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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

Y.M., Plaintiff and Respondent, v. ENRIQUE PARRA, Defendant and Appellant.	B271645 (Los Angeles County Super. Ct. No. VS028475)

APPEAL from an order of the Superior Court of Los Angeles County, Doreen B. Boxer, Commissioner. Appeal dismissed.

Law Offices of David Givot and Ashlie N. Brillault for Defendant and Appellant.

No Appearance for Plaintiff and Respondent.

INTRODUCTION

Enrique Parra appeals from a restraining order entered against him in a civil harassment proceeding brought by Y.M. The restraining order expired by its own terms on March 30, 2017. Because the order has been extinguished, no appellate relief can be granted. We therefore dismiss the appeal as moot.

FACTS AND PROCEDURAL BACKGROUND

Consistent with the applicable standard of review, we state the record in the light most favorable to the trial court's ruling, resolving all factual conflicts and questions of credibility in favor of the prevailing party and indulging in all legitimate and reasonable inferences to uphold the trial court's findings. (*Schild v. Rubin* (1991) 232 Cal.App.3d 755, 762 (*Schild*).)

Y.M. is Appellant's former co-worker. They were friendly with one another at work, but eventually Appellant sought a romantic relationship. Y.M. rebuffed Appellant's advances, after which, she testified, Appellant "started acting different."

On March 8, 2016, Y.M. filed a request for a civil harassment restraining order against Appellant.[1] She asserted Appellant harassed her by vandalizing her property and sending a threatening letter to her current residence. According to Y.M.'s written statement under oath, the letter said Appellant had been watching her and that he "and others [would] be making contact with [her] family."

On March 30, 2016, the court held a trial on Y.M.'s restraining order request. Y.M. testified the harassment began after she told Appellant she did not want a relationship with him.

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[1] We grant Appellant's request to augment the record to include Y.M.'s request for a civil harassment restraining order.

Around that time, Appellant sent a message to Y.M.'s phone with a photograph of himself, brandishing a gun and "throwing a gang sign." Appellant had previously told Y.M. that he belonged to the "West Side Longo" gang.

Two months later, Y.M. discovered her car had been vandalized in her employer's parking lot. Earlier that evening, she left work in her then-boyfriend's car. When she returned, the driver and passenger windows of her car were broken, the front and back windows were bashed in, and the tires were slashed. Y.M. did not see Appellant near her car that evening; however, she did see his younger brother in the parking lot. Y.M. believed Appellant was responsible because she could not think of anyone else who would have a "motive" to vandalize her property. Y.M. reported the vandalism to the police. They questioned Appellant but did not charge him.

In the months that followed, Y.M. received a series of communications that she believed came from Appellant. The communications reinforced her suspicion that Appellant vandalized her car. At trial, Y.M. sought to introduce the communications as "attachments" to a timeline she prepared to outline the harassment she experienced.[2]

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[2] Appellant did not lodge the timeline or attachments as part of the record on appeal. We nevertheless discuss their contents to the extent they are described in the trial transcript. We note, however, that Appellant had a duty to affirmatively demonstrate error by presenting an adequate record. (*Bianco v. California Highway Patrol* (1994) 24 Cal.App.4th 1113, 1125.) By failing to include the timeline and its attachments in the appellate record, Appellant has fallen short of this burden.

"Attachment 1" was a photograph of Y.M.'s car with a note and cellophane wrapper under the windshield wiper. The note read " 'Remember' " and the cellophane contained a piece of broken glass. She found the items on her car about a month after it was vandalized. The court admitted Attachment 1 for the limited purpose of establishing Y.M.'s state of mind "and why she's requesting a civil harassment restraining order."

"Attachment 2" was another photograph of Y.M.'s car, taken about a month after she received Attachment 1. The photograph showed a message, written on the side of Y.M.'s car, that said " 'Pray for your dead mother.' " Y.M. testified that she told Appellant, before the harassment began, that her mother had passed away. The court admitted Attachment 2 for the limited purpose of showing Y.M.'s state of mind regarding her request for a civil harassment restraining order. The court observed that the photograph "doesn't connect [Appellant] to this."

"Attachment 3" was a two-page document consisting of two screenshots taken by Y.M. from Instagram. The first page was a screenshot of a photograph posted on Instagram under the account name "Oregon Avenue." The individual in the photograph fit Appellant's description. The second page was another screenshot from Instagram, consisting of a message and photograph sent to Y.M. from the Oregon Avenue account. The photograph showed various items, including an airline boarding pass for a flight from Chicago to Paris bearing Appellant's name. The message said, " 'I have yet to hear you roar,' " with a sad face. The message further read: " '#Sucka, you can't bring me down' "; " '#Remember that girl' "; and " 'I'm supposed to be

locked up too. You escaped what I just did, you'd be in Paris getting fucked up too.' "

Y.M. said the line, "I have yet to hear you roar," referred to a message she posted to her personal Twitter account. She testified that she received a letter at her home with screenshots from her Twitter account, including a post where she wrote, " 'You have yet to hear me roar.' " Y.M. believed Appellant sent the letter, and that his Instagram message referring to her Twitter post was meant to mock and intimidate her.

Appellant admitted he owned the Oregon Avenue Instagram account. He also admitted sending Y.M. the Instagram message in Attachment 3. He claimed he sent the message because he was upset with Y.M. for reporting him to the police regarding the vandalization of her car. He conceded the line, " 'I have yet to hear you roar,' " referred to a message Y.M. posted to her Twitter account. Appellant said he did not have access to Y.M.'s Twitter account, but claimed he heard gossip at work about the post and believed it referred to Y.M.'s efforts to implicate him in the vandalization. He said the lines beginning with " '#Sucka' " were meant to describe how he was celebrating after having endured questioning by the police. The court admitted Attachment 3 in its entirety.

"Attachment 4" was another two-page document consisting of two screenshots taken from Instagram. The first page was a photograph of Appellant posted on the Instagram account of "Sourire Beautiful." The second page was a screenshot of a message posted to the "Sourire Beautiful" account that referred to Y.M., her employer, her car, the vandalization incident, and her Twitter post. The court admitted the first page of Attachment 4 into evidence, and struck the second page.

Finally, "Attachment 5" consisted of a letter sent to Y.M.'s home. The letter referred to the vandalization incident and the family members living with Y.M. The letter said it " '[w]ould be unfortunate if we ran up and did what we did to your vehicle or worse and got away with it again.' " The court sustained Appellant's objection to Attachment 5, concluding there was not "enough information to connect [Appellant] to that letter."

At the close of the trial, the court found that Y.M. proved, by clear and convincing evidence, that Appellant harassed her, "based on [Appellant's] statement and . . . the Instagram message [Attachment 3] alone." The court remarked that "a course of conduct is a pattern of conduct composed of a series of acts over a period of time, however short, and can be only one act if it evidences a continuity of purpose." The court explained that "there was no legitimate purpose for [Appellant] to send that Instagram message as he described," and found that the message constituted harassment under Code of Civil Procedure section 527.6. The court also found Appellant's testimony was not credible.

The court granted Y.M. a one-year restraining order against Appellant. The restraining order expired by its own terms on March 30, 2017.

DISCUSSION

Appellant seeks reversal of the one-year civil harassment restraining order. It is undisputed that the restraining order expired by its own terms on March 30, 2017. As a general rule, an appeal is moot when any ruling by this court "can have no practical effect [nor can it] provide the parties with effective relief." (*Lincoln Place Tenants Assn. v. City of Los Angeles* (2007) 155 Cal.App.4th 425, 454.) " 'It is well settled that an appellate

court will decide only actual controversies and that a live appeal may be rendered moot by events occurring after the notice of appeal was filed. We will not render opinions on moot questions.' " (*Building a Better Redondo, Inc. v. City of Redondo Beach* (2012) 203 Cal.App.4th 852, 866.)

We can and should explore a question of mootness on our own motion. (*City of Hollister v. Monterey Ins. Co.* (2008) 165 Cal.App.4th 455, 479-480.) At our request, Appellant filed a letter brief addressing why the appeal should not be dismissed as moot. (Gov. Code, § 68081.) He argues the appeal is not moot because a record of the restraining order will remain accessible in the California Law Enforcement Telecommunications System and, as a result, could negatively impact future employment or housing prospects. The case Appellant relies upon, however, is distinguishable. In *In re Cassandra B.* (2004) 125 Cal.App.4th 199, the mother in a child dependency proceeding challenged an expired restraining order issued under Welfare and Institutions Code section 213.5, subdivision (a), prohibiting her from contacting her child or the child's caretakers. The appellate court held the issue was not moot because, under Welfare and Institutions Code section 213.5, subdivision (j)(2) (formerly subd. (k)(2)), "[t]he existence of the prior restraining order must be considered by the juvenile court in any proceeding to issue another restraining order against [the] mother. This consequence of the restraining order leaves *unresolved a material question affecting the parties*." (*Cassandra B.,* at pp. 209-210, fn. omitted, italics added.)

No such unresolved material question exists here. The restraining order was not issued under the Welfare and Institutions Code, and Appellant cites no authority suggesting

the speculative potential implications of an expired civil harassment restraining order compel review of a moot appeal. While clearing one's name can serve as an exception permitting review of a moot appeal in the *criminal context* (see *People v. Delong* (2002) 101 Cal.App.4th 482, 486-492), it does not provide a basis for review of a moot civil case. (Compare 6 Witkin & Epstein, Cal. Criminal Law (4th ed. 2012) Criminal Appeal, § 187, p. 472 ["The fact that a convicted defendant has served his or her term of imprisonment does not make the appeal moot, for a defendant is entitled to clear his or her name"] with 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, §§ 757-760, pp. 824-834 [discussing reasons for denying dismissal based on mootness in civil actions].)

Nor does the appeal present a novel legal question that demands we exercise our discretion to resolve a moot civil appeal. (See *Steiner v. Superior Court* (2013) 220 Cal.App.4th 1479, 1485; *Malatka v. Helm* (2010) 188 Cal.App.4th 1074, 1088.) Appellant argues the restraining order was supported by only a single incident – "one Instagram message that [Appellant] sent to [Y.M.]" – and that this evidence was insufficient to establish a " 'course of conduct' " under Code of Civil Procedure section 527.6. (See *Leydon v. Alexander* (1989) 212 Cal.App.3d 1, 4 (*Leydon*) [because Code of Civil Procedure section 527.6 refers to " 'a *series of acts*,' " a single incident cannot support issuance of a restraining order].) However, apart from the Instagram message, Y.M. testified that the harassment started when Appellant sent her a photograph of himself, brandishing a gun and "throwing a gang sign," after she refused his romantic advances. The trial court received the testimony into evidence without objection.

"In assessing whether substantial evidence supports the requisite elements of willful harassment, as defined in Code of Civil Procedure section 527.6, we review the evidence before the trial court in accordance with the customary rules of appellate review. We 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 which is reasonable, credible and of solid value." (*Schild, supra,* 232 Cal.App.3d at p. 762.) Critically, "[w]e do not review the trial court's reasoning, but rather its ruling. A trial court's order is affirmed if correct on any theory, even if the trial court's reasoning was not correct." (*J.B. Aguerre, Inc. v. American Guarantee & Liability Ins. Co.* (1997) 59 Cal.App.4th 6, 15-16.)

Code of Civil Procedure section 527.6 defines "harassment" as, among other things, "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." Under *Leydon*, a " 'course of conduct' " is a number of harassing acts "greater than one." (*Leydon, supra,* 212 Cal.App.3d at p. 4.) In view of the evidence admitted at trial, including Y.M.'s testimony about the photograph sent by Appellant, and Appellant's admission about his Instagram message to Y.M., we have no reason to reassess the rule stated in *Leydon* as part of this moot civil appeal.

DISPOSITION

The appeal is dismissed.

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CURREY, J.*

We concur:

EDMON, P. J.

LAVIN, J.

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