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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

MOHAMAD RANI ALTINAWI,

Plaintiff and Respondent,

v.

OMAR SALMAN,

Defendant and Appellant.

B284071

(Los Angeles County
Super. Ct. No. YS029942)

APPEAL from a judgment of the Superior Court of Los Angeles County, Maria Puente-Porras, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Remanded with directions.

Omar Salman, in pro. per., for Defendant and Appellant.

Yury Galperin, Lieber & Galperin, for Plaintiff and Respondent.

INTRODUCTION

Respondent Mohamad Rani Altinawi sought a restraining order against appellant Omar Salman, alleging that Salman was harassing Altinawi. The court granted a five-year restraining order. Salman appeals. We conclude that substantial evidence supports the court's finding of harassment. However, because we find that the scope of the restraining order is unconstitutionally overbroad and restricts Salman's right to free speech, we reverse and remand for further hearing.

FACTUAL AND PROCEDURAL HISTORY

Altinawi filed a petition for a civil harassment restraining order against Salman in May 2017.¹ He alleged that he and Salman were former classmates.

Salman filed a response, stating that he did not agree to the orders requested. In an attached declaration, Salman stated that he operated "a website as a hobby, www.douchebagsexposed.com." He explained that his website was "similar to yelp.com or angieslist.com," as it posted reviews of businesses, but "with an admittedly more colorful tone." Salman claimed that he had "learned of numerous allegations of misconduct inside La Mirage nightclub," where Altinawi worked as the Director of Operations, from "various patrons' Facebook posts." Salman decided to "compile the negative Facebook reviews and other social media accounts of La Mirage and post them to my website to inform the public about the allegations

¹The record does not include a copy of the petition, any supporting documents, or Altinawi's exhibits submitted at the hearing. It does include Salman's response, with exhibits, and the court's order.

patrons had made against the club.” He then emailed Altinawi a link to the website.

Altinawi responded with a message² calling Salman a “fat loser,” stating that Salman would “be billed for my legal fees later,” and alleging a past incident in which Salman was raped by a janitor and Altinawi “thought it was the funniest thing ever.” Altinawi also told Salman to “at [sic] this to your blog fatty.” Salman attached a copy of the message to his declaration. He also stated that the sexual assault allegation was untrue. According to Salman, he then posted the message sent by Altinawi to Salman’s blog because Altinawi “specifically told me to.”

Salman also contacted law enforcement regarding La Mirage Nightclub, because he had “a reasonable belief that [Altinawi] and others were committing crimes inside La Mirage.” Salman attached a printout of his blog post to his declaration. The post included several customer complaints regarding La Mirage Nightclub, the message from Altinawi, a copy of what appears to be Altinawi’s personal Facebook profile photo and profile page, and an expletive-filled Facebook message purportedly sent from Altinawi’s sister to Salman. Salman also posted that Altinawi “went to juvenile hall because he sexually assaulted a girl before he was 15.”

²The record contains inconsistent references to the types of written communication between Salman, Altinawi, and related persons. For example, the communication sent by Altinawi to Salman is referred to at various times as a “message,” an “email,” and a “text.”

The court held a hearing on the petition on June 15, 2017. Both parties were represented by counsel. Altinawi called Salman as an adverse witness under Evidence Code section 776.

Salman testified that he and Altinawi were students at the same Islamic school for a short time in approximately 1993. Salman last saw Altinawi in about 2004 at “some carnival or something.” He has never been to La Mirage Nightclub. In April or May 2016, he looked at Altinawi’s Facebook page and noticed he worked for La Mirage Nightclub in some capacity. He also learned of the negative reviews regarding the nightclub around that time. Salman said that the purpose of his website is to “provide reviews of people who are not a good character.” He had posted the information at issue to his website only about a month earlier, when he learned that Altinawi was the Director of Operations for the nightclub. Altinawi’s attorney asked why, “if your intention was to inform the public of negative reviews of La Mirage, why wouldn’t you post it 14 months ago when you first learned of those reviews?” Salman responded, “[Altinawi] and I have a history . . . if he is still the same guy he was when we were young and he still has this personality and he still victimizes people, it’s still like he is doing that.”

In his testimony, Salman admitted he had messaged Altinawi on Facebook in May of 2016; Altinawi did not respond and blocked Salman on Facebook. Salman then created a fake Facebook profile and contacted Altinawi through that profile. He also tried to contact Altinawi through LinkedIn, and emailed him twice after he was blocked on Facebook. Asked why he contacted Altinawi in 2016 after he had not seen him for many years, Salman responded that he had a “nightmarish” time at the Islamic school and was diagnosed with PTSD because of what

had happened to him at that school, including bullying by Altinawi. He had been seeing a therapist and realized that Altinawi “is still probably not a good person.” He then started “doing research,” found the negative reviews of the nightclub, and thought, “that sounds like [Altinawi] to me.”

Salman testified that he contacted the local police, the FBI, and several other entities regarding Altinawi. He also emailed people who had posted the negative reviews “to try to get them to take action and stand up for themselves.” Altinawi’s counsel also asked about text messages in which Salman wrote, “I hate muzzies,” in reference to Muslims. When asked if he had a personal vendetta against Altinawi, Salman responded, “The guy bullied me, so yes.” He also admitted to sending a text to a third party saying that he wanted to be the reason Altinawi “goes down financially, emotionally and everything.” He also retrieved Altinawi’s home address from the website whitepages.com and was planning to send the information to the police department.

At one point, Altinawi’s counsel asked about an exhibit containing a series of text messages Salman sent to Sean Fonseca, Altinawi’s co-worker, regarding Altinawi. Salman testified that the messages from Fonseca to him had been excluded from the exhibit. Salman denied sending 34 consecutive messages without a response, claiming that the text message exchange in fact consisted of “a bunch of questions” by Fonseca and “a bunch of answers” by Salman.

In response to questioning by his own counsel, Salman explained that he started his website in November 2015. The purpose of the website was “to expose like sociopathic type people. People who want to connive and screw you over.” As of May 2017, he had published about nine posts. Salman admitted

that he removed eight of his nine blog posts after being served with the restraining order because the posts related to Muslims, but insisted that “was not the key point.”

Salman offered only one exhibit, his blog post that was attached to his response. The exhibits offered by Altinawi included the series of text messages between Salman and Fonseca. Salman’s counsel objected to that exhibit as incomplete, based on Salman’s testimony that he had sent responses to Fonseca that were omitted from the document. The court overruled the objection but noted it would “consider the weight.”

Altinawi testified that he last saw Salman at school in 1998. He next heard from Salman through Facebook in December 2015; Salman sent him a message referring to him as “Rani the rapist.” Altinawi did not respond, but Salman continued to send Facebook messages. Altinawi stated that he had to deactivate his Facebook and LinkedIn accounts because of “the consistent harassment” by Salman. His employer asked him about the allegations that Salman was posting. In addition, Altinawi was contacted by the Lakewood Sheriff’s Department and questioned about the blog and La Mirage Nightclub. Altinawi testified that Salman also sent him messages through a fake Facebook account, and sent messages to his sister, friends, and girlfriend. He testified that Salman’s behavior toward him during the few weeks before he filed the restraining order was “disturbing, harassing, very disturbing.” Since he requested the restraining order, Salman had not contacted him or his friends or family, and had not posted anything new; Salman also removed his prior postings regarding the nightclub. Altinawi testified that he was afraid Salman might harm him or his family based on “the behavior he’s demonstrated.” On cross-examination, he

admitted sending the message to Salman regarding the janitor incident and telling Salman to add it to his blog, but he insisted he did not actually want the message put on the blog. ~

Salman's counsel moved to dismiss, arguing there was no evidence of substantial emotional distress to Altinawi. The court denied the motion.

After hearing closing argument from both sides, the court granted Altinawi's request for a restraining order. The court noted Salman's acts of contacting Altinawi, as well as his friends and relatives and other people who had posted negative reviews about La Mirage. The court found that, unlike Yelp, Salman's website "invites . . . personal opinion into what people have posted." He also "injected his personal history or perception of Mr. Altinawi's past actions" onto the blog, and "extended those communications to third parties." The court found Salman was not simply posting negative reviews, but making inflammatory accusations regarding rape and incarceration, which were "completely and absolutely directed at [Altinawi] himself." The court further found that "there was no legitimate purpose to what Mr. Salman was stating" and that Altinawi had established emotional distress. "If somebody is posting on a blog that I've raped and gone to prison I trust that that's going to cause me to be affected by it." The court also noted Altinawi's testimony that he had withdrawn from social media as a result. The court further told Salman that "despite the fact that [Altinawi] may have sent back the one email that said go ahead put it on your blog and called you names and made some very ugly comments, does not in any way, shape or form eliminate the reality of this situation that there was no legitimate purpose for what you did."

The court granted the petition, issuing a five-year restraining order that would expire in June 2022. Salman was restrained from, among other things, harassing or intimidating Altinawi or contacting him in any way, and was required to stay 100 yards away from his person, home, and workplace. Salman was also ordered “not to post any comments on social media related to or about [Altinawi] and to remove all comments about [Altinawi] and as they relate to his job.” The court noted it had “no jurisdiction to make any orders regarding La Mirage,” apart from postings specifically regarding Altinawi and his job.

Salman timely appealed.

DISCUSSION

I. *Legal Standards*

Code of Civil Procedure section 527.6³ authorizes a ““person who has suffered harassment” to obtain a temporary restraining order and injunction against the harassing conduct and provides an expedited procedure to obtain such an injunction.” (*Schild v. Rubin* (1991) 232 Cal.App.3d 755, 762 (*Schild*).)

Harassment under this section is defined as follows: “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).) A “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

³All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

purpose, including . . . sending harassing correspondence to an individual by any means.” (§ 527.6, subd. (b)(1).) In order to grant the requested relief, the trial court must find harassment by clear and convincing evidence. (§ 527.6, subd. (i).)

We review the trial court’s findings for substantial evidence. (*Schild, supra*, 232 Cal.App.3d 755, 762.) Accordingly, “[w]e 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.” (*Ibid.*, citing *Nestle v. City of Santa Monica* (1972) 6 Cal.3d 920, 925.) Whether the restraining order passes constitutional muster is a question of law subject to de novo review. (*DVD Copy Control Ass’n v. Bunner* (2003) 31 Cal.4th 864, 890; *R.D. v. P.M.* (2011) 202 Cal.App.4th 181, 188.)

II. Trial Court’s Finding of Harassment

Salman contends that Altinawi failed to meet his burden to establish harassment; instead, he argues that the evidence showed the “harassment went the other way around.” We conclude that substantial evidence supports the trial court’s findings of a harassing course of conduct by Salman, directed at Altinawi, without a legitimate purpose. Although Salman claimed he posted on his blog for the purpose of alerting the public about untrustworthy businesses and individuals, he admitted that he did not post about La Mirage Nightclub until over a year after he learned of the negative reviews about the club from other sources. He also admitted that the impetus for his posting was his personal history with Altinawi and that he posted allegations regarding Altinawi related to that history. Indeed, he admitted to having a personal vendetta against

Altinawi and to wanting to ruin Altinawi financially and emotionally. Moreover, Salman admitted to sending numerous messages to Altinawi across multiple platforms; then, once these attempts were blocked, he created fake social media profiles to continue these attempts. He also contacted Altinawi's colleagues and family members.⁴ Salman cites no authority to the contrary. The trial court was entitled to weigh all of the evidence in concluding Salman had engaged in a harassing course of conduct against Altinawi. We do not reweigh the evidence on appeal and we give deference to the trial court's findings. (See, e.g., *Scott v. Pacific Gas & Electric Co.* (1995) 11 Cal.4th 454, 465.)

Furthermore, the trial court had sufficient evidence, based on Salman's conduct, to conclude that Altinawi suffered sufficient distress to satisfy the requirements of the statute. Salman admitted repeatedly calling Altinawi a rapist and alleging in a post on his blog that Altinawi committed sexual assault. Salman also admitted that he had obtained Altinawi's home address, and Altinawi testified that he was afraid Salman would harm him or his family. Salman reported Altinawi to multiple law enforcement agencies, and Altinawi testified that he had been questioned by police. In addition, Altinawi testified that he was forced to close his social media accounts as a result of Salman's conduct, and that he was questioned by his employer about Salman's postings. The trial court relied on this evidence in concluding that Salman's conduct would cause a reasonable person to suffer substantial emotional distress and actually did

⁴While the email and text responses to Salman from Altinawi and his sister certainly contained some very rude and crude remarks, such conduct does not necessarily negate the evidence of harassment by Salman.

cause substantial emotional distress to Altinawi. We find substantial evidence supports these conclusions.⁵

Salman also argues that the court's order should be reversed because Altinawi lied in his testimony and his counsel submitted incomplete evidence regarding Salman's blog posts and the text message conversation with Fonseca. He cites no authority for these claims. Contentions that are unsupported by fact or law will be deemed forfeited on appeal. (See, e.g., *City of Lincoln v. Barringer* (2002) 102 Cal.App.4th 1211, 1239, fn. 16; *Berger v. Godden* (1985) 163 Cal.App.3d 1113, 1117 ["failure of appellant to advance any pertinent or intelligible legal argument . . . constitute[s] an abandonment of the [claim of error]".]) Moreover, we note that the court admitted the full set of blog posts as evidence. Salman also had the opportunity to testify regarding the content of the text messages with Fonseca, and to submit his own evidence. He now claims that his counsel refused to offer the full set of text messages, deciding to rely on the blog evidence. Salman fails to demonstrate any error by the court on this basis.

Finally, Salman contends that Altinawi's petition was effectively a SLAPP lawsuit,⁶ intended to chill his free speech rights by shutting down his blog. This issue is not properly before us, as Salman did not file (nor is he appealing from) a special motion to strike the complaint under section 425.16, the

⁵Salman references the purported findings of two other trial courts as supporting his contention that there was no harassment. These findings are not in the record before us and we have no basis to consider them.

⁶SLAPP is an acronym for Strategic Lawsuit Against Public Participation.

anti-SLAPP statute. However, we address Salman’s objection to the scope of the restraining order on First Amendment grounds in the following section.

III. *The Scope of the Restraining Order*

Salman contends that the restraining order violated his First Amendment free speech rights as it required him to take down all of the postings on his website regarding Altinawi and prohibited him from future postings.⁷ We agree that the restraining order as issued does not pass constitutional muster, as it is not sufficiently narrowly tailored to target the harassing conduct at issue.

“‘The right to free speech is . . . one of the cornerstones of our society,’ and is protected under the First Amendment of the United States Constitution and under an ‘even broader’ provision of the California Constitution.” (*Evans v. Evans* (2008) 162 Cal.App.4th 1157, 1166 (*Evans*), quoting *Hurvitz v. Hoefflin* (2000) 84 Cal.App.4th 1232, 1241; see also Cal. Const., art. I, § 2, subd. (a).) An injunction forbidding certain communications “in advance of the time that such communications are to occur” is known as a “prior restraint.” (*DVD Copy Control Assn. v. Bunner* (2003) 31 Cal.4th 864, 886 (*DVD Copy*).) A prior restraint is “the most serious and the least tolerable infringement on First Amendment rights.” (*Ibid.*; *Near v. Minnesota* (1931) 283 U.S. 697, 713.) “Prior restraints are highly disfavored and presumptively violate the First Amendment. [Citations.] This is

⁷Altinawi did not respond to this argument in his brief. However, at our request, his counsel addressed it during oral argument. He contends the order was constitutional; in the alternative, he requests we remand to allow the trial court to revisit the scope of the order.

true even when the speech is expected to be of the type that is not constitutionally protected.” (*Evans, supra*, 162 Cal.App.4th at p. 1167; citing *Near v. Minnesota, supra*, 283 U.S. at pp. 704–705 [rejecting restraint on publication of any periodical containing “malicious, scandalous and defamatory” matter].) “When enjoining activities in the sensitive area of First Amendment freedoms, courts must draft temporary restraining orders ‘couched in the narrowest terms that will accomplish the pinpointed objective permitted by constitutional mandate and the essential needs of the public order.’” (*United Farm Workers of America v. Superior Court* (1975) 14 Cal.3d 902, 909.)

“Temporary restraining orders and permanent injunctions—i.e., court orders that actually forbid speech activities—are classic examples of prior restraints.” (*Alexander v. United States* (1993) 509 U.S. 544, 550; see also *DVD Copy, supra*, 31 Cal.4th at p. 886.) However, not all speech is constitutionally protected. (See *Flatley v. Mauro* (2006) 39 Cal.4th 299, 313.) For example, “only content-based injunctions are subject to prior restraint analysis.” (*DVD Copy, supra*, 31 Cal.4th at p. 886, citing *Thomas v. Chicago Park District* (2002) 534 U.S. 316, 321–322.) In addition, in California, “speech that constitutes ‘harassment’ within the meaning of section 527.6 is not constitutionally protected, and the victim of the harassment may obtain injunctive relief.” (*Huntingdon Life Sciences, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.* (2005) 129 Cal.App.4th 1228, 1250.) The right to free speech “does not include the right to repeatedly invade another person’s constitutional rights of privacy and the pursuit of happiness through the use of acts and threats that evidence a pattern of

harassment designed to inflict substantial emotional distress.” (*People v. Borrelli* (2000) 77 Cal.App.4th 703, 716.)

Here, Salman’s counsel argued to the trial court that Salman had a First Amendment right to “inform the public” by posting reviews of “businesses and individuals” so that “people can make informed decisions about the businesses and individuals they want to work with.” The court acknowledged Salman’s right to post reviews, including those of other commenters. However, the court distinguished between this protected conduct and Salman’s act of “inject[ing] his personal history or perception of Mr. Altinawi’s past actions,” particularly by posting the accusation that Altinawi had committed sexual assault—a statement that was “pretty inflammatory” and served no legitimate purpose.

Ultimately, the restraining order required Salman to remove *all* comments about Altinawi and Altinawi’s job from social media and blogs, and barred Salman from future posting of similar material. This order was clearly overbroad, as it encompassed speech the court itself recognized as constitutionally protected (such as reviews of the nightclub and Altinawi’s behavior as an employee there).⁸ Moreover, the court’s order barring Salman from posting further “defamatory” statements online was unconstitutional. (See *Evans, supra*, 162 Cal.App.4th at p. 1169 [finding preliminary injunction barring

⁸The court did find that Salman’s statement on his blog suggesting Altinawi committed sexual assault was harassment under section 527.6. Salman has not challenged this finding on First Amendment grounds on appeal. Instead, his free speech argument is focused on the court’s order requiring him to take down the entire blog. Accordingly, we need not reach the constitutional issue with respect to this particular statement.

the defendant from publishing “false and defamatory” statements about the plaintiff online was an invalid prior restraint, because there had been no trial and no determination on the merits that any statements made by the defendant were defamatory]; compare *R.D. v. P.M.*, *supra*, 202 Cal.App.4th at p. 191 [affirming restraining order barring appellant from distributing flyers disparaging respondent, as the order was content-neutral and merely prohibited appellant “from expressing her message in close proximity to R.D. and her family”].)

As such, we conclude reversal is warranted to permit the trial court to appropriately tailor the scope of the restraining order toward harassing conduct within the meaning of section 527.6.

DISPOSITION

The restraining order is reversed and the matter is remanded for the court to reconsider the scope of the order consistent with this opinion. The parties are to bear their own costs on appeal.

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COLLINS, J.

We concur:

MANELLA, P. J.

MICON, J.*

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