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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 FIVE

HEALTH-SMART DBA PACIFIC HOSPITAL et al., Petitioners and Respondents, v. GREGORY ARISTOTLE LYONS, Respondent and Appellant.	B237428 (Los Angeles County Super. Ct. Nos. NS023726, NS023727, NS023728, NS023758)

APPEALS from orders of the Superior Court of the County of Los Angeles, Chet L. Taylor, Judge. Affirmed.

Gregory Aristotle Lyons, in pro. per. and Andrew E. Smyth, for Respondent and Appellant.

Fink & Steinberg, Keith A. Fink, S. Keven Steinberg, and Olaf J. Muller for Petitioners and Respondents.

INTRODUCTION

Respondent and appellant Gregory Lyons (Mr. Lyons), a security guard, was terminated from his employment at petitioner and respondent Healthsmart Pacific, Inc., doing business as Pacific Hospital of Long Beach (Pacific). Mr. Lyons filed an action against Pacific asserting a number of claims concerning his employment and termination. Pacific successfully moved for summary judgment in Mr. Lyons's employment action. Thereafter, based on conduct it viewed as threatening, Pacific sought restraining orders against Mr. Lyons to protect certain employees. Also based on perceived threatening conduct, Fink & Steinberg, Pacific's attorneys, sought restraining orders against Mr. Lyons to protect its employees.[1] The trial court issued permanent workplace violence restraining orders against Mr. Lyons and in favor of Pacific and its attorneys. Mr. Lyons appeals.

Mr. Lyons contends that none of the restraining orders is supported by substantial evidence and each of the restraining orders was issued in error because his alleged threatening communications were made in the course of litigation and thus were privileged. Mr. Lyons also contends that a firearm restriction was not justified and was issued without due process and the trial court was without jurisdiction to enjoin his behavior with respect to persons not named in Pacific's petition for a restraining order. If there is sufficient evidence to support the trial court's findings, without regard to Mr. Lyons's evidence or credibility questions, and the trial court does not abuse its discretion, we must affirm. We are also required to resolve all factual conflicts and questions of

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[1] The trial court issued Pacific restraining orders in case numbers NS023726 (Tia Schiller) and NS023728 (Jennifer and Alicia Patterson) which Mr. Lyons appealed in case numbers B237428 and B237507. Alicia Patterson is Jennifer Patterson's daughter. Because they share the same last name, for clarity, we will refer to Jennifer Patterson and Alicia Patterson individually by their first names. The trial court issued Fink & Steinberg restraining orders in case numbers NS023727 (Olaf Muller) and NS023758 (Keith Fink and Sarah Hernandez) which Mr. Lyons appealed in case numbers B237503 and B237438. We granted Pacific and Fink & Steinberg's motion to consolidate Mr. Lyons's appeals.

credibility in favor of the party that prevailed in the trial court and draw all reasonable inferences in support of the trial court's findings. If there is sufficient evidence that supports the trial court's findings, that there is evidence that might also be reconciled with contrary findings does not justify a reversal of the orders. Thus, based on the standard of review we are required by law to follow, our power being limited, we must affirm.

BACKGROUND

On February 28, 2011, Pacific filed petitions for restraining orders against Mr. Lyons to protect Tia Schiller, Pacific's Vice President of Human Resources; Jennifer, Pacific's Human Resources Director; and Alicia. On February 28, 2011, Fink & Steinberg filed a petition for a restraining order against Mr. Lyons to protect Mr. Fink and Ms. Hernandez.[2] On March 8, 2011, Fink & Steinberg filed a petition for a restraining order against Mr. Lyons to protect Mr. Muller.

A. Content of Ms. Schiller's Declaration

In support of its request for a restraining order to protect Ms. Schiller, Pacific submitted Ms. Schiller's declaration in which she addressed Mr. Lyons's employment and termination. Ms. Schiller stated that Mr. Lyons worked as a security guard for Pacific for seven months beginning in February 2009 and ending in September 2009. During his employment, Mr. Lyons received verbal and written warnings concerning his failure to follow various Pacific procedures. Pacific received complaints from its security guard Martin Maldonado and from third party vendor Eladio Chavez that Mr. Lyons made inappropriate comments, disparaged another employee, and repeatedly called an employee during non-work hours. In August 2009, Jennifer informed Mr. Lyons that his

[2] We will refer collectively to Ms. Schiller, the Pattersons, Mr. Muller, Mr. Fink, and Ms. Hernandez as "petitioners."

employment was suspended pending Pacific's investigation of the various complaints about him.

In the course of Pacific's investigation, one of Mr. Lyons's supervisors expressed the view that while Mr. Lyons initially appeared to be a diligent and hard working employee who was eager to learn and follow security department procedures, but then had engaged in increasingly odd behavior on the job during the two months preceding his suspension.

Following Mr. Lyons's suspension, he communicated with Pacific's President and CEO about his suspension, made accusations against employees, and claimed racial harassment and discrimination. Four days after he was suspended, Mr. Lyons e-mailed Ms. Schiller demanding that Pacific return his security officer badge and uniform immediately and that Ms. Schiller help him "'schedule a joint news conference as soon as your investigation is over with I have all the same documents that I gave to you ready to release to the report's [sic].'" During his suspension, Mr. Lyons continued to call an employee at all hours of the day and night despite her repeated demands that he stop.

Pacific terminated Mr. Lyons's employment at the end of its investigation on the ground that because he "displayed unacceptable unprofessional behavior toward vendors and co-workers. This behavior includes death threats and stalking." Pacific extended Mr. Lyons's medical benefits for one month so that he could seek counseling and treatment for his "obvious psychological problems." After his termination, Mr. Lyons made copies of his termination letter, which he posted around Pacific. In the months following his termination, Mr. Lyons repeatedly was seen around Pacific.

B. Content of Jennifer's Declaration

In a declaration submitted in support of Pacific's request for a restraining order to protect Jennifer and Alicia, Jennifer stated that during Mr. Lyons's suspension, Mr. Lyons sent her several e-mails accusing her of violating various laws. Two days after Pacific terminated Mr. Lyons's employment, Jennifer saw Mr. Lyons at Pacific. Around the same time, Mr. Lyons called Jennifer and accused her of violating the law by

suspending and terminating his employment. Mr. Lyons claimed she would be liable to Pacific for $5 million for terminating his employment. Mr. Lyons called Alicia and demanded Jennifer's personal cell phone number. Shortly thereafter, Pacific and Jennifer were granted a temporary restraining order against Mr. Lyons, but were denied a permanent restraining order.

In January 2011, Mr. Lyons contacted Jennifer through her Facebook account and claimed that Mr. Fink was demanding that he respond to a motion Mr. Fink filed in Mr. Lyons's employment action against Pacific that concerned Alicia's "drinking problem" and the number of times he reported her for being intoxicated at work. Mr. Lyons stated that Alicia should be left out of the "court battle." Mr. Lyons said, "Fair is fair, but you[r] own attorney for the hospital should not be bringing up your daughter, and making allegations against your daughter, and now demanding that a Los [A]ngeles Superior Court Judge order me to answer questions about your own daughter. She seemed like a nice girl, I never knew her, and we really didn't work that much together. The press is getting these exact same documents. If you guys want to sling allegations against me ok. But let[']s leave Alicia out of the Wrongful termination case." The same day, Mr. Lyons contacted Alicia through her Facebook account and left a message addressing the same subject.

Jennifer stated that she was aware that Mr. Lyons was trained in the use of firearms, owned several firearms, and was a United States Navy veteran. She further stated that Mr. Lyons had been seen in recent months driving around Pacific wearing his former Pacific security guard uniform even though he no longer worked there. Jennifer believed that Mr. Lyons had focused his anger over his termination on her in particular and had made clear that he would not leave her alone. She felt "constant anxiety" that Mr. Lyons would appear at Pacific or at her home when Alicia and her other children were present and feared for her and her family's safety.

C. Content of Mr. Muller's Declaration

In Mr. Muller's February 28, 2011, declaration in support of Pacific's request for a restraining order to protect Jennifer and Alicia, Mr. Muller stated that Mr. Lyons sent him a declaration on February 26, 2011, in connection with an ex parte application in which Mr. Lyons stated that he had informed "law enforcement of the criminal actions of all parties involved."[3] Mr. Lyons informed the trial court that he gave notice of the ex parte application by e-mail because he feared that violence would break out once the trial court turned the matter over to the District Attorney's Office. According to Mr. Lyons, he received death threats after reporting the parties' criminal actions to law enforcement and he would be forced to wear a bullet-proof vest for the rest of his life.

Mr. Muller believed that Mr. Lyons would attempt to attack or shoot him, other attorneys or staff at his law firm, and Ms. Schiller, Jennifer, or other Pacific employees for suspending and terminating his employment and for having his employment action against Pacific dismissed. Mr. Muller viewed Mr. Lyons's declaration as an attempt to portray himself as a victim and to justify any violent action by him as self-defense. According to Mr. Muller, Mr. Lyons's e-mail messages to him in the prior two weeks had grown increasingly angry and frantic.

Mr. Muller attached to his declaration an excerpt from Mr. Lyons's 2007 deposition in a civil case in which Mr. Lyons testified that he had been charged with conspiracy to commit murder in 1978. Mr. Lyons testified that he hired someone to kill a defendant who was in jail custody whom Mr. Lyons wanted killed because he had molested Mr. Lyons when Mr. Lyons was a child. The perpetrator whom Mr. Lyons hired stabbed the defendant in the eye while the defendant was being transported to court on a bus. Mr. Lyons believed that murder was justified in that case. The perpetrator

[3] The "criminal actions" apparently concern Mr. Lyons's claim that exhibits used in his deposition in his employment action against Pacific had been altered. It appears that Mr. Lyons believes that at least Mr. Fink, Jennifer, Ms. Schiller, and the court reporter conspired to alter the exhibits.

received a life sentence at Patton State Hospital, and the charge against Mr. Lyons was reduced to assault.

D. Content of Mr. Fink's Testimony

In November 2011, the trial court held a joint hearing on Pacific's and Fink & Steinberg's petitions for restraining orders. At the hearing, Mr. Fink testified that he had received numerous e-mails and faxes from Mr. Lyons since April 2010. At times, the faxes were so long—approximately 600 pages—that the fax machine would run out of paper and turn off. Some of the communications asserted that Mr. Fink and Mr. Muller wanted to sexually attack him.

Mr. Fink received an e-mailed declaration from Mr. Lyons in which Mr. Lyons declared that he had purchased a bulletproof vest because he believed that Mr. Fink and Mr. Muller had made death threats to him. Because Mr. Fink had not threatened Mr. Lyons, he interpreted Mr. Lyons's declaration as a threat to shoot him. A week prior to the hearing, Mr. Fink received a communication from Mr. Lyons asserting that Mr. Fink would lose at the hearing and Mr. Lyons's 9 millimeter gun would be returned to him.

Mr. Fink testified that Mr. Lyons filed a petition for a restraining order in which Mr. Lyons claimed to have "received scores of death threats and [to] have been stalked by Olaf Muller and Keith Fink." According to the petition, Mr. Lyons received no less than 80 death threats between January 1, 2010, and June 16, 2011. Mr. Lyons stated that he had received over 75 calls from Mr. Muller and Mr. Fink. Mr. Fink never made a death threat to Mr. Lyons and had not called Mr. Lyons. Mr. Lyons's petition stated, "'I have to put up with Olaf Muller calling me and saying, "I will blow your head off. I will shoot you when you come out of your house. You better watch your back as we have you under surveillance and we can kill you at any time."'"

Mr. Lyons's petition further stated, "'The conduct of Olaf Muller and Keith Allen Fink has increased to the point that both Olaf Muller and Keith Allen Fink have continued to play a tag-team match, calling my home and making such sounds in the phone as we want you to come out, fat boy, so we can shoot at your big butt.'" The

statement concerned Fink enough that he paid a significant amount of money to install a security gate in front of his house. In its ruling on Mr. Lyons's petition, the trial court in that case stated, "'A thorough reading of all papers submitted by petitioner causes the court to believe Mr. Lyons may have some issues re mental health, i.e. claims of being sexually abused by attorney Olaf and Fink.'"

Mr. Fink believed that Mr. Lyons was a threat to him because Mr. Lyons's friend and attorney Andrew Smyth told Mr. Fink that he had received e-mails from Mr. Lyons that concerned him, one of which he forwarded to Mr. Fink. That e-mail attached a document that stated, "You are ruined because of them strike back like a real man. Don't be a little bitch." The document said that certain employees at Pacific, including Ms. Schiller and Jennifer, were laughing at Mr. Lyons. It further had remarks disparaging of Mr. Lyons. Mr. Fink believed that Mr. Lyons authored the document and believed that Mr. Lyons intended the document to camouflage his actions after he harmed Mr. Fink or the other petitioners. Mr. Fink believed that the nature of Mr. Lyons's threats was escalating.

On four occasions, Mr. Smyth e-mailed Mr. Fink advising him that the restraining order proceedings were a mistake, that Mr. Lyons was mentally ill, and that if Mr. Fink and the others continued with the restraining order proceedings Mr. Lyons would "snap" and they would be harmed. Mr. Smyth told Mr. Fink that in 2007 Mr. Lyons was angry with Mr. Smyth and threatened to put him and his wife in a coma.[4] Mr. Fink believed that Mr. Lyons's threats to petitioners had escalated since he lost his employment action.

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[4] The trial court found Mr. Fink's testimony about Mr. Smyth's statement to him to be hearsay, but allowed the testimony because Mr. Fink reported those statements to Dr. David Glaser, M.D., a forensic psychiatrist and expert in stalking, who examined Mr. Lyons in Mr. Lyons's employment action against Pacific and testified as an expert witness at the hearing on Pacific's and Fink & Steinberg's petitions for restraining orders. (Evid. Code, § 801, subd. (b); *Howard Entertainment, Inc. v. Kudrow* (2012) 208 Cal.App.4th 1102, 1115 [an expert may rely on hearsay in forming an opinion].) Moreover, a trial court may rely on relevant hearsay evidence when deciding whether to issue an injunction to prevent workplace violence under Code of Civil Procedure section

Mr. Lyons threatened to have Mr. Fink arrested. Mr. Lyons filed complaints against Mr. Fink with the state bar, the F.B.I., and the District Attorney's Office. Mr. Fink was also concerned because Mr. Lyons appeared to be overly preoccupied with every aspect of Mr. Fink's life. Mr. Lyons sent e-mails to others concerning Mr. Fink.

E. Content of Mr. Taylor's Testimony

Randolph Taylor, Pacific's Risk Manager, testified at the hearing that he was contacted about Mr. Lyons in September 2009, after Mr. Lyons exhibited "bizarre" behavior that included harassing some of the female staff, making death threats against one of Pacific's employees, and brandishing a firearm. Ms. Schiller and Jennifer told Mr. Taylor that they were afraid that Mr. Lyons would cause them great bodily injury. Pacific instituted new security protocols to address Ms. Schiller's and Jennifer's fear. Pacific blacked out the windows in its Human Resources Department because Mr. Lyons had been seen many times walking within three feet of the building that housed that department. Jennifer's office was moved from the outer perimeter to an interior part of the building. Ms. Schiller and Jennifer were permitted to park in the parking lot reserved for doctors, and security escorted them to their cars. With respect to the brandishing incident, Pacific employee Elio Chavez told Mr. Taylor that Mr. Lyons brandished a firearm in an elevator and said that if Mr. Chavez did not "act correctly," he would end up in a grave "just like another Mexican had."

F. Content of Dr. Glaser's Testimony

Dr. Glaser testified at the hearing concerning the factors that are considered in assessing whether a person poses a threat for imminent dangerousness. Dr. Glaser testified that he was to examine Mr. Lyons in February 2011 in connection with Mr. Lyons's employment case against Pacific. Dr. Glaser spent 90 minutes with Mr. Lyons. Mr. Lyons refused to fill out any of the standard forms, to take any psychological tests, or

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527.8 (section 527.8). (*Kaiser Foundation Hospitals v. Wilson* (2011) 201 Cal.App.4th 550, 557.) Dr. Glaser's testimony is set forth below.

to answer any of Dr. Glaser's standard forensic questions. Instead, Mr. Lyons went on a 90-minute "rant" about how documents related to his employment case were forged and how Pacific's counsel in that action engaged in misconduct. Mr. Lyons stated that Mr. Muller and Mr. Fink were attempting to slander him, ruin his career, and "possibly hurt him." Dr. Glaser said Mr. Lyons's tone was paranoid and suspicious. Dr. Glaser was concerned that Mr. Lyons had a psychotic disorder, but was then unable to make a diagnosis as Mr. Lyons had not permitted him to perform a forensic examination.

Later, based on his review of over four boxes or records that included a "slew" of e-mails to Mr. Muller and others, Mr. Lyons's behavior patterns going back to 1998 when Mr. Lyons threatened someone with a bomb, and Mr. Lyons's attorney's telephone call to Mr. Muller warning him that Mr. Lyons was dangerous and violent, Dr. Glaser opined that Mr. Lyons had a delusional disorder, paranoid subtype.

Dr. Glaser testified that the documents he reviewed included Mr. Lyons's medical records from Dr. Falcon. Mr. Lyons, representing himself, objected that Dr. Falcon had not certified the medical records and the records could have been altered. The trial court overruled the objection, and Dr. Glaser testified that Mr. Lyons's belief that the medical records could have been altered was part of his delusional disorder, persecutory subtype. Thus, according to Dr. Glaser, Mr. Lyons had displayed in court one of the symptoms of his psychotic disorder.

Dr. Glaser said Mr. Lyons's medical records showed that he had been prescribed the anti-psychotic drug Seroquel. Dr. Glaser testified that he had observed Mr. Lyons in the courtroom and noticed some buccolingual movements that were consistent with tardive dyskinesia which can only be caused by the use of an anti-psychotic medication such as Seroquel. On cross-examination, Dr. Glaser admitted that he saw no entries for Seroquel on Mr. Lyons's records from the CVS pharmacy in Torrance.

Among the documents that Dr. Glaser reviewed included Mr. Lyons's 2007 deposition testimony in which Mr. Lyons related that he had been convicted as a juvenile of a felony for ordering a "hit" on a man who allegedly sexually abused him. Later, during his cross-examination of Dr. Glaser, Mr. Lyons introduced an errata sheet for his

deposition that purported to "correct" his testimony and denied that he conspired to murder. Dr. Glaser was not aware of the errata sheet.

Dr. Glaser reviewed the court transcript from a 1998 proceeding in which Mr. Lyons's co-worker sought a restraining order after Mr. Lyons made death threats against the co-worker and her children. According to Dr. Glaser, in assessing risk, threats from a person who has a delusional disorder are "ominous" and a "red flag" for increased risk of imminent violence. Dr. Glaser testified that where there is anger driven by delusional thoughts, there is an increased risk for violence. Later, during his cross-examination of Dr. Glaser, Mr. Lyons told the trial court that he had been in a relationship with the co-worker, she became angry when he married another woman, and he agreed to allow the trial court to issue a temporary restraining order against him even though his co-worker's case had fallen apart.

Dr. Glaser reviewed some of the federal complaints Mr. Lyons had filed and asserted that the documents showed a similar pattern of people wronging Mr. Lyons with behavior that was illegal, improper, and threatening. Dr. Glaser said that Mr. Lyons's correspondence in the court files was significant in assessing Mr. Lyons's threat risk.

Dr. Glaser testified that Mr. Lyons prided himself on his security work, and in connection with that work, Mr. Lyons had certain grandiose ideas. Dr. Glaser concluded that Mr. Lyons's alleged psychotic thinking and behavior "statistically, demographically and clinically" increased Mr. Lyons's risk of imminent violence.

Dr. Glaser reviewed documents that Mr. Lyons submitted in June 2011 in support of a petition for a restraining order against Mr. Muller and Mr. Fink in which Mr. Lyons claimed that Messrs. Muller and Fink wanted to attack him. Dr. Glaser also reviewed the document that Mr. Fink had received from Mr. Smyth. He opined that the document was "concrete, hard forensic evidence of dangerousness."

Dr. Glaser testified that there is a strong link between stalking and physical violence. Researchers had found that a significant number of stalkers threaten and physically attack their victims. Dr. Glaser viewed Mr. Lyons's conduct in sending e-mails, faxes, clogging up fax machines, sending multiple copies of various complaints,

and his use of the court system to be a form of stalking. Dr. Glaser opined that Mr. Lyons was a "bright" man which made him more dangerous. Mr. Lyons's intelligence made the "web of his conspiracy that much thicker."

G. Content of Mr. Lyons's Testimony[5]

Mr. Lyons testified at the hearing that he was a good employee at Pacific. Mr. Lyons denied that he was prescribed the medication Seroquel.

Mr. Lyons explained that his dentist's office was across the street from Pacific. Mr. Lyons had a tooth removed in May 2010. He parked down the street from the hospital and walked to his dentist's office. He visited his dentist four times in connection with his extracted tooth. After each visit, he received an e-mail from Mr. Fink asking why he was near the hospital. Mr. Lyons believed that Mr. Fink was harassing and cyber-bullying him.

Mr. Lyons testified that Pacific's petitions for restraining orders and Fink & Steinberg's restraining order with respect to Mr. Muller relied on declarations that were considered and rejected in prior restraining order proceedings. The record on appeal in case number B237507 contains the October 6, 2009, reporter's transcript from one of those proceedings. In that proceeding, Judge Joseph DiLoreto denied Pacific's request for restraining orders—which orders were to protect Ms. Schiller, Jennifer, and a third Pacific employee. In his ruling, Judge DiLoreto stated, "So at this point in time, just not enough proof to prove, clear and convincing evidence, that there is a course of conduct, threatening, etc. I'm sure everybody is upset, but he never made threats to anybody, never threatened indirectly to do any harm to anybody. He's denied that. There is just no evidence."

Mr. Lyons testified that when the trial court issued temporary restraining orders to Pacific and Fink & Steinberg, the orders permitted him to use his firearm in his

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[5] As noted, in considering the sufficiency of the evidence under the required standard of review, we do not consider evidence that may conflict with petitioners' evidence.

employment, but he had to turn in his firearm to his employer at the end of work each day. Mr. Lyons otherwise had to turn in his firearm to law enforcement. Mr. Lyons said that he refused to comply with the firearm restriction and did not turn in his firearm to law enforcement until the trial court threatened to hold him in contempt and incarcerate him.

H. Trial Court Restraining Orders

At the conclusion of the hearing, the trial court issued permanent restraining orders against Mr. Lyons for a duration of three years. Among other things, the trial court ordered Mr. Lyons to surrender to a local law enforcement agency or sell to a licensed firearms dealer within 24 hours any firearms he owned or possessed. It further ordered Mr. Lyons not to contact the petitioners in any way or to enter their names in any internet search engine. The trial court based its ruling on all of the documents and pleadings in the court's file. The trial court found that Mr. Lyons had testified falsely, either intentionally or as a symptom of a delusional syndrome as described by Dr. Glaser. The trial court found Dr. Glaser to be "extremely" credible.

The trial court found that Mr. Lyons presented a high risk of violence to any person who contradicted Mr. Lyons's version of events. It ruled that petitioners had presented more than enough evidence to show that they were reasonably in fear of violence from Mr. Lyons. Among other things, the trial court found that the document attached to an e-mail, sent by Mr. Lyons, exhorting Mr. Lyons to "do something" strongly suggested that Mr. Lyons was ready to take action. Mr. Lyons appealed.

DISCUSSION

I. Substantial Evidence Supports The Trial Court's Orders

Mr. Lyons contends that the trial court's orders issuing permanent workplace violence restraining orders are not supported by substantial evidence. He argues Dr. Glaser's opinion that Mr. Lyons suffers from a delusional disorder and poses a threat of future danger is not substantial evidence because, in forming his opinion, Dr. Glaser took

Mr. Lyons's statements out of context and failed to consider that they were made in the course of litigation.[6] Further, Mr. Lyons contends, expert opinions about future dangerousness are unreliable and inadmissible.

A. Standard of Review

The court in *City of San Jose v. Garbett* (2010) 190 Cal.App.4th 526, 537-538 stated the applicable standard of review as follows: "A 'credible threat of violence' under section 527.8 is 'a knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose.' (§ 527.8, subd. (b)(2).) '[T]o obtain a permanent injunction under section 527.8, subdivision (f), a plaintiff must establish by clear and convincing evidence not only that a defendant engaged in unlawful violence or made credible threats of violence, but also that great or irreparable harm would result to an employee if a prohibitory injunction were not issued due to the reasonable probability unlawful violence will occur in the future.' (*Scripps Health v. Marin* (1999) 72 Cal.App.4th 324, 335 [85 Cal.Rptr.2d 86].) On appeal, however, we review an injunction issued under section 527.8 to determine whether the necessary factual findings are supported by substantial evidence. (*USS-Posco Industries v. Edwards* [(2003)] 111 Cal.App.4th [436,] 444.) Accordingly, we resolve all factual conflicts and questions of credibility in favor of the prevailing party, and draw all reasonable inferences in support of the trial court's findings. (*Ibid*.)" The trial court's decision to grant injunctive relief rests within its sound discretion "and will not be disturbed on appeal absent a showing of a clear abuse of discretion. [Citation.]" (*Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 904, 912.)

Under the substantial evidence test, we look only to see if there is such evidence favoring the respondents. "If this 'substantial evidence is present no matter how slight it may appear in comparison with the contradictory evidence, the judgment must be upheld.

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[6] We address below Mr. Lyons's claim that his conduct was protected by the litigation privilege in Civil Code section 47, subdivision (b).

As a general rule, therefore we look only at the evidence and reasonable inferences supporting the successful party and disregard the contrary showing." (Pouler et al., Civil Procedure Guide, California Law and Motion Authorities (2012) § 62.17.) One court has noted that the substantial evidence test, "can require a reviewing court to affirm a factual finding which the reviewing court does not regard as supported by a preponderance of the evidence. Inherent in the substantial evidence test is the proposition that a finding must be affirmed even though the reviewing court considers it more likely than not that the finding under review is incorrect, so long as that finding is supported by substantial evidence." (*Wollersheim v. Church of Scientology* (1999) 69 Cal.App.4th 1012, 1015.) Other decisions have reiterated these principles. The Supreme Court in *Shamblin v. Brattain* (1988) 44 Cal.3d 474 stated: "Even though contrary findings *could* have been made, an appellate court should defer to the factual determinations made by the trial court when the evidence is in conflict." (*Id*. at p. 479, fn. omitted.) "'[W]e have no power to judge of the effect or value of the evidence, to weigh the evidence, to consider the credibility of the witnesses, or to resolve conflicts in the evidence or in the reasonable inferences that may be drawn therefrom.' [Citations.]" (*Leff v. Gunter* (1983) 33 Cal.3d 508, 518.) An appellate court is "not in a position to weigh any conflicts or disputes in the evidence." (*Estate of Beard* (1999) 71 Cal.App.4th 753, 778.) "Credibility is an issue for the fact finder . . . we do not reweigh evidence or reassess the credibility of witnesses. [Citation.]" (*Johnson v. Pratt & Whitney Canada, Inc.* (1994) 28 Cal.App.4th 613, 622.) We affirm a judgment if it is supported by substantial evidence, even though substantial evidence to the contrary exists and would have supported a different result. (*Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 631.)

With regard to the abuse of discretion standard of review for injunctive relief, "'[d]iscretion is abused whenever, in its exercise, the court exceeds the bounds of reason, all of the circumstances before it being considered.'" (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 566.) A trial court only "exceeds the limits of legal discretion by making an arbitrary, capricious or patently absurd determination." (*In re Shirley K.* (2006) 140

Cal.App.4th 65, 71.) This is the most stringent standard of review. These are the principles we are obligated to follow on reviewing the trial court's decision.

B. Relevant Principles

Pursuant to section 527.8, subdivision (a),[7] an employer may seek an injunction on behalf of its employees to prevent threats or acts of violence. (*Scripps Health v. Marin, supra,* 72 Cal.App.4th at p. 333.) Section 527.8, subdivision (a) provided, "Any employer, whose employee has suffered unlawful violence or a credible threat of violence from any individual, that can reasonably be construed to be carried out or to have been carried out at the workplace, may seek a temporary restraining order and an injunction on behalf of the employee and, at the discretion of the court, any number of other employees at the workplace, and, if appropriate, other employees at other workplaces of the employer."

A "'[c]redible threat of violence' is a knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose." (§ 527.8, subd. (b)(2).) A "'[c]ourse of conduct' is 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 employee to or from the place of work; entering the workplace; following an employee during hours of employment; making telephone calls to an employee; or sending correspondence to an employee by any means, including, but not limited to, the use of the public or private mails, interoffice mail, fax, or computer e-mail." (§ 527.8, subd. (b)(3).) A threat may be conveyed by conduct or speech. (*City of San Jose v. Garbett, supra,* 190 Cal.App.4th at p. 539.)

Section 527.8 does not require that an employee show that the threatened violence is directed at a particular employee. (*USS-Posco Industries v. Edwards, supra,* 111 Cal.App.4th at p. 443.) Instead, "[a]n employer may seek relief under section 527.8 on

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[7] We apply the version of section 527.8 in effect when the trial court issued the restraining orders.

behalf of any employee who is credibly threatened with unlawful violence, whether or not that employee is identified by the defendant." (*Ibid.*)

C. Sufficiency of Evidence

As noted above, in assessing the sufficiency of the evidence supporting the trial court's findings, under the required standard of review, we do not consider Mr. Lyons's evidence. The evidence set forth above submitted by the petitioners was sufficient to support the trial court's conclusion that Mr. Lyons engaged in a course of conduct that constituted a credible threat of violence against Ms. Schiller, Jennifer, Alicia, Mr. Muller, Mr. Fink, and Ms. Hernandez within the meaning of section 527.8. That is, based on that evidence alone, Mr. Lyons's conduct would have placed a reasonable person in fear for his or her safety or the safety of his or her family. (§ 527.8, subds. (b)(2) & (3); *Scripps Health v. Marin, supra,* 72 Cal.App.4th at p. 333.) Petitioner's evidence was that Mr. Lyons owned a firearm and a bullet-proof vest and spoke about death threats and the eruption of violence; Ms. Schiller and Jennifer, who worked in the Human Resources Department at Mr. Lyons's former employer Pacific, were natural targets for any violence by Mr. Lyons; Mr. Lyons apparently authored a document stating that he had been "ruined because of them" and accusing Ms. Schiller and Jennifer of laughing at him and exhorting him to take action; Mr. Muller and Mr. Fink represented Pacific in Mr. Lyons's unsuccessful employment action against Pacific and thus also were natural targets for any violence by Mr. Lyons; and Mr. Lyons believed that Mr. Muller and Mr. Fink wanted to sexually assault him and had threatened to kill him. With respect to Alicia and Ms. Hernandez who were not the focus of Mr. Lyons's greatest attention, section 527.8 does not require that an employer show that the threatened violence is directed at a particular employee. (*USS-Posco Industries v. Edwards, supra,* 111 Cal.App.4th at p. 443.) The employer only has to show that the employee is credibly threatened with violence. (*Ibid.*) Petitioner's evidence was that Alicia is Jennifer's daughter and a Pacific employee; Mr. Lyons contacted Alicia and Jennifer in connection

with his employment action; and Ms. Hernandez was a Fink & Steinberg employee and represented Pacific in Mr. Lyons's unsuccessful employment action against Pacific.

With respect to Dr. Glaser's testimony, Mr. Lyons quotes *People v. Murtishaw* (1981) 29 Cal.3d 733, 767 (*Murtishaw*), superseded by statute on another ground as stated in *People v. Boyd* (1985) 38 Cal.3d 762, 772-773, for the proposition that the California Supreme Court has held that the opinions of expert witnesses about future dangerousness are unreliable. In that case, the Supreme Court held that a trial court erred in admitting the testimony of a psychopharmacologist at the penalty phase of a death penalty case that a murderer would continue to be violent in prison if incarcerated. (*Murtishaw, supra,* 29 Cal.3d at p. 767.) The court stated that " (1) expert predictions that persons will commit future acts of violence are unreliable, and frequently erroneous; (2) forecasts of future violence have little relevance to any of the factors which the jury must consider in determining whether to impose the death penalty; (3) such forecasts, despite their unreliability and doubtful relevance, may be extremely prejudicial to the defendant." (*Ibid*.)

The Supreme Court's decision in *Murtishaw, supra,* 29 Cal.3d 733 was based on considerations unique to death penalty determinations and thus has no application here. (*Id.* at pp. 770-771.) Moreover, in *Murtishaw*, the court acknowledged that expert witness opinions are admissible to show future dangerousness in other contexts, stating that "courts have upheld admission of opinion testimony forecasting future violence . . . [when] required by statute to determine whether a person is 'dangerous.' [Citations.]" (*Id*. at p. 772.) Section 527.8, with its requirement that an employer show future harm, is a statute that requires the trial court to determine whether a person is dangerous. (See *Scripps Health v. Marin, supra,* 72 Cal.App.4th at p. 327 ["to obtain a permanent injunction under section 527.8, subdivision (f), plaintiff must establish not only that defendant engaged in unlawful violence or made a credible threat of violence, but also that great or irreparable harm would result to an employee without issuance of the prohibitory injunction. Because the record lacks any evidence that Marin posed a threat of future harm to any Scripps Health employee, we accordingly reverse the order"]; *City*

of San Jose v. Garbett, supra, 190 Cal.App.4th at p. 542.) Finally, even if the trial court should not have considered Dr. Glaser's testimony, the remaining evidence was sufficient to support the trial court's restraining orders. Again, in determining the sufficiency of the evidence, we do not consider contrary evidence.

D. No Abuse of Discretion

Based on the trial court's findings, we cannot say that the trial court's ruling granting the permanent restraining orders was arbitrary, capricious, or exceeded the bounds of reason.

II. Litigation Privilege

Mr. Lyons contends that all of the communications he allegedly made were privileged under Civil Code section 47, subdivision (b) because they were made in the course of litigation in connection with his underlying employment action against Pacific or in connection with Pacific's and Fink & Steinberg's petitions for restraining orders.[8] In support of his argument that his communications were privileged, Mr. Lyons also cites Code of Civil Procedure section 425.16, the anti-SLAPP statute. Mr. Lyons did not bring an anti-SLAPP motion in the trial court. Accordingly, the provisions of the anti-SLAPP statute are not at issue on appeal. The litigation privilege in Civil Code section 47, subdivision (b) did not apply to Mr. Lyons's communications.

"The litigation privilege, codified at Civil Code section 47, subdivision (b), provides that a 'publication or broadcast' made as part of a 'judicial proceeding' is privileged. This privilege is absolute in nature, applying 'to *all* publications, irrespective

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[8] In a separate argument heading in his appeal of Fink & Steinberg's restraining order on behalf of Mr. Fink and Ms. Hernandez, Mr. Lyons states that the petition for a restraining order was intended to punish him for his employment action against Pacific. This heading is followed by a single sentence that states, "This is shown most clearly by examining those actions the Trial Court was concerned about—which were acts of communication (related to Appellants legal matter[])." This argument is, in effect, the same argument as Mr. Lyons's litigation privilege argument.

of their maliciousness.' (*Silberg v. Anderson* (1990) 50 Cal.3d 205, 216 [266 Cal.Rptr. 638, 786 P.2d 365] (*Silberg*).) 'The usual formulation is that the privilege applies to any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) that [has] some connection or logical relation to the action.' (*Id.* at p. 212.) The privilege 'is not limited to statements made during a trial or other proceedings, but may extend to steps taken prior thereto, or afterwards.' (*Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1057 [39 Cal.Rptr.3d 516, 128 P.3d 713] (*Rusheen*).)" (*Action Apartment Assn., Inc. v. City of Santa Monica* (2007) 41 Cal.4th 1232, 1241.)

The litigation privilege in Civil Code section 47, subdivision (b) "applies only to tort causes of action." (*Mattco Forge, Inc. v. Arthur Young & Co.* (1992) 5 Cal.App.4th 392, 406; *Oren Royal Oaks Venture v. Greenberg, Bernhard, Weiss & Karma, Inc.* (1986) 42 Cal.3d 1157, 1168; *Washburn v. City of Berkeley* (1987) 195 Cal.App.3d 578, 586.) That is, the privilege protects against tort liability for communications made in the course of litigation. (*Kerner v. Superior Court* (2012) 206 Cal.App.4th 84, 120; *Washburn v. City of Berkeley*, *supra*, 195 Cal.App.3d at p. 586.) For example, criminal threats of violence are not privileged under Civil Code section 47, subdivision (b). (*Brown v. Department of Corrections* (2005) 132 Cal.App.4th 520, 529.) Because a proceeding for a workplace violence restraining order is not a tort action, and threats that may be criminal are not privileged under Civil Code section 47, subdivision (b), Mr. Lyons's communications were not privileged.

III. The Firearm Restriction

In his appeal of Fink & Steinberg's restraining order on behalf of Mr. Fink and Ms. Hernandez, Mr. Lyons argues that the trial court's order that he cannot own or possess a firearm[9] was not justified and that he was denied due process because his

[9] The order required Mr. Lyons to sell to a licensed gun dealer or turn in to a law enforcement agency any guns or other firearms in his immediate possession or control. During the three-year term of the permanent restraining order, Mr. Lyons was not

ability to earn a living was taken away (i.e., without a firearm, he could not work as an armed security guard) in a summary proceeding that did not provide for the confrontation of witnesses or notice of all of the allegations. The trial court did not commit legal error.

Mr. Lyons's fourth argument heading states, "Failure To Cease (Nonthreatening Legal) Communications Has No Connection With Having A Firearm And Did Not Justify The Trial Court's Firearm Restriction." No factual or legal discussion follows the argument heading. Mr. Lyons's failure to provide any discussion, under binding authority, results in his not meeting his burden to show prejudicial error and thus results in a forfeiture of the argument on appeal. (*Gunn v. Mariners Church, Inc.* (2008) 167 Cal.App.4th 206, 217-218 ["'It is an established rule of appellate procedure that an appellant must present a factual analysis and legal authority on each point made or the argument may be deemed waived. [Citations.]' [Citation.]"]; *Bullock v. Philip Morris USA, Inc.* (2008) 159 Cal.App.4th 655, 685 ["An appellant must affirmatively demonstrate error through reasoned argument, citation to the appellate record, and discussion of legal authority"].) "Pro. per. litigants are held to the same standards as attorneys." (*Kobayashi v. Superior Court* (2009) 175 Cal.App.4th 536, 543; see *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 985.)

Even if Mr. Lyons had not forfeited the argument, the argument does not prevail because a firearm restriction is mandatory under section 527.8 once a trial court finds sufficient evidence to issue a restraining order. At the time of the hearing, section 527.8, subdivision (j) (now subdivision (r)) provided:

"(1) A person subject to a protective order issued under this section shall not own, possess, purchase, receive, or attempt to purchase or receive a firearm while the protective order is in effect.

"(2) The court shall order a person subject to a protective order issued under this section to relinquish any firearms he or she owns or possesses pursuant to Section 527.9.

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permitted to "own, possess, have, buy or try to buy, receive or try to receive, or in any other way get guns, other firearms, or ammunition."

"(3) Every person who owns, possesses, purchases or receives, or attempts to purchase or receive a firearm while the protective order is in effect is punishable pursuant to subdivision (g) of Section 12021 of the Penal Code."

As explained above, sufficient evidence was presented to the trial court to support the restraining orders. Accordingly, the firearm restriction was a mandatory requirement under section 527.8, subdivision (j).

In his fifth argument, Mr. Lyons contends that Fink & Steinberg's primary goal in the restraining order proceeding was to deprive him of his gun and livelihood.[10] According to Mr. Lyons, in such a proceeding, "a gun restriction is usually given pro forma and without much consideration by either side or even the Court." Mr. Lyons argues that Fink & Steinberg "used evidence previously rejected by other judges; and evidence of alleged misconduct which was never described in the Application for Injunctive relief." Mr. Lyons argues that "[t]his was a violation of [his] due process rights to be protected by res judicata (or to be protected against double jeopardy in this quasi criminal proceeding (i.e., restraining orders ARE enforced by criminal penalties)."

Although Mr. Lyons claims that the trial court issued a restraining order based on evidence that two trial courts previously rejected in denying temporary restraining orders, Mr. Lyons has not shown that the evidence at the hearing on the restraining order at issue here was the same evidence that was presented to the two prior trial courts. (*Bullock v. Philip Morris USA, Inc., supra,* 159 Cal.App.4th at p. 685.) The record appears to demonstrate otherwise. At the hearing on the restraining order at issue here, Fink & Steinberg presented Dr. Glaser's testimony. At least with respect to the hearing on one of the prior petitions for a restraining order, the trial court did not hear testimony from Dr. Glaser. As to Mr. Lyons's contention that Fink & Steinberg presented "evidence of

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[10] Although the heading for this argument claims a denial of due process because the permanent restraining order hearing did not provide for the confrontation of witnesses, Mr. Lyons does not further address the point or identify any witness he was denied the right to confront. Accordingly, for the reasons stated above, Mr. Lyons has waived or forfeited any such argument. (*Gunn v. Mariners Church, Inc., supra,* 167 Cal.App.4th at pp. 217-218; *Bullock v. Philip Morris USA, Inc., supra,* 159 Cal.App.4th at p. 685.)

alleged misconduct which was never described in the Application for Injunctive relief," Mr. Lyons does not identify any such evidence and thus cannot prevail on the issue. (*Ibid.*) Accordingly, Mr. Lyons has not demonstrated a due process violation with respect to the firearm restriction.

IV. The Trial Court Did Not Exceed Its Jurisdiction In Issuing The Permanent Workplace Violence Restraining Orders

In his appeal of Fink & Steinberg's restraining order on behalf of Mr. Fink and Ms. Hernandez, Mr. Lyons contends that the trial court exceeded its jurisdiction by enjoining his behavior with respect to persons not named in the petition for a restraining order. Specifically, he contends that he was not given notice and an opportunity to be heard that he "would be enjoined from communicating with 'anyone' connected with his case." The restraining order, Mr. Lyons argues, enjoins him from "'searching the Internet' concerning such unknown and unnamed person[s]." Mr. Lyons misconstrues the restraining order.

The restraining order the trial court issued applies to Mr. Lyons's conduct with respect to the protected "employee" and "other protected persons." Mr. Fink is identified as the protected "employee" in the restraining order and Ms. Hernandez is identified as an "additional protected person[]." The restraining order further states that Mr. Lyons "cannot search for information online regarding Petitioners using any internet search engine." In the context of the restraining order, the trial court's use of the term "Petitioners" plainly refers to Mr. Fink and Ms. Hernandez. The restraining order does not purport to restrain Mr. Lyons's conduct with respect to "unknown or unnamed" persons. Accordingly, the trial court did not exceed its jurisdiction in issuing the restraining order.

CONCLUSION

We look only to the sufficiency of the evidence submitted to determine if it is sufficient enough to support the trial court's findings. As discussed above we must conclude that the evidence is sufficient. Thus, we make no determination as to the credibility of the parties or witnesses—that is for the trial court. Then, in determining whether the trial court erred in granting an injunction, we look only to whether the injunction was an abuse of discretion. We are not able to make such a determination. Accordingly, we affirm the orders.

DISPOSITION

The orders are affirmed. No costs are awarded.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

MOSK, J.

We concur:

ARMSTRONG, Acting P. J.

KRIEGLER, J.