Filed 6/28/18 Alexander v. Conway CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

SUSAN ALEXANDER, Plaintiff and Appellant, v. BARBRA CONWAY, Defendant and Respondent.	2d Civil No. B284070 (Super. Ct. No. 56-2017-00495692-CU-HR-VTA) (Ventura County)

The parties to this appeal are neighbors in a condominium complex. The upstairs neighbor, appellant Susan Alexander, contends that she is being stalked by her downstairs neighbor. The downstairs neighbor, respondent Barbra Conway, claims that appellant stomps around and slams doors overhead.

The dispute gave rise to two lawsuits. The first was a nuisance suit brought by the condominium owners' association (COA) against appellant for her behavior toward respondent and others. COA sought an injunction against appellant. Soon after, appellant applied for a civil harassment restraining order against respondent. The two actions were deemed "related" and assigned

to one Ventura County Superior Court department, which conducted the hearings for both cases in tandem.

Appellant was denied a restraining order. The trial court found her application "frivolous." Appellant does not challenge (or even discuss) the evidence underlying the court's judgment. Instead, she claims that improper case consolidation procedures prevented her from cross-examining respondent. We conclude that appellant's rights were not violated and affirm.

FACTS AND PROCEDURAL HISTORY

In 2015, COA filed suit against appellant, her domestic partner Jason Mavropoulos, and their landlord. The gist of the complaint was that appellant and Mavropoulos were stalking, harassing and intimidating COA members, and creating noise disturbances; this was a nuisance and a breach of COA rules.[1] Appellant and Mavropoulos cross-complained against COA claiming harassment, interference with contract, nuisance and emotional distress. They named respondent as a cross-defendant, then later dismissed her from the COA action.

In March 2017, COA sought an injunction to prevent appellant and Mavropoulos from approaching respondent. On April 20, in the presence of appellant and Mavropoulos, the trial court scheduled a hearing on the injunction, to hear testimony from witnesses. On April 27, appellant applied in a different superior court department for a civil harassment restraining order against respondent. A temporary restraining order (TRO) issued against respondent on April 28.

Respondent filed an ex parte request to transfer the TRO matter to Department 43, where the COA lawsuit was pending.

---

[1] COA, Mavropoulos and the landlord are not parties to this appeal. Appellant is self-represented.

Counsel filed and served a notice of related case. On May 4, 2017, the trial court found that the two cases are "related" and transferred the TRO case to Department 43. The court clerk served appellant with notice of the transfer.

Appellant did not show up for trial on COA's request for a preliminary injunction on May 8, 2017. At the hearing, the court and counsel discussed the inter-related nature of COA's request for a preliminary injunction and appellant's TRO; the witnesses are the same in both matters.[2] The court told counsel to give notice that both matters would be heard concurrently. The court continued the matter to May 10.

On May 10, appellant and Mavropoulos appeared in court and asked for a continuance, claiming unpreparedness. They knew that both cases were being heard in Department 43.[3] The court read into the record the contents of e-mails showing that appellant and Mavropoulos agreed to go forward, only to try and retract their assent on the morning of May 10, when the witnesses and attorneys were ready to begin. The court denied a continuance because it was led to believe that appellant and Mavropoulos were prepared for trial.

---

[2] Appellant's brief incorrectly states that counsel asked the court to "consolidate" the two cases. Counsel used the word "relate." Consolidation was not discussed.

[3] Mavropoulos stated, on behalf of himself and appellant, "on the court's website it showed there was a hearing on a temporary restraining order, and we thought that that was the restraining order that had been transferred from Department 34 to this department. So we thought initially that the hearing we were going to have today was a hearing on the restraining order that had been transferred and consolidated with this present case, and so . . . we were prepared to argue that."

The court took testimony pertaining to both matters. A non-party neighbor testified about "thumping" and door slamming noise emanating from appellant's apartment. The noise was "excessive."

Respondent described "stomping all the time . . . and slamming of the door constantly" since appellant and Mavropoulos moved into the upstairs unit in 2014. After respondent and her now-deceased husband complained to COA, the noise became "purposeful," as if to provoke respondent. There were lulls—for example when the parties attended a mandatory settlement conference—then the noise would start up again. The noise incidents continued into 2017.

Respondent walks daily since having lung surgery. She has encountered appellant and Mavropoulos, by happenstance, during her walks. They videotape her, which she finds "disturbing." Respondent denied following appellant by car or stalking her. When appellant filed police reports against respondent, an officer advised respondent to walk wherever she pleased and not be intimidated. Respondent has never quarreled with other neighbors.

Respondent was cross-examined by Mavropoulos and appellant regarding their interactions, respondent's failure to speak directly to them, her complaints to COA about the noise (and lack of complaints to the police department), resulting COA fines, lack of independent corroboration of the noise and so on. Respondent adamantly denied canvassing the neighborhood for appellant and Mavropoulos, stopping her car to stare at them, following them in her car, or sitting in her front window waiting to see them. Appellant asked respondent why she did not "turn

around" when she saw appellant walking outside, or saw appellant walking down the stairs at the condominium.

The court instructed respondent to remain on call after she testified. It encouraged the parties to reach a settlement. It dissolved the TRO.

Additional testimony was taken on May 30, 2017. Mavropoulos testified that respondent regularly walks in their neighborhood. He and appellant stopped walking their dogs in the neighborhood to avoid respondent and other COA members. Each time they change neighborhoods to avoid her, respondent follows on foot or by car; she waits by her front window to see when they leave. They videotaped respondent to prove that she is stalking them, and notified the police on five occasions. During a meeting with COA's attorney to discuss their grievances, Mavropoulos and appellant did not claim that respondent was stalking them. They believe there is a concerted effort by COA and respondent to harass them.

Appellant testified that videotapes she made and police reports prove that respondent is a stalker. Appellant feels that respondent "uses her presence to annoy" and "to intimidate and harass me," by approaching appellant as she is videotaping. Respondent watches from her window then comes outside and confronts appellant. Respondent owns a gun, which appellant finds intimidating and scary. Appellant asserted that respondent had been stalking her for some time, including following her in a car for five miles; however, appellant did not begin making police reports until February 2017.

At the end of appellant's testimony, the court stated, "My understanding is that on Ms. Alexander's behalf all evidence has been presented on the Alexander versus Conway matter."

Appellant did not object to the court's statement or ask to call respondent as a hostile witness.

Respondent called rebuttal witnesses to show a course of aggressive conduct by appellant and Mavropoulos. A former neighbor stated that appellant and Mavropoulos made "verbal assault[s]," angrily saying or yelling derogatory things. Appellant acted irrationally and followed the witness in her car. The witness was intimidated and terrified. She sold her unit and moved to get away from them. Another neighbor described "hostile" and "belligerent" behavior from appellant and Mavropoulos, who refused to follow COA rules.

The court informed appellant that she has the burden of proof on a civil harassment restraining order. It asked if she had anything more. Appellant replied, "No. I'm done."

THE TRIAL COURT'S RULING

In a written decision, the trial court denied appellant's application for a restraining order. It found no evidence that respondent threatened or engaged in violence or a course of conduct constituting harassment. All of the conduct had an innocent appearance and explanation. Nothing shows that appellant was seriously alarmed, annoyed or harassed. A reasonable person would not suffer substantial emotional distress, as required by statute. Respondent is entitled to leave her home, look out of her window, drive on public streets, etc. After watching a video taken by appellant, it was plain to the court that respondent was not harassing or stalking. Appellant had an unreasonable reaction to respondent's innocent conduct. The court awarded respondent attorney fees and costs.

DISCUSSION

Appeal is taken from the denial of a civil harassment order. (Code Civ. Proc., § 527.6.) The order is appealable. (*Id*., § 904.1, subd. (a)(6); *Malatka v. Helm* (2010) 188 Cal.App.4th 1074, 1081.) Appellant does not question the sufficiency of the evidence supporting the trial court's findings. Instead, she disputes the court's procedures. As we shall see, none of her claims have merit.

First, appellant argues that no motion was filed to consolidate her restraining order application with COA's lawsuit seeking injunctive relief against her. (Code Civ. Proc., § 1048.) Also, she did not have notice of the consolidation.

Appellant is mistaken about the procedure used here. It is true that she was not given notice of consolidation. (Cal. Rules of Court, rule 3.350.) The reason is clear: The cases were not "consolidated." Instead, the trial court deemed them "related."

A party to a civil action must give notice if pending actions or proceedings are related, meaning they involve the same parties, the same or similar claims, the same or substantially identical transactions, incidents or events, or are likely "to require substantial duplication of judicial resources if heard by different judges." (Cal. Rules of Court, rule 3.300(a), (b).)

The proceedings here were ripe for related case status. COA sought an injunction against appellant and Mavropoulos in Department 43 for intimidating respondent. Appellant responded by seeking a TRO, claiming that respondent committed acts of stalking and harassment. It was appropriate for one judge to hear the parties' conflicting claims of unneighborly behavior. There was no emergency: appellant claimed that the stalking had been going on for a long time. Appellant was remiss in

failing to file a notice of related cases, and by attempting to have two judges hear evidence from the same witnesses, a waste of scarce judicial resources.

Though appellant failed to file a notice of related cases, respondent did so as soon as she learned of appellant's TRO. The duty to advise the court of related cases is a continuing one, and extends to all parties. (Cal. Rules of Court, rule 3.300(f).) The related cases were pending in one superior court, so the court properly ordered that the cases be heard in a single department. The court clerk served notice of the order. (*Id.*, 3.300(h)(1), (i).)

When appellant appeared in court on May 10, she knew that the two cases were being heard in Department 43. Trial proceeded on both cases, as planned. By failing to object at the time of trial, appellant forfeited her right to challenge related case status on appeal.

Second, the record belies appellant's claim that the transfer resulted in the termination of the TRO without notice to her. When the court deemed the cases related, it *denied* respondent's request to stay the TRO. Its order reads, "All temporary restraining orders/existing orders remain in full force and effect." The court did not dissolve the TRO until halfway through trial, on its own motion, because there was insufficient evidence to support a TRO.

Third, appellant was not denied the opportunity to cross-examine respondent. Respondent was cross-examined, first by Mavropoulos and then by appellant, and remained on call in the event she was needed to testify again. Appellant then presented her evidence that respondent was harassing or stalking her. Afterward, the court expressed its "understanding" that appellant had presented "all evidence" in *Alexander v. Conway*.

Appellant did not object to this statement, or ask to call respondent as a hostile witness. Appellant stated "I'm done" when the trial court asked if she had anything else to say.

Appellant was not denied a full evidentiary hearing or the right to confront and cross-examine respondent. Appellant asked questions of respondent knowing that the two cases were being heard in tandem. Her ability to cross-examine or call respondent as a hostile witness was not curtailed. If she wished to re-question respondent at the May 30 hearing, she had to take the steps required of an attorney and either ask the court to order respondent to attend or subpoena respondent. (*Malatka v. Helm*, *supra*, 188 Cal.App.4th at p. 1087.) She did not do so, and cannot blame others for her oversight.

DISPOSITION

The judgment is affirmed. Costs are awarded to respondent as the prevailing party on appeal.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

Kevin G. DeNoce, Judge

Superior Court County of Ventura

Susan Alexander, in pro. per., for Plaintiff and Appellant.

Kulik Gottesman Siegel & Ware, Leonard Siegel and Patricia Brum for Defendant and Respondent.