Filed 12/10/18 Vaillancourt v. Edison CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

DEBORAH VAILLANCOURT, Plaintiff and Respondent, v. THOMAS EDISON, Defendant and Appellant.	B283696 Los Angeles County Super. Ct. No. PS019232

APPEAL from an order of the Superior Court of Los Angeles County, Lloyd C. Loomis, Judge. Reversed.

Thomas Edison, in pro. per., for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Deborah Vaillancourt obtained a three-year civil harassment restraining order (Code Civ. Proc., § 527.6 (section 527.6)) against Thomas Edison. Edison appeals, and we reverse.

BACKGROUND

On February 24, 2017, Vaillancourt filed a request for a civil harassment restraining order against Edison. She named her daughter and son as additional protected persons, "[d]ue to the Thomas Edison being asked in 7/2014 by the court not to return to property." The request stated Edison, a former employee, had arrived at Vaillancourt's business on February 23, 2017, with the co-owner of the business, and "drilled out all locks and door window [*sic*] on the building after being asked to wait for LAPD to show up. Thomas has been told not to return." In response to the question whether Edison had harassed her at other times, Vaillancourt answered, "[n]o," although she also stated, "This is the second time Thomas Edison has [tried] to remove company property." The trial court issued a temporary restraining order against Edison protecting Vaillancourt and her daughter and son, to expire at the end of a hearing on March 17, 2017.

The court twice continued the hearing. Edison responded to the request for a restraining order on April 24, 2017, stating: "Request is based upon false allegations[,]" and "Petitioner has committed perjury." In an attachment, Edison stated that the co-owner of the business, Doug Yerkes, had contracted with the locksmith, and the allegation that Edison had attempted to remove company property was "a blatant lie." Vaillancourt's daughter had tried and failed to get a restraining order against Edison in March 2014 "based on similar false allegations."

Vaillancourt had "hijacked" the company from Yerkes after the death of her husband. Yerkes had given Edison "written and notarized authority to be on the premises"; on February 23, 2017 Edison was there for moral support of Yerkes; and Edison left the premises when the officers (whom he had called in advance to "keep the peace") politely asked him to leave. Edison intended never to return, and said, "I have no further interest in being involved with any of these people for any reason." Before February 23, 2017, the last time Edison had been on the premises was March 5, 2014, when Yerkes escorted him there so Edison could gather his personal belongings.

At the hearing on May 24, 2017, Vaillancourt was represented by an attorney and Edison represented himself. Vaillancourt testified that she was the surviving spouse of the late president of the company, and worked part-time at the business. On February 23, 2017, she saw Edison trying to enter the property, and she locked the door because Edison "was not supposed to be there in the property. He was warned before to not come back to that property ever again, and he was there." She had no problem with Yerkes being on the property. She called the police, and when the police arrived an officer talked to her and to Yerkes. The officer told Edison to leave, and told Vaillancourt to settle matters with Yerkes.

Edison had been trying to get into the building, and he and Yerkes had brought along a locksmith who was drilling holes to change the locks. Vaillancourt had been negotiating with Yerkes about her community property interest in the business, and, although he had been notified of annual meetings, he had not shown up. Her late husband, who died on June 1, 2015, had fired

Edison and his wife. Vaillancourt was afraid of Edison, "very much so."

Edison cross-examined Vaillancourt, asking her if she had any proof of her right to control the company. The court asked Edison whether he had filed an action "to somehow figure out who owns what." Edison answered, "[n]o," and the court pointed out he had no interest in the company. Edison said he was "representing" Yerkes, an older man, as a personal friend, and the court said: "[Y]ou are representing nobody. You don't have a license. You don't have a bar card." Vaillancourt's attorney responded: "He has no interest. He tries to come into the building trying to take equipment from the facility. And that's the whole basis of this issue." Vaillancourt explained her late husband had fired Edison and his wife because they were mismanaging money, and they kept trying to get back into the business to take computers. Yerkes, her partner, could enter, but Edison could not.

Vaillancourt explained that on the day of the confrontation, she had gone to her second job at a bank when a call alerted her that Edison and Yerkes were at the business with a locksmith. Edison was directing Yerkes. After Edison was fired in 2014, there was an "incident" to which Vaillancourt's daughter was a witness, and Edison had been warned by a judge not to come back ("I believe that's the paperwork."). Edison had not threatened Vaillancourt personally. Asked if Edison had returned to the business "since" (it is unclear whether it was meant, since the 2014 firing, or, since the 2017 incident), she replied, "Not to my knowledge. But I've heard that they been driving by. But, you know, I really can't testify to that." Nevertheless, she was afraid of Edison.

Vaillancourt's counsel stated that the next witness would testify that Edison also had ordered products under the company's name to be delivered to his home. The court responded that it was not a court of general jurisdiction.

Edison offered the court documentary evidence (which counsel for Vaillancourt had not seen and which was not attached to his response). The documents included a notarized letter from Yerkes, dated February 22, 2017, authorizing Edison to act as his agent regarding the company and any company property in his possession, granting Edison "unlimited access" to the company property and storage unit, and authorizing Edison to "confiscate and retrieve" any company property that had not been paid for or was on consignment to any person. Also included was a letter from Yerkes, dated February 23, 2017, addressed to all company employees, dismissing them all and ordering them to leave the business premises. A copy of an order granting unemployment benefits to Edison after his 2014 firing by the company, a July 2014 order dissolving a temporary restraining order and finding "no credible evidence" to support Vaillancourt's daughter's request for a permanent restraining order against Edison, and an invoice from the locksmith (addressed to the company) were also included. Edison argued he was at the business on February 23, 2017 on behalf of Yerkes; the court responded that personal friendship did not provide him with authority to represent Yerkes.

The court stated it had looked at the documents "and it doesn't change anything." The court found Edison's behavior violated the civil harassment statute, noted that Edison was a terminated employee who was fired in 2014, and issued a three-year civil harassment restraining order. The May 24, 2017 order

protected Vaillancourt, her son, and her daughter from harassment or any other contact by Edison. The order requires Edison to stay 100 yards away from each individual and from Vaillancourt's home, workplace, and vehicle, and prohibits Edison from owning or possessing firearms. (Edison told the court he had turned in his guns.)

Edison filed a notice of appeal.

DISCUSSION

Edison represents himself on appeal, filing an opening brief, a clerk's transcript, and a reporter's transcript. Vaillancourt did not file a respondent's brief. We notified her that under California Rules of Court, rule 8.220(a)(2), the matter would be submitted for decision upon the record and Edison's opening brief. "[W]e will examine the record in light of the points raised and reverse only if reversible error is found." (*In re Marriage of Olivarez* (1986) 188 Cal.App.3d 336, 338, fn. 1; *Nakamura v. Parker* (2007) 156 Cal.App.4th 327, 334.) As a self-represented appellant, Edison is entitled to the same, but no greater, consideration than other appellants. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247.)

Edison's brief cites no cases or relevant statutes (other than one reference to "California Code of Civil Procedures"), and he makes few citations to the record. Edison asserts facts regarding his status as a war veteran, the circumstances of Yerkes's dispute with Vaillancourt about the ownership of the business, how Vaillancourt ran the company, Edison's prior behavior toward Vaillancourt, and whether in 2017 the company was operating without a worker's compensation policy. He asserts that "Yerkes went there to close the business" and requested that Edison accompany him to make sure all the equipment was shut down

and lights and circuit breakers were turned off. He claims the police arrived because he called them in advance for a "police civil escort," and he "voluntarily left the premises without incident," returning to pick up Yerkes. None of these factual assertions is supported by the record or necessary to our decision.

Edison also characterizes Vaillancourt's testimony at the hearing, and the statements she made to obtain the temporary restraining order, as intentionally false. The trial court believed her, and we defer to the court's credibility determinations. (*Harris v. Stampolis* (2016) 248 Cal.App.4th 484, 498 (*Harris*).) Edison contends the trial judge was biased against him as a pro. per. and failed to properly review the documents he presented, but at the hearing the court stated it had reviewed Edison's documents.

Nevertheless, Edison adequately makes the legal argument that substantial, credible evidence does not support the court's decision to issue the three-year civil harassment restraining order, describing the substantial evidence standard of review and the law of civil harassment. We consider his argument and conclude the restraining order is not supported by substantial evidence.

Section 527.6, subdivision (a) provides that a victim of harassment may petition for a temporary restraining order and an injunction prohibiting harassment. Subdivision (b)(3), relevant here, defines harassment as 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." The statute also states: " 'Course 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," unless the conduct is constitutionally protected. (§ 527.6, subd. (b)(1).) The trial court may issue a temporary restraining order if the petitioner's declaration shows reasonable proof of harassment by the respondent, and that great or irreparable harm would result to the petitioner. (*Id.*, subd. (d).)

The respondent may file a response to the petition. (§ 527.6, subd. (h).) The court shall then hold a hearing on the petition for the injunction, receiving any relevant testimony and making an independent inquiry: "If the judge finds by clear and convincing evidence that unlawful harassment exists, an order shall issue prohibiting the harassment." (*Id.*, subd. (i).) Still, "[a]n 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.) The court has the discretion to include other named family members "on a showing of good cause." (§ 527.6, subd. (c).)

We review the issuance of the restraining order for an abuse of discretion. (*Parisi v. Mazzaferro* (2016) 5 Cal.App.5th 1219, 1226.) We review the factual findings to determine " '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.' " (*Harris*, *supra*, 248 Cal.App.4th at p. 497.)

Here the evidence was insufficient to establish a course of harassing conduct by Edison against Vaillancourt. The sole event alleged by Vaillancourt was on February 23, 2017, when Edison arrived at the business with Vaillancourt's co-owner and attempted to change the locks. Vaillancourt stated that Edison had not harassed her at other times, and at the hearing she testified that as far as she knew he had not come back to the business. Although she heard "they" had driven by, she could not testify to that.

Vaillancourt's petition stated that the court had asked Edison not to return to the property in July 2014, and that the 2017 incident was the second time Edison had attempted to take company property. At the hearing she referred to an "incident" witnessed by her daughter in 2014 when Edison was fired, and "he was warned by a judge then not to come back." Vaillancourt submitted no evidence regarding the events in 2014. After the hearing, Edison submitted a court order dated July 18, 2014, finding "no credible evidence to support claim for reissuance [of a temporary restraining order] or final order" against him and protecting Vaillancourt's daughter, dissolving a temporary restraining order, and denying a final workplace violence restraining order. The paperwork Vaillancourt referred to shows there was no restraining order against Edison.

The trial court found that Edison violated the civil harassment statute, stating in support only that Edison was an employee terminated in 2014. The finding that Edison had been fired is supported by substantial evidence, but even construing the evidence in Vaillancourt's favor, the facts are not legally sufficient to constitute civil harassment under section 527.6.

First, there is no evidence of a "pattern of conduct composed of a series of acts over a period of time . . . evidencing a continuity of purpose." (§ 527.6, subd. (b)(1).) There is only evidence of Edison's firing in 2014, followed by a temporary restraining order against him protecting Vaillancourt's daughter and the later denial of a workplace violence restraining order, and then Edison's appearance at the business with Yerkes three years later in 2017. Vaillancourt admitted Edison had not threatened her personally. She had only heard, but could not testify, that "they" had been driving by.

Second, the evidence does not show a "course of conduct [such as] would cause a reasonable person to suffer substantial emotional distress, and [that] must actually cause substantial emotional distress to the petitioner." (§ 527.6, subd. (b)(3).) Vaillancourt stated she was afraid of Edison (without elaborating), but even if this constituted evidence of substantial emotional distress, there is not sufficient evidence to show a course of conduct that would cause a *reasonable* person such distress.

Third, no evidence supports the inclusion of Vaillancourt's daughter and son as persons protected by the restraining order. Although the statute gives the court discretion to include named family members (§ 527.6, subd. (c)), here no evidence supports a finding Vaillancourt's son had been subjected to a course of harassing conduct. Vaillancourt's daughter had obtained a temporary restraining order against Edison in 2014, but, after a hearing, the trial court had denied a request for a workplace violence restraining order. The only mention of Vaillancourt's daughter at the hearing was when Vaillancourt stated that her daughter was a witness to what happened when Edison was fired

in 2014. The evidence was insufficient to show good cause to protect Vaillancourt's daughter and son.

Finally, "an injunction restraining future conduct is authorized by section 527.6 only when it appears from the evidence that the harassment is likely to recur in the future." (*R.D. v. P.M.* (2011) 202 Cal.App.4th 181, 189.) The trial court made no findings regarding future harassment. Without evidence that Edison had engaged in a harassing course of conduct, and that he intended to continue to harass Vaillancourt or her children in the future, nothing supports "the trial court's implied conclusion 'that wrongful acts [constituting harassment] are likely to recur.' " (*Id.* at p. 190.)

Because we conclude that the evidence was insufficient to support the restraining order, we need not consider Edison's contention that the order impaired his constitutional rights under the Second Amendment.

DISPOSITION

The civil harassment restraining order is reversed. Costs are awarded to appellant.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EGERTON, J.

We concur:

EDMON, P. J.

LAVIN, J.