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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 ONE

LAWRENCE LILIENTHAL, Plaintiff and Respondent, v. GEORGE CRAWFORD, Defendant and Appellant.	B276073 (Los Angeles County Super. Ct. No. LS 026402)

APPEAL from a judgment of the Superior Court of Los Angeles County, Andrea C. Thompson, Judge. Affirmed.

Law Office of Bryan Barnet Miller and Bryan B. Miller for Defendant and Appellant.

Lawrence Lilienthal, in pro. per., for Plaintiff and Respondent.

Defendant and appellant George Crawford challenges the trial court's restraining order against him and in favor of plaintiff and respondent Lawrence Lilienthal. The parties have engaged in a multi-year dispute regarding parking regulations and other issues in the small condominium complex where they both reside. Crawford contends that the trial court erred by delaying the hearing on the restraining order for 15 months while criminal charges against Lilienthal were pending in order to protect Lilienthal's Fifth Amendment privilege from self-incrimination. Crawford also contends that there was no substantial evidence to support the trial court's decision. We affirm.

FACTS AND PROCEEDINGS BELOW

This case is the culmination of years of conflict among residents of a condominium complex in Encino. Lilienthal is the president of the complex's homeowners association. The complex consists of five separate detached residences surrounding a driveway. The driveway is the sole means of access to the street. Lilienthal, who owned and lived in the unit immediately adjacent to the front gate of the complex, sometimes parked his car, or allowed a guest to park, in the driveway in front of his garage, thereby narrowing the space through which other residents could enter and exit the complex. Crawford, who lived in another residence in the complex, objected to this practice. He claimed that he could not enter or exit the complex without risking a collision with Lilienthal's parked car.

On January 26, 2015, Crawford saw a car parked in the driveway in the area that he objected to. He then parked his own car outside the front gate in a position that blocked the entrance to the complex entirely. When a neighbor knocked on the door to ask Crawford to move his car so that the neighbor could exit, Crawford refused to answer the door. Lilienthal then went to Crawford's car, sat on the hood, and began bouncing up and down. He claimed he did so in the hope of triggering Crawford's car alarm so that Crawford would come outside. Crawford

called the police and showed them surveillance video footage of Lilienthal bouncing on the car, which Crawford believed had caused significant damage. The police officer arrested Lilienthal for vandalism.

Shortly after these events, Crawford filed a petition for a civil harassment restraining order against Lilienthal. In February 2015, Lilienthal filed a cross-petition for a restraining order against Crawford. The trial court granted temporary restraining orders in favor of each petitioner pending a hearing. Lilienthal requested, and the trial court granted, a series of continuances of the hearing on the ground that the criminal case against him was still pending, and that his testimony at the restraining order hearing might compromise his Fifth Amendment privilege from self-incrimination.

Lilienthal ultimately pled no contest to a lesser misdemeanor offense. In May 2016, the trial court held hearings, first with regard to Crawford's petition, then with regard to Lilienthal's cross-petition. The court found that there was clear and convincing evidence that Lilienthal had harassed Crawford, and issued a restraining order in favor of Crawford with a duration of three years. The court also issued a restraining order with a duration of four years in favor of Lilienthal. The court found that there was clear and convincing evidence that Crawford had engaged in harassing behavior against Lilienthal over the course of several years. Crawford frequently followed Lilienthal around and videotaped him, parked his car in a location that blocked the complex's driveway and swimming pool, allowed his car alarm to go off in the middle of the night, and honked his horn while driving up and down the driveway. When confronted, Crawford would send emails accusing Lilienthal of crimes and would threaten to call the police. Crawford named his home Wi-Fi network, which was visible to anyone in the complex using a Wi-Fi enabled device, "Embezzler" followed by Lilienthal's initials and street address. The trial court found that "Crawford burst out of his home on numerous occasions running towards Lilienthal with a camera, giving him the 'finger' and threatening to 'get' him. While Lilienthal was standing on a ladder near the gate, Crawford

activated the gate and cause[d] it to strike Lilienthal. [¶] All of these occurred consistently over a number of years and abated only when there was a mutual stay away order in effect and[] then later, temporary restraining orders."

The trial court concluded that Crawford had engaged in a knowing and willful course of conduct aimed at harassing Lilienthal for no legitimate purpose, that the conduct would cause a reasonable person substantial emotional distress, and that the conduct in fact did cause Lilienthal substantial emotional distress. The court concluded that because Crawford had not acknowledged wrongdoing, it was necessary to impose a four-year restraining order against him.

DISCUSSION

Crawford contends that the trial court deprived him of his constitutional rights and acted in excess of its jurisdiction when it delayed the hearing on the restraining order by more than one year. Next, he contends that the trial court denied him due process by granting a restraining order on the basis of a petition that contained incorrect dates of some of the events that Lilienthal alleged occurred. Finally, Crawford contends that the trial court's decision granting the restraining order in favor of Lilienthal was not supported by substantial evidence.[1] We disagree and affirm the judgment of the trial court.

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[1] Crawford attempts to raise two additional arguments by incorporating by reference the arguments he raised in an earlier petition for a writ of mandate. Crawford claims that this is permissible pursuant to rule 8.147 of the California Rules of Court. That rule allows parties "to incorporate by reference all or parts of a record in a prior appeal in the same case." (Cal. Rules of Court, rule 8.147(b).) Crawford cites no authority for the proposition that the rule allows a party to incorporate arguments raised in an earlier writ petition to his brief on appeal. If these additional arguments were included in appellant's opening brief, the brief would exceed the maximum 14,000 words allowed under California Rules of Court, rule 8.204(c)(1). For this reason, we do not address the arguments Crawford has attempted to raise in this manner.

I. Jurisdiction and Res Judicata

Lilienthal contends that we must dismiss the appeal for lack of jurisdiction, and that Crawford's claims are barred as res judicata. We disagree.

Lilienthal argues that we lack jurisdiction because Crawford has challenged the trial court's interlocutory orders—namely, its grants of multiple continuances and temporary restraining orders. But we understand Crawford to be arguing that as a consequence of the delays in the hearing, the trial court lacked authority to issue the four-year restraining order in favor of Lilienthal. That order is appealable as an order granting an injunction. (See Code Civ. Proc. § 904.1, subd. (a)(6);[2] *R.D. v. P.M.* (2011) 202 Cal.App.4th 181, 187.) In addition, because Crawford's arguments primarily attack the final restraining order, which remains in effect, his appeal is not moot.

We also find no merit in Lilienthal's argument that our summary denial of Crawford's petition for a writ of mandate bars Crawford's arguments on appeal. The doctrine of res judicata does not prevent an appellant from raising a claim summarily denied in a prior writ petition. (*Kowis v. Howard* (1992) 3 Cal.4th 888, 895.)

II. The Trial Court's Authority to Grant the Restraining Order After Multiple Continuances

Section 527.6 establishes the procedure for obtaining a civil harassment restraining order. The statute defines harassment 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).)

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[2] Unless otherwise specified, subsequent statutory references are to the Code of Civil Procedure.

A petitioner whose declaration, "to the satisfaction of the court, shows reasonable proof of harassment of the petitioner by the respondent, and that great or irreparable harm would result to the petitioner," may obtain a temporary restraining order against the respondent. (*Id.*, subd. (d).) The temporary restraining order may have a duration of no more than 25 days "unless otherwise modified or terminated by the court" (*id.*, subd. (f)), and the trial court must hold a hearing on the petition within the same 25-day period from the filing of the petition. (*Id.*, subd. (g).) After receiving testimony from both parties at the hearing, "[i]f the judge finds by clear and convincing evidence that unlawful harassment exists, an order shall issue prohibiting the harassment." (*Id.*, subd. (i).) The court may issue an order after a hearing prohibiting harassment for up to five years. (*Id.*, subd. (j).)

At the time Lilienthal and Crawford filed their petitions for restraining orders against one another, Lilienthal faced criminal charges for vandalism of Crawford's car. Over the course of the next year, Lilienthal requested, and the trial court granted, continuances so that Lilienthal would not have to face the dilemma of either remaining silent and prejudicing himself in the hearing, or forfeiting his Fifth Amendment privilege against self-incrimination. As a result, although Crawford filed his petition for a restraining order on January 30, 2015, and Lilienthal filed his own petition against Crawford on February 19, the hearing did not begin until May 2016. Crawford contends that by granting the delays, the trial court denied him his right to due process, violated the separation of powers, and acted in excess of its jurisdiction. We disagree.

The statute governing civil harassment restraining orders provides that, "[w]ithin 21 days, or, if good cause appears to the court, 25 days from the date that a petition for a temporary order is granted or denied, a hearing shall be held on the petition. If a request for a temporary order is not made, the hearing shall be held within 21 days, or, if good cause appears to the court, 25 days, from the date that the

petition is filed."[3] (§ 527.6, subd. (g).) Courts have not treated this deadline as absolute, however. As the court noted in *Adler v. Vaicius* (1993) 21 Cal.App.4th 1770, 1775-1776 (*Adler*), "[t]he hearing may be lawfully continued beyond the statutory time at the request of the defendant, when the necessary business of the court prevents it from hearing the matter within that time, and when defendant's counteraffidavits are not served as provided in that code section."[4] Thus, the trial court does not lose jurisdiction if it fails to conduct the hearing within the statutory time frame. (*Ibid.*)

In the case of Crawford's petition for a restraining order against Lilienthal, the trial court acted within its authority by delaying the hearing until Lilienthal's criminal case concluded. The deadline for

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[3] After both parties had filed their petitions, but before the hearing took place, the Legislature amended section 527.6 to add a new subdivision that expressly allows courts to grant continuances of hearings for civil harassment restraining orders. (See Stats. 2015, ch. 411, § 1.5 (A.B. 1081).) The new law, which became effective on January 1, 2016, provides as follows: "(1) Either party may request a continuance of the hearing, which the court shall grant on a showing of good cause. The request may be made in writing before or at the hearing, or orally at the hearing. The court may also grant a continuance on its own motion.

"(2) If the court grants a continuance, any temporary restraining order that has been granted shall remain in effect until the end of the continued hearing, unless otherwise ordered by the court. In granting a continuance, the court may modify or terminate a temporary restraining order." (§ 527.6, subd. (p)(2).)

Because we conclude that the trial court did not err by granting the continuances under previously existing law, we need not consider whether the newly enacted subdivision (p) provided an additional justification for the continuances.

[4] The court in *Adler* reviewed case law interpreting section 527, subdivision (a), which is closely related and contains nearly identical language regarding the timing of a hearing, and applied it to section 527.6.

holding a hearing on a restraining order exists for the benefit of the respondent, who may waive its application. (See *Adler*, *supra*, 21 Cal.App.4th at p. 1776.) There was good cause to do so in this case, due to the Fifth Amendment implications of Lilienthal's potential testimony. Although a trial court is not required to stay civil proceedings pending the conclusion of a criminal case in order to protect a defendant's Fifth Amendment rights (see *Keating v. Office of Thrift Supervision* (9th Cir. 1995) 45 F.3d 322, 324), courts have granted stays "when the interests of justice seemed to require such action." (*United States v. Kordel* (1970) 397 U.S. 1, 12, fn. 27.) In these situations, "the alleviation of tension between constitutional rights has been treated as within the province of a court's discretion in seeking to assure the sound administration of justice." (*People v. Coleman* (1975) 13 Cal.3d 867, 885.)

This case is more complicated, however, because Crawford objects not only to the delay in the hearing on his petition, but also to the delay in the hearing on Lilienthal's cross-petition against him. In the case of the cross-petition, Crawford was the respondent, and the 25-day deadline under section 527.6, subdivision (g), was for his benefit. Crawford objected to all of the continuances in this case.

Nevertheless, we hold that in this case, where the two petitions were closely factually related, the trial court did not err by granting the continuances in Lilienthal's petition against Crawford. Any other conclusion would lead to needless complexity and a waste of judicial resources. If the court had denied Lilienthal's request for a continuance on the cross-petition, it would have been required to hold two separate hearings in this case: First, Lilienthal's petition against Crawford, and then, more than a year later, after Lilienthal had settled the criminal charges against him, a separate hearing on Crawford's petition, involving the same parties and largely the same facts.

Furthermore, the delay in the hearing on the cross-petition did not prejudice Crawford. Crawford claims that as a result of the delay, one of the attorneys he had hired to represent him was able to attend only the first day of the hearing. The record indicates that this was the result of a scheduling conflict. There is no indication in the record that Crawford attempted to reschedule the hearing to a date when his attorney could have attended, nor that the trial court would have refused such a request. Crawford also claims that the delays in the hearing prejudiced him because one of the witnesses in the case, Terry Siegel, died prior to the hearing. According to Crawford, Siegel was intimidated by Lilienthal. But Siegel was scheduled to testify as a witness for Lilienthal, and Crawford concedes that Siegel was hostile to Crawford. Furthermore, evidence of Siegel's intimidation would have been of little or no relevance on the question of whether Crawford had been harassing Lilienthal.[5]

Although a trial court would not always act within its discretion by delaying a hearing on a restraining order for such a long period of time, under these circumstances, we conclude that there was no abuse of discretion. The trial court acted within its authority "[t]o amend and control its process and orders so as to make them conform to law and justice." (§ 128, subd. (a)(8).) Furthermore, "[w]hen jurisdiction is, by the Constitution or this Code, or by any other statute, conferred on a Court or judicial officer, all the means necessary to carry it into effect

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[5] We also conclude that the continuances did not prejudice Crawford because, even if the trial court had refused to grant Lilienthal a continuance of the hearing on his cross-petition, he could have voluntarily dismissed the cross-petition and re-filed it after settling the criminal charges. Because a petition for a restraining order is an expedited proceeding, not an ordinary civil action (*Siam v. Kizilbash* (2005) 130 Cal.App.4th 1563, 1573), the rules restricting the assertion of compulsory counter-claims do not apply. (See § 426.60, subd. (a) [The part of the code pertaining to compulsory counter-claims "applies only to civil actions and does not apply to special proceedings."].)

are also given; and in the exercise of this jurisdiction, if the course of proceeding be not specifically pointed out by this Code or the statute, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of this Code." (§ 187.) Prior to the 2016 amendment, the trial court's authority to grant continuances under section 527.6 was unclear, especially when one party faced possible Fifth Amendment consequences for testifying. Because the course the court chose was not clearly inconsistent with the statute, the trial court acted within its inherent authority by granting the continuances. (See *Elkins v. Superior Court* (2007) 41 Cal.4th 1337, 1351.)

III. Additional Constitutional Arguments

Crawford raises an additional argument against the trial court's grant of continuances under the heading, "The Doctrine of Unconstitutional Conditions." (Underlining omitted.) He contends that the trial court violated his constitutional rights by refusing to require Lilienthal to proceed with a contempt hearing without a criminal lawyer present, and by continuing the restraining order hearing over five continuous court days. "As a general matter, the unconstitutional conditions doctrine imposes special restrictions upon the government's otherwise broad authority to condition the grant of a privilege or benefit when a proposed condition requires the individual to give up or refrain from exercising a constitutional right." (*California Building Industry Assn. v. City of San Jose* (2015) 61 Cal.4th 435, 457.) This doctrine applies primarily to actions by legislatures or executive agencies, and Crawford cites no authority supporting its application to the context of the scheduling of court hearings. Consequently, we reject the argument.

Crawford contends that Lilienthal's cross-petition contained several incorrect dates, and that the trial court erred when it refused to dismiss the cross-petition on account of these errors. Lilienthal admitted that in some cases, he mistakenly dated certain events to February 2014, when in fact they occurred in February 2015. The court also noted that one event, which Lilienthal claimed occurred on

February 11, actually occurred on February 10. On another occasion, Lilienthal acknowledged that he was mistaken about the date of a confrontation between Crawford and the condominium complex's gardener.

We do not agree that these errors denied Crawford due process. In most instances, the errors represent a mistake as to a single digit. Consequently, we agree with the trial court that they were most likely the result of typos or honest mistakes by Lilienthal, and do not represent a deliberate attempt to deceive Crawford. Crawford contends that these errors nevertheless prejudiced him because he was unable to search through his "substantial video archives" of home security surveillance footage to discover recordings from the relevant dates. But "a section 527.6 petition is designed to be processed simply and expeditiously." (*Siam v. Kizilbash*, *supra*, 130 Cal.App.4th at p. 1573.) In order to satisfy requirements of due process, it is not necessary to allow a party to introduce voluminous amounts of video footage, as Crawford apparently intended to do. Furthermore, it is unlikely that any additional footage Crawford could have uncovered would have altered the outcome of the case. There were several examples of video footage presented at trial displaying Crawford's behavior, including some footage that Crawford himself had recorded, and other evidence came from Crawford's own testimony and copies of emails he had sent to Lilienthal and others. It is unlikely that additional surveillance footage, filmed at a distance and with no sound, would have provided useful evidence of a *lack* of harassment by Crawford.

IV. Substantial Evidence

Crawford contends that there was insufficient evidence to support the trial court's judgment. We review the trial court's factual findings in a decision to grant a restraining order for substantial evidence. (*Harris v. Stampolis* (2016) 248 Cal.App.4th 484, 497.) Under that standard, "we view the evidence in a light most favorable to the respondent, and indulge all legitimate and reasonable inferences to uphold the [trial]

court's determination." (*In re Cassandra B.* (2004) 125 Cal.App.4th 199, 210–211.)

In this case, there was substantial evidence to support the trial court's findings, in the form of Lilienthal's testimony of years of harassing behavior from Crawford, along with corroborating video evidence. We must defer to the trial court's conclusions regarding the credibility of the witnesses and the reasonable inferences to be drawn from the testimony. Crawford's appellate briefs attempt to argue issues such as whether he deliberately allowed his car's burglar alarm to go off in the middle of the night, and whether he briefly gave his Wi-Fi network a name that accused Lilienthal of embezzling. It is not our role to re-weigh the trial court's findings on these matters.

Crawford contends that Lilienthal's cross-petition contained incorrect dates and irrelevant information regarding parties other than Crawford and Lilienthal. But as we have already seen (see Discussion part III *ante*, at p. 10), the record indicates that these errors were probably the result of typos. There is no indication that the trial court based its decision on incorrect or irrelevant information. Crawford contends that Lilienthal should have brought suit against him in Lilienthal's capacity as the president of the condominium's homeowner's association, but this is irrelevant to the question of whether there was substantial evidence to support the trial court's findings regarding the claims that Lilienthal actually did raise in his petition.

Crawford also objects to the trial court's reliance in its decision on events prior to 2011, including a mutual stay-away order to which the parties agreed in 2010, and in which Crawford insists that he was the "prevailing party." Crawford relies on *Adler*, in which the court held that when a party voluntarily dismissed a petition for a restraining order, that party was not the prevailing party for purposes of an award of attorney's fees. (See *Adler*, *supra*, 21 Cal.App.4th at pp. 1776-1777.) In this case, the parties agreed to a mutual stay-away order in 2010. Lilienthal attempted to obtain a restraining order against Crawford in 2011 but voluntarily dismissed the case. That voluntary dismissal does

not mean that the trial court was required to accept Crawford's version of all events prior to 2011, nor that the court was precluded from drawing inferences from the parties' testimony regarding those events. Although more recent events are more probative of the parties' relationship, the court did not err in finding that earlier events had some continued relevance.

Finally, Crawford contends that some of the conduct that the trial court found to be evidence of harassment constituted protected speech under the First Amendment. He points out that in some instances, courts have viewed homeowner's associations as quasi-governmental institutions, such that speech to the homeowner's association may be protected. (See, e.g., *Damon v. Ocean Hills Journalism Club* (2000) 85 Cal.App.4th 468, 478-480.) On the other hand, "[n]ot every mundane communication between a homeowners association and a homeowner gives rise to a freedom of speech issue." (*Turner v. Vista Pointe Ridge Homeowners Assn.* (2009) 180 Cal.App.4th 676, 679.) We need not decide whether, when Crawford raised his middle fingers toward Lilienthal, he was "flipping him the bird" in Lilienthal's capacity as president of the condominium association or merely as a private citizen. Even if the trial court erred by considering this as evidence of harassment, there remained substantial evidence to support the court's conclusion.

DISPOSITION

The judgment of the trial court is affirmed. Respondent Lilienthal is awarded his costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

LUI, J.