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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

EDWARD OLSHANSKY, Plaintiff and Respondent, v. DANIEL THORR HUSTWIT, Defendant and Appellant.	B277903 Los Angeles County Super. Ct. No. LS027878

APPEAL from an order of the Superior Court of Los Angeles County, Shirley K. Watkins, Judge. Affirmed.

Daniel T. Hustwit, in pro. per., for Defendant and Appellant.

Cron Israels & Stark and Sam Israels for Plaintiff and Respondent.

INTRODUCTION

Respondent Edward Olshansky obtained a three-year civil harassment restraining order against his neighbor, appellant Daniel Hustwit, after Hustwit came to Olshansky's home late at night and delivered a profanity-laden ultimatum in which he repeatedly threatened to kill Olshansky's dog. The exchange, witnessed by Olshansky's wife, two minor daughters, and elderly parents-in-law, lasted approximately 10 minutes and was fully captured by Olshansky's video doorbell. Hustwit's underlying concern related to an incident that occurred earlier in the evening, during which Olshansky's German shepherd allegedly bit Hustwit's wife, Gihan Thomas, while she was walking their dog.

After viewing the recording of the incident and hearing testimony from Olshansky, Hustwit, Thomas, and an animal behavior expert, the court imposed a three-year civil harassment order prohibiting Hustwit from coming within 25 yards of Olshansky, his home, his family, and his dog. The order directs Hustwit to visit neighbors using his car (rather than walking in front of Olshansky's house) and to walk in the direction away from Olshansky's house when walking his dog.

Hustwit contends the court lacked jurisdiction to issue the order, the order is not supported by substantial evidence, and the court infringed on his due process rights. Finding no merit in any of Hustwit's arguments, we affirm.

FACTS AND PROCEDURAL BACKGROUND

1. The Parties

Olshansky, Hustwit, and Thomas live on the same street in the hills above Studio City. Hustwit and Thomas live across the street from Olshansky's next-door neighbor.

2. The Canine Confrontation

In the early evening of April 16, 2016, Olshansky and Thomas were walking their dogs in the neighborhood. Thomas's dog, who weighs 20 pounds, began growling and charging at Olshansky's dog. Olshansky's dog, an 85-pound German shepherd, reciprocated. As Olshansky pulled back on his dog's leash, the collar chain broke and the dog sprang free. Olshansky's dog ran toward Thomas and her dog.

According to Olshansky, his dog ran around Thomas to chase her dog and his dog's pronged collar, which turned inside out when the collar chain broke, punctured Thomas's leg. He testified that his dog did not bite Thomas.

Thomas, however, was convinced Olshansky's dog bit her leg and attacked her dog. She said Olshansky routinely walked his German shepherd off leash and that she had told Olshansky on multiple occasions that she was quite scared of his dog.

After the skirmish, Thomas returned to her home.

3. The Confrontation at Hustwit's House

Olshansky immediately went to Thomas's home to check on her condition. When he arrived, "she was screaming hysterically." Thomas said Olshansky's dog had bitten her and her dog. But Olshansky examined Thomas's dog and saw no indication of a bite.

Hustwit, who was at home when Thomas returned, approached Olshansky aggressively. According to Olshansky, Hustwit said " 'I'm going to kill that dog. I'm going to go over there with a gun. And I'm going to break into your house and poison the dogs, poison the fucking dogs.' " Hustwit denied threatening to use a gun and poison the dogs, but testified that "the first thing I said to him was, 'You mother fucker.' "[1] Hustwit described the ensuing conversation:

> "[Thomas] was crying. She was in great pain. And I was telling Olshansky, I was pointing to her while I was telling Mr. Olshansky that, 'You've got to keep your dog on a leash.' That's my only concern. And then I said to Mr. Olshansky, 'The dog is dangerous. I will have no choice but to kill the dog if it is off leash and coming near my wife again. I'll have no choice.' I said, 'I'm well within my rights to kill the dog so I would like you to keep him on a leash.' Then I said to him, 'But you know what, I'm a dog person. I don't want to kill your dog so just put a muzzle on him.' "[2]

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[1] Hustwit's response to the petition included a similar summary: "Seeing my wife crying, screaming and her blood gushing down from his dog's bite, I simply stated 'you mother fucker, you have been warned numerous times in the past that this would happen, if I see your dog without a muzzle roaming in this neighborhood, I will kill your dog.' "

[2] Thomas confirmed that during her husband's conversation with Olshansky at her house, immediately after the incident, Hustwit threatened to kill Olshansky's dog if he saw the dog without a leash or a muzzle.

Hustwit described Olshansky as "friendly the whole time. He was nice." Olshansky, however, was "freaked out and got really scared" by Hustwit's behavior. Olshansky returned to his home.

4. The Confrontation at Olshansky's House

Later that evening, at approximately 10:00 p.m., Thomas went to Olshansky's residence. She confronted Olshansky in a "loud and hysterical" manner and began "screaming" at Olshansky and his wife. Thomas asked for the dog's vaccination records and Olshansky told her that animal control had the records. He asked Thomas to leave his house and told her not to bring her husband to their house.

Shortly thereafter, however, Hustwit came to the front door of Olshansky's home with Thomas. The subsequent exchange, which took place over the course of approximately 10 minutes, was captured by a doorbell video camera.[3] Hustwit appeared highly agitated throughout the discourse, spoke in a very loud voice and sometimes yelled, and paced around the Olshansky's front stoop as he spoke—at times invading the personal space of Olshansky, his wife, and his father-in-law—while gesticulating wildly. Hustwit's first statement, after Olshansky opened the door, was:

> "Okay. Okay. I want to make it clear. I want to make it clear—if I see your dog without a leash again I'm going to—on the street, I will kill the dog; okay?"

At that point, pandemonium ensued. The entire commotion took place in front of Olshansky's wife, her parents, and the

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[3] Hustwit provided this court a copy of the video.

Olshanskys' 11- and 14-year old daughters, all of whom were standing at the front door to Olshansky's home. Olshansky remained calm and reasonable throughout Hustwit's rant, but later testified he felt threatened and terrified by the entire experience.

Because Hustwit, Thomas, Olshansky, and his wife were often speaking at the same time, the audio portion of the recording is sometimes difficult to understand. But we can discern that Hustwit's subsequent statements to Olshansky (or to the family generally) included:

> "I'm just telling you guys, from my perspective there is a very dangerous situation. And I don't like living in a dangerous situation and I won't tolerate it. I promise."
>
> "I worry my dog will be killed by your dog. So we are both going to have to have mutual worry or we're go—both have no worries. It's one or the other. If my dog is going to be killed, if I have to worry about it, you should have to worry about your dog getting killed, too; right?"
>
> "I am conditioning that if your dog is a violent threat to my dog's life I will not hesitate to kill the dog."
>
> "[I]f your dog is on public property I will kill your dog."
>
> "There are many ways to kill a dog."
>
> "You want a war—you want a war, you'll have a war. You want one? I'll bring you war. You want war? We'll have one."
>
> "You guys are fucking crazy."
>
> "You're a fucking crazy person."

"No. You're fucking insane. Show them what—do you want to see fucking pictures of her fucking injury?"

Thomas, who was standing behind Hustwit, repeatedly accused Olshansky of lying and interjected, speaking or yelling:

"He tried to kill my dog. He was trying to kill my dog."

"He is leaving the dog without a leash. He is a fucking liar."

"You're a liar. You're a liar. That's a lie."

"I'm going to sue you for money—I will ensure that the Animal Control have that dog is taken out and killed." (*Sic*.)

Both Thomas and Hustwit are attorneys.

5. Olshansky's Petition for a Civil Harassment Restraining Order Against Hustwit

On April 20, 2016, Olshansky filed a petition for civil harassment restraining orders under Code of Civil Procedure[4] section 527.6, describing the confrontation and seeking to prevent Hustwit from further harassing him and family members residing with him. The same day, the court issued a temporary restraining order prohibiting Hustwit from coming within 100 yards of Olshansky, his family, his workplace, his children's schools, his vehicle, and his dog. Hustwit filed a response to the petition agreeing not to harass or contact Olshansky but denying the other requested relief and all of the allegations in the petition.

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[4] All undesignated statutory references are to the Code of Civil Procedure.

The court held an initial hearing on the petition on May 11, 2016. At that time, the parties agreed to continue the hearing to June 16, 2016, because they were working on an agreement to settle the case. At the parties' request, the court did not reissue the temporary restraining order. The continued hearing took place on June 16, 2016. At that proceeding, the court viewed the video of the confrontation on Olshansky's front stoop and heard testimony by Olshansky and an expert animal behaviorist.

Because the matter was not concluded, the court held a further hearing on July 12, 2016. Hustwit and Thomas both testified, and Hustwit recalled Olshansky for further questioning.

At the hearings, Hustwit reflected on the discourse that took place in front of Olshansky's house:

> "I don't know if anger is—incredulous. Indignant. I don't know if anger. I mean, I was, I was thinking I was being reasonable here. I was reasoning with them. I mean, you know, I'm from an Italian family and sometimes my reasoning is, is loud and with my hands and emotional, but I wasn't holding back emotions. But I was just reasoning with them to try and, just don't walk the dog without a leash."
>
> "That's why I was very happy when the audio was played because I didn't want things to be mischaracterized and I was happy they had video and an audio. I was not trying to get in anyone's face. I think it is very clear. There was no fight. All I was trying to do was explain the situation. And we were having a normal argument that people have in America."

6. The Restraining Order Against Hustwit

The parties returned to court on July 25, 2016, but apparently presented no further evidence. On that date, the court issued a three-year civil harassment restraining order against Hustwit, protecting Olshansky's family from harassment and any other contact by Hustwit. The order requires Hustwit to stay at least 25 yards away from Olshansky, his family, and his dog. The order directs Hustwit to visit neighbors using his car (rather than walking in front of Olshansky's house) and to walk in the direction away from Olshansky's house when walking his dog.

At the hearing, the court explained the basis for its decision in some detail:

> "The most persuasive testimony or evidence in this case came from the video. Just reviewing the video alone the court finds evidence which would support the granting of a restraining order. There was no legitimate purpose in the conduct of Mr. Hustwit as shown on the videotape. While I do understand and empathize with the fact that Miss Thomas suffered an injury, the nature of the injury and the fact that everybody was lawyers—Mr. Hustwit is a lawyer, Miss Thomas is a lawyer—they know what their rights are. Coming over at 10:30 in the evening after having come back from the hospital they were in a highly agitated state. Mr. Hustwit came to the door already in an agitated state and he immediately—immediately—began yelling. And he didn't say, 'Mr. Olshansky, I came to see if you could please give me the information on your dog's rabies and shots.' Instead he began yelling, gesticulating, got into the face of Mr. Olshansky's father or father-in-law, literally in his face, and almost the first thing he said

is 'If I see your dog without a leash again I'm going to kill the dog.' Okay? He didn't say if the dog is acting aggressively, it's just 'If I see the dog off the leash I will kill the dog.' "

Overall, the court concluded a reasonable person would consider Hustwit's statements and actions as a credible threat of violence within the meaning of section 527.6. Specifically, the court stated, "All of the things that could potentially come about that would allow you to kill the dog, sir, are violent acts when the dog is out with the family going for walks and a reasonable person would consider that to be a threat of violence, because I can't see the circumstances under which Mr. Hustwit would be able to kill the dog with children present or kill the dog with the parents present without it causing severe distress, anxiety and fear to them."

Hustwit's demeanor during the confrontation also influenced the court's decision: "I will also say that there was almost no point in time or just very short periods of time where I think that Mr. Hustwit was acting in a controlled way. Virtually the entire time was out of control. He was screaming. He was swearing. He was gesticulating with his hands." And with respect to the threats to kill the dog, the court found that "a reasonable person under those circumstances would be fearful about how that might come about, would be scared. They would be scared for their animal. They would be scared for themselves."

The court also observed that Hustwit threatened ongoing harassment: "It was very clear from the statements made by Mr. Hustwit on the porch that this was going to continue, that this was not ending right there, that there was going to be a war, that if he sees the dog he is going to kill it; and even at the time of Mr.

Hustwit's testimony I said to myself 'How could he kill the dog without being threatening to everybody?' That didn't make any sense at all. Run it down with your car? I agree, there [is] more than one way to kill a dog, but a lot of them are threatening to the people that own the dog and are with the dog."

In summary, the court explained, "Things happen. People get [bitten] by dogs. People get injured in accidents. The circumstances of what happened here do not justify the conduct of Mr. Hustwit and because he has threatened to bring them war, which is in the future, threatened to kill the dog in the future, it shows a continuity of purpose and a reasonable person would believe that this is going to continue unless it is stopped. And Mr. Olshansky testified that that is how he sees it, that he believes it's going to continue, that his children were scared, that his wife was scared and I think those were all reasonable and for those reasons I granted the restraining order."

Hustwit was personally served with the July 25, 2016 restraining order at the hearing. Hustwit timely appeals from that order.

DISCUSSION

Hustwit contends the court lacked jurisdiction to issue the civil harassment restraining order, the order is not supported by substantial evidence, and the court deprived him of due process during the proceedings below. We find no merit in these arguments.

1. The court did not lose jurisdiction over the petition for a civil harassment restraining order.

Hustwit asserts "the lower court lost jurisdiction over the § 527.6 petition for permanent injunction after the TRO was voluntarily dismissed by Olshansky."

Some additional facts are necessary to understand Hustwit's argument. The court issued a temporary restraining order the same day Olshansky filed the petition, April 20, 2016, and set the matter for a May 11, 2016 hearing. But at the May 11 hearing, the parties "agreed to postpone the hearing" to June 16, 2016, because they were working on a stipulated settlement. Because of their settlement negotiations, the parties requested "that the [temporary] restraining order[] NOT be re-issued at this time." The court complied with the parties' requests. At the subsequent hearing on June 16, 2016, however, Olshansky indicated the parties had not reached an agreement and asked the court to reinstate the temporary restraining order pending the court's final decision on the petition. At that time, the court indicated it had no jurisdiction to reinstate the temporary restraining order because the parties had voluntarily withdrawn the order. Relying on these facts, Hustwit claims the court lost jurisdiction over the entire matter.

The only legal authority Hustwit cites on this point is *Adler v. Vaicius* (1993) 21 Cal.App.4th 1770 (*Adler*). Hustwit's reliance on that case is misplaced for several reasons, not least because *Adler* makes clear that a trial court does *not* lose jurisdiction to hear a petition for a permanent restraining order when a temporary restraining order expires, as Hustwit urges.

In *Adler*, the petitioner filed a petition for an injunction prohibiting harassment against a police officer and obtained a

temporary restraining order against him on an ex parte basis. (*Adler, supra*, 21 Cal.App.4th at pp. 1773–1774.) Under section 527.6, subdivisions (c) and (d), a temporary restraining order generally expires within a short period of time (then, 15 days), by which time a hearing should be held on the petition. As the court observed, these subdivisions serve two important purposes: to provide expedited relief to victims of harassment and to give the accused party a full opportunity to present his or her case before a judge. (*Adler*, at pp. 1774–1775.) However, in *Adler*, no court was available to conduct the hearing within the applicable 15-day time frame. As a result, the temporary restraining order automatically expired under section 527.6, subdivision (c).

The court set a hearing on the petition for a later date, but before the hearing occurred the petitioner dismissed the petition with prejudice. The police officer then filed a motion for attorney's fees under section 527.6. In opposition to the motion, the petitioner argued (as Hustwit argues here) the court had no jurisdiction to award fees to the officer because it lost jurisdiction over the entire matter when the temporary restraining order expired. The Court of Appeal rejected that argument and concluded the statutory provisions regarding the expiration of the temporary restraining order and the timing of the hearing on the permanent injunction operate independently. (*Adler*, *supra*, 21 Cal.App.4th at pp. 1775–1776.) Accordingly, the Court of Appeal concluded the lower court did not lose jurisdiction over the matter when the temporary restraining order expired. (*Id.* at p. 1776.)

Procedurally, the present case is similar to *Adler*. Olshansky obtained a temporary restraining order against Hustwit on an ex parte basis. The parties appeared in court 21 days later, at which point the temporary restraining order was

expiring under section 527.6, subdivision (c). And, also similar to *Adler*, the court did not conduct the hearing on the merits of the petition on that date, but rather set that hearing for a later date. No temporary restraining order was in effect during the intervening time.

Purportedly relying on *Adler*, Hustwit argues that because the court did not renew the temporary restraining order on May 11, 2016, it lost jurisdiction over the petition. But that argument was squarely rejected in *Adler* and we agree with that court's reasoning. Our conclusion is further supported by the fact that the statute gives the court discretion to issue a temporary restraining order in the first instance and to continue a hearing to another date even if the temporary restraining order is terminated. (§ 527.6, subds. (d) & (p)(2) ["In granting a continuance, the court may modify or terminate a temporary restraining order"].) Given that the issuance of a temporary restraining order is not a prerequisite to the issuance of an order after hearing, the court did not lose jurisdiction over the petition simply because the (optional) temporary restraining order expired.

2. Substantial evidence supports the civil harassment restraining order after hearing.

Hustwit argues the restraining order is not supported by substantial evidence because he did not make a credible threat of violence and, alternatively, there is no evidence that any harassment would take place in the future. We disagree with both contentions.

2.1. Background Legal Principles and Standard of Review

Section 527.6, subdivision (a), provides that a victim of harassment "may seek a temporary restraining order and an injunction prohibiting harassment as provided in this section." Subdivision (b)(3) 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." "Credible threat of violence" is defined as "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." (§ 527.6, subd. (b)(2).) "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 purpose, including following or stalking an individual, making harassing telephone calls to an individual, or sending harassing correspondence to an individual by any means, including, but not limited to, the use of public or private mails, interoffice mail, facsimile, or email. Constitutionally protected activity is not included within the meaning of 'course of conduct.' " (§ 527.6, subd. (b)(1).)

The court must issue a restraining order or injunction if it finds, by clear and convincing evidence, that unlawful harassment exists. (§ 527.6, subd. (i).) An injunction restraining future conduct is only authorized when it appears that

harassment is likely to recur in the future. (*Harris v. Stampolis* (2016) 248 Cal.App.4th 484, 496 (*Harris*).)

We review the trial court's decision to issue a restraining order for substantial evidence. (*Schild v. Rubin* (1991) 232 Cal.App.3d 755, 762; *Harris*, *supra*, 248 Cal.App.4th at p. 497.) " 'The appropriate test on appeal is whether the findings (express and implied) that support the trial court's entry of the restraining order are justified by substantial evidence in the record. [Citation.] But whether the facts, when construed most favorably in [petitioner's] favor, are legally sufficient to constitute civil harassment under section 527.6, and whether the restraining order passes constitutional muster, are questions of law subject to de novo review.' [Citation.]" (*Harris*, p. 497.)

2.2. Hustwit's repeated threats to kill Olshansky's dog would place a reasonable person in fear of his or her safety.

As noted, a credible threat of violence must place a reasonable person in fear for his or her safety or the safety of his or her immediate family. (§ 527.6, subd. (b)(2).) Hustwit asserts his threat to kill Olshansky's dog does not constitute a credible threat of violence within the meaning of section 527.6 because the threat was directed at a dog (not a person) and was conditional (the killing would only take place if Hustwit saw the dog without a leash or muzzle).

As to the first point, Hustwit cites case law holding section 527.6 does not allow corporate entities to seek protection from harassment. (*Diamond View Limited v. Herz* (1986) 180 Cal.App.3d 612, 618 (*Diamond View*).) He highlights the court's analysis of section 527.6, subdivision (b), which protects "a specific person" from harassment. (See *id.* at p. 618.) Hustwit

then argues that because a dog is not a person, the dog (like a corporate entity) is not protected under section 527.6, and therefore his threat to kill Olshansky's dog cannot be considered a "credible threat of violence" under section 527.6.

Hustwit's analogy is inapt. In *Diamond View* and similar cases, our courts have considered whether a corporate entity has standing to seek redress under section 527.6 even though it is not a "person." Based upon legislative history and the language of the statute, courts have consistently concluded corporate entities may not bring an action under section 527.6. But Hustwit's application of that reasoning here makes little sense, as we do not consider whether Olshansky's dog, who is also not a "person," has standing to seek protection under section 527.6.

Moreover, the fact that Olshansky's dog would be the immediate victim of Hustwit's promised violence does not preclude a finding that the threat would reasonably place Olshansky, who *is* a person, in fear for his safety, or the safety of his immediate family, as the statute requires. At a minimum, Hustwit's threat to break into Olshansky's house to poison the dog, and his further threat to come to the house with a gun to kill the dog, easily clear that threshold.[5]

2.3. Hustwit's repeated threats to kill Olshansky's dog served no legitimate purpose.

In addition, Hustwit asserts his conduct cannot constitute a credible threat of violence because it served a legitimate purpose.

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[5] Notably, those threats were not conditioned on the absence of a leash or a muzzle. Because we conclude those unconditional threats meet the statutory standard, we need not address Hustwit's further argument regarding the conditional nature of his threats.

(§ 527.6, subd. (b)(2).) Specifically, Hustwit claims he was simply asking Olshansky to keep his dog on a leash in order to keep his wife and dog safe from an attack by Olshansky's dog.

As framed, we agree with Hustwit. If a neighbor has a large dog prone to biting people and smaller dogs, it would serve a legitimate purpose to ask the neighbor to keep the dog on a leash and/or to put a muzzle on the dog. The problem for Hustwit, however, is that he did not simply ask for Olshansky's cooperation in creating a safe environment for his wife and dog. Instead, he appeared on Olshansky's doorstep after 10:00 p.m., began screaming and swearing at Olshansky, and repeatedly threatened— in front of the entire Olshansky family, including Olshansky's 14- and 11-year old daughters—to kill the family dog. Although Hustwit may have intended to motivate Olshansky to use a leash or muzzle when walking his dog, he went well beyond reasonable and legitimate means of doing so. (See *Harris*, *supra*, 248 Cal.App.4th at p. 499 (*Harris*) [distinguishing between the legitimate purpose of picking a child up from school and the aggressive conduct that occurred during the pickup which constituted a credible threat of violence].)

2.4. The court did not err in finding it likely that harassment would recur in the future.

Hustwit also claims there is no evidence to support a finding that it is likely he would engage in any harassment in the future. As we have said, an injunction restraining future conduct is only authorized when it appears that harassment is likely to recur in the future. (*Harris, supra,* 248 Cal.App.4th at p. 496.)

We agree with the court's analysis on this point. Hustwit explicitly threatened to kill Olshansky's dog in the future. Further, Hustwit threatened "a war," which, taken at face value,

suggests a commitment to long-term conflict. These facts are sufficient to support the court's finding that harassment would recur in the future.

In addition, Hustwit's testimony demonstrates he has no remorse and continues to believe his conduct was justified. During his testimony, Hustwit characterized himself as "reasonable," and stated he believed at the time that he was being "reasonable," that he was "just reasoning" with Olshansky, and "[t]here was no fight. All I was trying to do was explain the situation. And we were having a normal argument that people have in America." He also stated he was pleased to have a video and audio record of the confrontation on the stoop because he did not want his statements to be mischaracterized—as if his actual statements and conduct, as evidenced on the recording, were perfectly appropriate. They were not.

Hustwit appears to contend that, as a matter of law, injunctive relief is not available where a single incident gives rise to the request for restraining order. Hustwit misunderstands the cases he cites and, in any event, two incidents precipitated the petition in this case.

Harris is of assistance on this issue. There, a middle school principal obtained a civil harassment restraining order against the parent of a student enrolled in her school following a series of incidents in which the parent reacted aggressively when she requested that the parent pick up his child on time and in accordance with school policy. The trial court issued a restraining order after finding the parent made a credible threat of violence during the first confrontation "by charging at her, making hand gestures, and pointing at her." (*Harris, supra,* 248 Cal.App.4th at p. 494.) The principal testified that during the first incident, the

parent was "aggressive and angry," "raised his voice and began yelling at her," and "put his fingers in Harris's face and clasped his hands together in the shape of a gun, pointing his fingers toward [her]." (*Id.* at pp. 488–489.) Although the Court of Appeal noted multiple confrontations took place between the parent and the principal, it concluded substantial evidence supported the trial court's specific finding that the parent made a credible threat of violence during the first confrontation. (*Id.* at p. 498.) The Court of Appeal went on to conclude harassment was likely to recur in the future because the parent was primarily responsible for picking his child up from school, which made it likely the parent and the principal would continue to interact.

In *Harris*, the appellate court distinguished the two cases relied on by Hustwit here: *Russell v Douvan* (2003) 112 Cal.App.4th 399 (*Russell*) and *Scripps Health v. Marin* (1999) 72 Cal.App.4th 324 (*Scripps*). In both those cases, the courts concluded it was not reasonably probable that the harassing conduct would occur in the future in light of the facts surrounding the confrontation that gave rise to the civil harassment proceeding. In *Russell*, for example, the trial court issued a restraining order after a conflict between two attorneys following a court appearance in which they represented opposite sides. (*Id.* at p. 400.) The trial court believed it was required to issue a restraining order given the past confrontation. (*Id.* at pp. 400–401.) But the Court of Appeal disagreed and held that a likelihood of future harassment is also required. (*Id.* at p. 403.) The appellate court reversed because the specific facts—the attorneys did not regularly do business with each other and the aggressor had not made any other threats against his opponent—did not suggest a future confrontation was likely. (*Id.* at p. 404.)

Similarly, in *Scripps*, the Court of Appeal also reversed a restraining order because it concluded a future confrontation was unlikely. There, the son of a patient at a hospital got into an altercation with a hospital employee concerning his mother's care. (*Scripps*, *supra*, 72 Cal.App.4th at pp. 327–328.) But the patient was later transferred to another facility and the patient's son promised to (and did) stay away from the hospital. (*Id.* at p. 336.) The court concluded the circumstances surrounding the single incident did not establish a likelihood the son would commit future violent acts against the hospital's employees. (*Ibid.*)

The present case is similar to *Harris* and distinguishable from *Russell* and *Scripps*. Like the parent in *Harris* who needed to go to his son's school, making contact with the school's principal likely, Hustwit is likely to see Olshansky and his family members on a regular basis because he lives across the street from Olshansky. Given the proximity of their houses and the fact that all parties walk their dogs in the neighborhood, the likelihood of future contact is high. Further, Hustwit has shown himself to have difficulty with self-control, as evidenced by his confrontations with Olshansky, as well as his decision to go to Olshansky's house late at night instead of waiting until the next day. Moreover, Hustwit explicitly threatened to take violent action in the future. That threat, which the court found credible, is sufficient in and of itself to establish a likelihood of future violence or threats of violence.

3. The court's other rulings were proper.

Finally, Hustwit claims the court deprived him of due process by refusing to admit a proposed settlement agreement into evidence and by refusing to allow him to represent himself

while he was being represented by retained counsel. We disagree.[6]

3.1. The court properly excluded evidence relating to settlement discussions.

Hustwit contends the court erred in denying his attorney's request to admit into evidence a copy of an unsigned settlement offer purportedly made to Hustwit by Olshansky and his wife. We review the court's decision to exclude the settlement offer under Evidence Code section 1152 for an abuse of discretion. (See *Zhou v. Unisource Worldwide* (2007) 157 Cal.App.4th 1471, 1476 (*Zhou*).)

Hustwit asserts Olshansky "testified on direct examination regarding settlement discussions," and that his attorney wanted to use the unsigned settlement offer to impeach Olshansky during cross-examination. Below, Hustwit's counsel contended "there are factual assertions that are made in the settlement proposal" that conflicted with Olshansky's testimony. The court denied the request under Evidence Code section 1152, subdivision (a), which provides that evidence relating to offers of settlement, including negotiations, is inadmissible. The court also noted the offer was not signed by anyone and there was no indication that any statement in the settlement offer could be attributed to Olshansky.

The court properly excluded the testimony for the reasons stated. Hustwit's counsel proffered that the document was a

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[6] Although we reject all of Hustwit's arguments, we do not believe this appeal rises to the level of a frivolous appeal. (Cal. Rules of Court, rule 8.276.) We therefore deny Olshansky's motion for sanctions filed August 21, 2017.

settlement proposal made by Olshansky. As such, it is plainly inadmissible under Evidence Code section 1152, subdivision (a).

In any event, even if the court erred in excluding the document, any error was not prejudicial. (Cal. Const., art. VI, § 13 ["[n]o judgment shall be set aside, or new trial granted, in any cause, on the ground of misdirection of the jury, or of the improper admission or rejection of evidence, or for any error as to any matter of pleading, or for any error as to any matter of procedure, unless after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice"]; *Zhou, supra,* 157 Cal.App.4th at p. 1480.)

First, the testimony cited by Hustwit does not relate to settlement discussions, as Hustwit represents. Rather, it relates to the conditions Olshansky wanted in the restraining order: "We told [Hustwit's counsel], we said the only way we can consider doing something like this is if they don't walk in front of our house with their dog or themselves and I don't walk towards their house. We go in opposite directions." Second, even if Hustwit's counsel could have proved that testimony was somehow undermined by something contained in the proposed settlement agreement, the issue was irrelevant to the inquiry at hand: whether Hustwit made a credible threat of violence and whether his harassment of Olshansky was likely to continue in the future. We cannot conclude on this record that the admission of the settlement agreement would have impacted the court's decision, or ours, in any meaningful respect.[7]

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[7] Hustwit also asserts the court erred by prohibiting him from testifying in narrative form. We do not consider this argument because Hustwit cites no pertinent legal authority to support it. An appellant

3.2. Parties may either be represented by retained counsel or may represent themselves, not both.

Finally, Hustwit asserts "[t]he lower court arbitrarily refused to allow Hustwit to represent himself with retained co-counsel." Hustwit, a criminal defense attorney, cites the landmark case *Faretta v. California* (1975) 422 U.S. 806, in which the United States Supreme Court held the Sixth Amendment not only guarantees the accused the right to assistance of counsel provided by the state in a criminal prosecution but also ensures the accused may represent himself or herself at trial. (*Id.* at p. 819 ["The Sixth Amendment does not provide merely that a defense shall be made for the accused; it grants to the accused personally the right to make his defense. … Although not stated in the Amendment in so many words, the right to self-representation—to make one's own defense personally—is thus necessarily implied by the structure of the Amendment"].) Further, citing *People v. Mattson* (1959) 51 Cal.2d 777 (*Mattson*), Hustwit correctly asserts that a self-represented criminal defendant may retain an attorney to advise him during trial. (*Id.* at p. 797.) On that basis, Hustwit urges the court erred in this

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must demonstrate prejudicial or reversible error based on sufficient legal argument supported by citation to an adequate record. (*Yield Dynamics, Inc. v. TEA Systems Corp.* (2007) 154 Cal.App.4th 547, 556–557.) "[A]n appellant must present argument and authorities on each point to which error is asserted or else the issue is waived." (*Kurinij v. Hanna & Morton* (1997) 55 Cal.App.4th 853, 867.) And matters not properly raised or that are lacking in adequate legal discussion will be deemed forfeited. (*Keyes v. Bowen* (2010) 189 Cal.App.4th 647, 655–656.)

case because he "sought to represent himself with assistance from retained counsel, … but was not allowed to do so."

Hustwit's argument is meritless. First, the Sixth Amendment applies by its own terms to criminal prosecutions, not civil proceedings. Second, Hustwit did not seek to represent himself with the assistance of counsel in the manner approved in *Mattson*—where retained counsel is available for consultation with the defendant but does not actively participate in the proceedings. Here, Hustwit told the court he wanted to act as his own attorney when he wasn't being questioned and wanted to be represented by retained counsel while he was on the stand or during other portions of the proceedings. In any event, and contrary to Hustwit's assertion, a criminal defendant does not have the right to represent himself and have retained counsel at the same time: "As has been stated …, despite the constitutional (art. I, § 13) and statutory (Pen. Code, § 686) provisions that defendant has the right to appear and defend in person *and* with counsel, defendant is not entitled to have his case *presented* in court *both by himself and by counsel* acting at the same time or alternating at defendant's pleasure. [Citations.] So long as defendant is represented by counsel at the trial, he has no right to be heard by himself [citations] … ." (*Mattson*, *supra*, 51 Cal.2d at p. 789; see also *Board of Commissioners v. Younger* (1865) 29 Cal. 147, 149 ["A party to an action may appear in his own proper person or by attorney, but he cannot do both. If he appears by attorney he must be heard through him, and it is indispensable to the decorum of the Court, and the due and orderly conduct of a cause that such attorney shall have the management and control of the action"]; *Electric Utilities Co. v. Smallpage* (1934) 137 Cal.App. 640, 641–642 [" 'A plaintiff in an

action may either appear in his own proper person or by attorney; but he cannot do both, and if he has appeared by attorney, he has no power of control over the action otherwise than through his original or substituted attorney of record' "].)

In short, the court did not err.

DISPOSITION

The order is affirmed. Olshansky shall recover his attorney's fees and costs on appeal in an amount to be determined by the trial court. (§ 527.6, subd. (s).)

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

LAVIN, Acting P. J.

WE CONCUR:

EGERTON, J.

DHANIDINA, J.*

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