

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.
---

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

OFFICE OF THE CITY ATTORNEY,

Plaintiff and Respondent,

v.

WAYNE SPINDLER,

Defendant and Appellant.

B276413

(Los Angeles County  
Super. Ct. No. BS162097)

APPEAL from an order of the Superior Court of  
Los Angeles County, Carol Boas Goodson, Judge. Affirmed as  
modified.

Michael N. Feuer, City Attorney, Vivienne A. Swanigan,  
Assistant City Attorney, Hugo S. Rossitter and Jennifer  
Handzlik, Deputy City Attorneys for Plaintiff and Respondent.

Wayne Spindler in pro. per. for Defendant and Appellant.

---

Defendant Wayne Spindler (Spindler) appeals from a workplace violence restraining order limiting Spindler's contact with City Council President Herman (Herb) Wesson, Jr. (Wesson). Spindler argues that the restraining order is invalid because it was sought by the Office of the City Attorney, rather than by the City of Los Angeles, was not supported by substantial evidence, and was inconsistent with his right to free speech. We conclude that Spindler's contentions are without merit, and thus we affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### **I.**

#### **May 11, 2016 City Council Meeting**

On May 11, 2016, the Los Angeles City Council held a special meeting of the Inter-Governmental Relations and Neighborhoods Committee (the May 11 meeting) to discuss issues relating to the Department of Water and Power. The meeting was presided over by Wesson and attended by Spindler.

Members of the public who wish to comment on agenda items or to make general public comments at City Council meetings fill out "speaker cards," which are handed to the Sergeant-At-Arms, then to the City Clerk, and then to the person presiding over the meeting. During the May 11 meeting, Spindler filled out a speaker card that identified him as "Wayne from Encino." On the front of the card were three images drawn in blue ink: (1) a hooded figure holding a noose and a sign reading "Herb = Nigger"; (2) a burning cross; and (3) a human figure hanging from a tree. On the back of the card were the words "Fuck-U Herb."

Wesson permitted Spindler to make his public comments, and then described the writing and drawings on the card to those

in attendance. Spindler began shouting and was removed from the meeting.

## II.

### **Workplace Restraining Order Proceedings**

On May 19, 2016, the Office of the City Attorney filed a Petition for Workplace Restraining Order pursuant to Code of Civil Procedure section 527.8.<sup>1</sup> The petition was supported by Wesson's declaration, which said that Wesson "found the card's message threatening to me personally[,] raising concerns for my personal safety." The declaration further stated as follows:

"8. [T]he speaker card submitted by Spindler was clearly targeted towards me as an African-American, and contained depictions of violence recalling the history of the [Ku] Klux Klan towards African-Americans such as myself;

"9. [I] took the depictions as a personal and direct threat to me;

"10. [T]he depictions and statements on the card had nothing to do with the DWP agenda item;

"11. [B]ased upon Wayne Spindler's written statements and depictions, his specific targeting of me, and his easy access to me as a public figure without assigned security, I am afraid for my safety, and the safety of my office staff and my family when Wayne Spindler is near me."

The petition also was supported by the declaration of Deputy City Attorney Hugo Rossitter, who declared that he had not served Spindler with the petition because Spindler previously had been arrested on criminal threat charges, and thus "I am

---

<sup>1</sup> All subsequent statutory references are to the Code of Civil Procedure.

reluctant to send our City Attorney Document Services staff out to serve [Spindler] under these circumstances, whereas a Temporary Order and Notice of Hearing, if granted, will be served by police officers in the Threat Management Unit of the Los Angeles Police Department.”

On May 19, 2016, the court issued a Temporary Restraining Order (TRO) and scheduled a hearing on the Request for Permanent Injunction; the City Attorney served Spindler with copies of the TRO and petition for a workplace restraining order the same day.<sup>2</sup> The TRO prohibited Spindler from coming within 100 yards of Wesson’s home, 10 yards of Wesson’s district office, two yards of Wesson’s council office, and 10 yards of Wesson himself; however, “[n]othing in this order shall be construed as prohibiting [Spindler] from peacefully and in an orderly manner presenting grievances or comments to the City Council or any City agencies.”

On May 25, 2016, Spindler filed a response to the petition. It stated, in pertinent part: “The card was submitted for public comment, and the expressions on the card are symbolic free speech to show the City being destroyed by rate hikes, over development (burning cross). The scarecrow stuffed figure represents a hanging in effigy as a symbol of rate-payers being ‘lynched’ by a 20% rate hike passed recently for 5 years; the hoodie cartoon is City Hall itself acting like a KKK for ratepayers and businesses, a rope to get us all for more money, and Herb=Nigger being that a nigger ‘pimp’ for the DWP and the

---

<sup>2</sup> On May 23, 2016, Spindler filed a “Proof of Firearms Turned In or Sold,” which stated that he had turned over four firearms, plus associated ammunition, to law enforcement.

money to campaign donors to get this corruption. Fuck-U Herb says the meetings are a sham – so saying ‘piss off’ you con-man you.” Spindler’s response also stated that the Office of the City Attorney lacked standing to file a petition on Wesson’s behalf.

At the June 10, 2016 hearing, the trial court commented that it had looked at Spindler’s speaker card, which it described as depicting “a tree with a human being hanging from [a] noose and a character who was clearly depicting a Ku Klux Klan member holding a noose in one hand and a sign in the other saying ‘Herb, Nigger,’ and a burning cross.” The court asked what these images had to do with the DWP; Spindler responded that it “symbolically represents the City coming after us on increases on fees. . . . The figure in the hood is the City raising our rates. . . .” “It was again symbolically representing my opposition to all of these matters which are going before the voters to cost hundreds of millions of dollars.”

Commenting that the images were “clearly a hate message,” the trial court entered a restraining order that prohibited Spindler from harassing, molesting, or assaulting Wesson for three years. It further prohibited Spindler from coming within 10 yards of Wesson during City Council meetings, 100 yards of 1819 South Western Avenue, two yards of City Hall, room 430, and 100 yards of Wesson’s home. The restraining order specifically provided, however, that Spindler “[m]ay engage in public comment and attend City public meetings.”

Spindler timely appealed from the restraining order.

### **CONTENTIONS**

Spindler contends: (1) The City of Los Angeles, not the Office of the City Attorney, was the proper party to the petition for restraining order; (2) substantial evidence did not support the

trial court's finding that the images on the speaker card constituted a credible threat of workplace violence against Wesson; and (3) the protective order violated his right to free speech.

## **DISCUSSION**

### **I.**

#### **The Workplace Violence Safety Act**

The Workplace Violence Safety Act (§ 527.8) enables an employer to seek an injunction to prevent violence or threatened violence against its employees. (*In re M.B.* (2011) 201 Cal.App.4th 1057, 1063.) In relevant part, it provides: "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 order after hearing on behalf of the employee." (§ 527.8, subd. (a).)

"At the hearing, the judge shall receive any testimony that is relevant and may make an independent inquiry. . . . If the judge finds by clear and convincing evidence that the respondent engaged in unlawful violence or made a credible threat of violence, an order shall issue prohibiting further unlawful violence or threats of violence." (§ 527.8, subd. (j).)

On appeal, "we review an injunction issued under section 527.8 to determine whether the necessary factual findings are supported by substantial evidence. [Citation.] 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. [Citation.]" (*City of San Jose v. Garbett* (2010) 190 Cal.App.4th 526, 538.)

## II.

### **The City Attorney May Pursue This Restraining Order on Behalf of the City of Los Angeles**

As noted, section 527.8 provides that “[a]ny employer, whose employee has suffered . . . a credible threat of violence from any individual” may seek a restraining order on behalf of the employee. (§ 527.8, subd. (a), italics added.) Spindler contends that the Los Angeles City Attorney is not Wesson’s employer, and thus the restraining order must be “immediately declared a nullity as it violates state law and is a fraud.”

There is no dispute that Wesson is an officer of the City of Los Angeles<sup>3</sup>, not the Los Angeles City Attorney, and thus the City was the proper petitioner. The question before us, therefore, is whether the Office of the City Attorney’s pursuit of the action in its own name, rather than the City’s, required dismissal of the action.

This court considered an analogous issue in *People ex rel. Harris v. Rizzo* (2013) 214 Cal.App.4th 921 (*Rizzo*). There, the Attorney General brought an action challenging excessive salaries paid to officers of the City of Bell. The defendants demurred, arguing, among other things, that the Attorney General lacked standing to sue, and the trial court sustained the demurrers without leave to amend. (*Id.* at pp. 928–929.) This court reversed. We explained that although the “People of the State of California” were not the proper plaintiffs, the Attorney General, as the chief law enforcement officer of the state, had the

---

<sup>3</sup> Although the parties do not directly address whether Wesson is “employed” by the City of Los Angeles, Spindler appears to concede the issue because he argues the action should have been brought in the name of the City of Los Angeles.

power to file any civil action necessary for the protection of the public's rights and interests. Accordingly, the Attorney General was authorized to bring the action, albeit in the name of the City, not the People: "It is apparent . . . that despite the caption of the action, the Attorney General brought the action on behalf of the City. When an action is brought in the name of the wrong party, leave to amend should be granted to substitute the real party in interest. [Citation.] As the Attorney General clearly brought this action on behalf of the City, an amendment to change the name of the plaintiff should be permitted." (*Id.* at p. 937.)

The present case is analogous to *Rizzo*. As we have said, Wesson is an officer of the City of Los Angeles, not the Los Angeles City Attorney, and thus the City was the proper petitioner. However, pursuant to the City Charter, the Los Angeles City Attorney "may initiate civil litigation *on behalf of the City* or the People of the State of California" (Los Angeles City Charter, § 272, italics added), and it plainly did so here, seeking protection on behalf of a City officer. Thus, notwithstanding the erroneous caption, the petition was properly before the court.<sup>4</sup>

---

<sup>4</sup> We are puzzled by Spindler's citation to *City of Los Angeles v. Animal Defense League* (2006) 135 Cal.App.4th 606, disapproved in *City of Montebello v. Vasquez* (2016) 1 Cal.5th 409, which Spindler says stands for the proposition that the City Attorney "cannot bring actions in its own name[] on workplace civil violence [TRO] actions." The issue before the court in that case was whether a section 527.8 workplace violence petition filed by the City of Los Angeles was subject to a special motion to strike under section 425.16, subdivision (b), or whether it instead was exempt from scrutiny under section 425.16, subdivision (d). (*City of Los Angeles v. Animal Defense League*, at pp. 617–620.) The decision is of no assistance to Spindler here.



On remand, we will direct the trial court to modify the restraining order to identify the City of Los Angeles as the petitioner.

### III.

#### **Substantial Evidence Supported the Trial Court’s Finding That the Images on the Speaker Card Constituted a Credible Threat of Workplace Violence Against Wesson**

As noted, the statute permits a restraining order to be sought by an employer on behalf of an employee who has suffered “a credible threat of violence”—that 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, subds. (a), (b)(2).) Spindler contends there was insufficient evidence he made a “credible threat of violence” within the meaning of the statute. For the reasons that follow, we do not agree.

#### *A. Substantial Evidence Supported the Trial Court’s Conclusion That the Images on the Speaker Card Would Place a Reasonable Person in Fear for His Safety*

We begin with Spindler’s contention that the speaker card would not place a reasonable person in Wesson’s position in fear for his safety. We disagree. As noted above, Spindler’s speaker card contained three images: (1) a hooded figure holding a noose and a sign reading “Herb = Nigger”; (2) a burning cross; and (3) a human figure hanging from a tree. On the back of the card were the words “Fuck-U Herb.” All three images could reasonably be understood as evoking the Ku Klux Klan, which the United

States Supreme Court has described as employing violent tactics, including lynchings, to discourage African-Americans from participating in the political process. (*Virginia v. Black* (2003) 538 U.S. 343, 352–353.) The image of the burning cross is particularly threatening; as the Supreme Court has explained: “[W]hen a cross burning is directed at a particular person not affiliated with the Klan, the burning cross often serves as a message of intimidation, designed to inspire in the victim a fear of bodily harm. Moreover, the history of violence associated with the Klan shows that the possibility of injury or death is not just hypothetical. The person who burns a cross directed at a particular person often is making a serious threat.” (*Id.* at pp. 354, 357.) Thus, Spindler’s Klan imagery, particularly when directed at an African-American political leader, could reasonably be understood as a threat of violence against that individual. The trial court did not err in so concluding.

*B. Substantial Evidence Supported the Trial Court’s Conclusion That the Images on the Speaker Card Did Not Serve a “Legitimate Purpose”*

We similarly reject Spindler’s contention that his submission of the speaker card could not be construed as a credible threat of violence because it served a “legitimate purpose”—i.e., it allowed him “to speak at a meeting that gives members of the public the right to speak.” In thus characterizing the issue, Spindler confounds the purposes of the speaker card and the racist imagery on it. While submission of the speaker card undoubtedly served a legitimate purpose, the trial court was well within its discretion in concluding that the inclusion of Klan imagery on the card did not.

**IV.**  
**The Issuance of the Restraining Order Is Not**  
**Inconsistent with Spindler’s**  
**Free Speech Rights**

Finally, we reject Spindler’s claim that the words and images on his speaker card could not support the issuance of the restraining order because they were “political speech” protected by the federal and state constitutions. As another Court of Appeal noted in rejecting a similar contention by a defendant against whom a restraining order had been issued: “The First Amendment does not help appellant here. The right to free speech is not absolute or unlimited. (*Near v. Minnesota* (1931) 283 U.S. 697, 708; *Gerawan Farming v. Lyons* (2000) 24 Cal.4th 468, 486.) As our Supreme Court has explained, ‘ “[T]he state may penalize threats, even those consisting of pure speech, provided the relevant statute singles out for punishment threats falling outside the scope of First Amendment protection. [Citations.] In this context, the goal of the First Amendment is to protect expression that engages in some fashion in public dialogue, that is, ‘ “communication in which the participants seek to persuade, or are persuaded; communication which is about changing or maintaining beliefs, or taking or refusing to take action on the basis of one’s beliefs . . . .” ’ [Citations.]” . . . A statute that is otherwise valid, and is not aimed at protected expression, does not conflict with the First Amendment simply because the statute can be violated by the use of spoken words or other expressive activity. [Citation.]’ (*Aguilar v. Avis Rent A Car System, Inc.* (1999) 21 Cal.4th 121, 134 (*Aguilar*), quoting *In re M.S.* (1995) 10 Cal.4th 698, 710.) ‘As speech strays further from the values of persuasion, dialogue and free exchange of ideas, and

moves toward willful threats to perform illegal acts, the state has greater latitude to regulate expression. [Citation.]’ (*In re M.S.*, *supra*, 10 Cal.4th at p. 710.) . . . . [¶] . . . [¶] Thus, it is clear that if the elements of section 527.8 are met by the expression of a credible threat of violence toward an employee, then that speech is not constitutionally protected and an injunction is appropriate.” (*City of San Jose v. Garbett* (2010) 190 Cal.App.4th 526, 536–537.)

In the present case, the trial court found that the elements of section 527.8 were met by the expression of a credible threat of violence toward Wesson, and we have concluded that the trial court’s findings were supported by substantial evidence. Thus, Spindler’s free speech claim is without merit.

### **DISPOSITION**

The trial court is directed to modify the restraining order to identify the City of Los Angeles as the petitioner. As modified, the restraining order is affirmed. The City shall recover its appellate costs.

### **NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

EDMON, P. J.

We concur:

LAVIN, J.

DHANIDINA, J.\*

---

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