, subd. (b)(1).)

A hearing must be held within 21 days, or 25 days upon a showing of good cause, from the date a petition for a temporary restraining order is granted or denied. (§ 527.6, subd. (g).) At the hearing, “the judge shall receive any testimony that is relevant, and may make an independent inquiry. If the judge finds by clear and convincing evidence that unlawful harassment exists, an order shall issue prohibiting the harassment.” (§ 527.6, subd. (i).)

II. The Restraining Order Was Supported by Sufficient Evidence of Haddock’s Course of Private Harassing Conduct

Haddock contends insufficient evidence demonstrated harassment, arguing instead that the only evidence in the record was his Internet blog post that he contends constituted protected speech. He focuses on his right to publicly post his criticism of Weber, a public figure, and defends his public posting of Weber’s and Weber’s family’s personal information and Weber’s criminal record. He also contends in his reply brief that the restraining order violated his constitutional rights because it was imposed “as a consequence for [his] protected speech.”

There are two problems with his argument. First, the appellate record does not include his Internet blog post (other than screen shots of a portion of the first page), his declaration, or any of his supporting documents for his opposition to Weber’s request for a restraining order. The record is therefore inadequate for us to evaluate his constitutional argument. (*Jameson v. Desta* (2018) 5 Cal.5th 594, 609 [“ ‘Consequently, [the appellant] has the burden of providing an adequate record. [Citation.] Failure to provide an adequate record on an issue requires that the issue be resolved against [the appellant].’ ”].)

Second, while Haddock generally had a constitutional right to publicly criticize Weber online, there was ample evidence in the record showing that Haddock also engaged in a *private* course of conduct directed at Weber and his family that “seriously alarm[ed], annoy[ed], or harass[ed]” them and that “serve[d] no legitimate purpose.” (§ 527.6, subd. (b)(3).) Sworn under penalty of perjury, Weber’s petition described Haddock “sending [and] delivering harassing and derogatory electronic messages to Petitioner and his family and friends, in public and *private* forums” (italics added); posting “private information including information that could only be obtained in ‘stakeout’ or via ‘stalking’ including photos, the license plate, address, telephone numbers of Petitioner AND his family”; “incessant day and night cyber harassment”; “persistently sending *individual messages* to Respondent WEBER and his friends and family after repeatedly being asked to stop” (italics added); and engaging in a “persistent pattern of online ‘cyber’ harassment that has been increasing in volume and a harassing course of conduct including but not limited to posting of the private home addresses and telephone numbers of Petitioner’s family.”

Weber’s mother submitted a statement describing “harassing and threatening posts on Facebook directed toward my son,” which “became nastier every day.” When Weber’s mother asked Haddock to remove her personal information from his posts, Haddock “started to engage and challenge” her. These interactions could very well have been private, contributing to Haddock’s course of private cyber harassment.

Perhaps most disturbing, Haddock posted a photograph of what appeared to be Weber’s license plate. Whether or not Haddock is correct that the license plate itself was public

information that Haddock was entitled to post, the trial court was free to infer that Haddock had been “following or stalking” Weber in order to obtain the photograph he then posted. (§ 527.6, subd. (b)(1).)

Based on these actions, Weber stated he feared Haddock and he was afraid Haddock would kill his family. Weber’s mother stated she feared for herself and her family. Weber’s parents had been receiving crank phone calls after Haddock publicly posted their phone number,³ and Weber’s mother heard noises outside and wondered if someone was stalking them. These fears were reinforced by other evidence in the record, such as the possibility that Haddock was suffering from some kind of mental trauma involved in his worker’s compensation cases, which Haddock testified made it “difficult to sleep and think.” Although attenuated in time and not involving Weber, Haddock’s Twitter posts from 2015 referred to “self immolation” and going on a “murderous rampage,” and the *Family Guy* “meme” showed a child character with a gun in its mouth. Haddock’s 2017 Twitter posts were even more disturbing, alluding to Weber as a “target.” Haddock contends these posts were “ripped . . . from context” and were “typical Internet bluster.” But the trial court was free to reject that characterization in the context of the whole record.

³ Weber contends that the publication of his parents’ personal information was not protected speech because that information was unrelated to any protected speech. Weber did not seek an order directed at preventing Haddock from publishing this information, so we need not decide the issue.

Haddock's own testimony also demonstrated his harassing conduct would likely continue unabated. Haddock explained his conduct toward Weber arose from a "moral[] obligation to stand up for people who abuse their public citizens." He discussed having gone after two other people for perceived wrongdoing. While he was certainly entitled to publicly criticize Weber, the record shows his actions went beyond public criticism and strayed into private harassment of not only Weber but his family members, placing them in fear for their safety. Given Haddock's belief that his actions were morally compelled, the injunction was justified. (See *Russell v. Douvan* (2003) 112 Cal.App.4th 399, 402 [enjoined acts must be likely to recur].)

III. The Restraining Order Was Narrowly Drawn to Avoid Restricting Haddock's Speech Rights

The scope of the restraining order was sufficiently narrow to avoid preventing Haddock from publicly criticizing Weber or engaging in other protected speech. The restraining order simply prevented Haddock from continuing his course of private harassing conduct toward Weber and his family by ordering Haddock not to "harass, intimidate, strike, stalk, threaten, destroy personal property, disturb the peace" of Weber and his family members, and to stay 100 yards away from Weber (or 20 yards at public gatherings). The trial court was careful to note that the restraining order did not "control what [Haddock] wants to write or say in general about" Weber.

At most, Haddock was prevented from speaking near Weber and his family. But that is a reasonable, content-neutral time, place, and manner restriction that targeted Haddock's problematic harassing conduct and did not limit his right to publicly criticize Weber. (*R.D.*, *supra*, 202 Cal.App.4th at

pp. 191–192 [rejecting free speech challenge to nearly identical restraining order preventing defendant from harassing and stalking plaintiff and requiring defendant stay 100 yards away from plaintiff].)

DISPOSITION

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

BIGELOW, P. J.

We Concur:

GRIMES, J.

DUNNING, J.*

* Judge of the Orange Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.