Filed 3/5/18 Somin v. Porter CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

CYNTHIA SOMIN, Plaintiff and Respondent, v. DASHIELL PORTER, Defendant and Appellant.	B271775 (Los Angeles County Super. Ct. No. YS028136)

APPEAL from an order of the Superior Court of Los Angeles County, Glenda Veasey, Commissioner. Affirmed.

Sauer & Wagner, Gerald L. Sauer, Amir A. Torkamani and Michelle S. Timpe for Defendant and Appellant.

Parker & Covert and Michael T. Travis for Plaintiff and Respondent.

INTRODUCTION

Cynthia Somin gave Dashiell Porter a failing grade in her English 101 class at El Camino Community College. Porter responded by going to her office, yelling, and shaking his fists at her. When Somin did not change Porter's grade, he sent her 14 vulgar and threatening messages through a social media platform over the course of a year. Some of Porter's messages said he would kill Somin if she did not change his grade.

Somin's employer filed a petition for a workplace violence restraining order against Porter under Code of Civil Procedure section 527.8.[1] After the trial court denied the petition, Somin sought a civil harassment restraining order against Porter under section 527.6. Prior to the hearing on Somin's petition, Porter requested an accommodation for his learning disabilities and autism pursuant to California Rules of Court, rule 1.100.[2] In particular, Porter asked the court to allow his parents to speak on his behalf. Porter initially appeared at the hearing, but he did not return after a recess, and the court granted Somin's petition for a restraining order without ruling on Porter's request for an accommodation. Porter appeals from the restraining order, arguing the trial court committed structural error by failing to rule on his request for an accommodation and violated his right to due process by granting Somin's petition in his absence.

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[1] Undesignated statutory references are to the Code of Civil Procedure.

[2] References to rules are to the California Rules of Court.

Porter also argues substantial evidence does not support the court's order.

We conclude that, by failing to return to the hearing after the recess to provide certain additional evidence requested by the court, Porter failed to satisfy the requirements of rule 1.100. Thus, the trial court should have denied Porter's request for an accommodation as a matter of law, and the trial court's failure to rule on his request was harmless, and not structural, error. Moreover, Porter's voluntary absence from the hearing did not violate his right to due process, and substantial evidence supports the trial court's order. Therefore, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Threatening Messages*

In May 2014 Somin gave Porter a failing grade in English. From January to December 2015 Porter sent Somin 14 messages through a social media platform. The messages began with expletive-laden insults that turned darker and included death threats. For example, on February 26, 2015 Porter sent a message that said, "Change my grade bitch or I'm gonna kill you!" On April 24, 2015 Porter sent another message that said, "SOMIN! This is your last chance, I mean it. Change my grade or I kill you." On August 12, 2015 Porter sent a message that said, "You are so gonna die you little CUNT! Once I return, I'm putting a bullet through your fucking head!!!!!" On December 8, 2015 Porter sent his last message, which stated, "I'm coming to kill you tomorrow!!!! (Gun's loaded)."

Somin did not discover the messages until December 26, 2015, when she first accessed the social media platform's direct

messaging feature. That same day she filed a police report with the El Camino Police Department.

B. *The Community College District's Petition for a Workplace Violence Restraining Order*

On December 29, 2015 the El Camino Community College District filed a petition pursuant to section 527.8 for a workplace violence restraining order against Porter. In support of the petition, the District filed a declaration by Somin stating that Porter's messages placed her in fear for her life and the lives of others. She said she was afraid Porter "will make good on his threats" and become violent with her or her coworkers.

On December 30, 2015 the court issued a temporary restraining order and set a hearing on the District's petition for January 20, 2016. Prior to the hearing, Porter filed a request for an accommodation pursuant to rule 1.100, stating he had "[l]anguage-based learning disabilities (expressive/receptive language) [and] autism (high-functioning)." He asked that the court allow his parents to assist him "in addressing the court and the claims made against [him]." "Without such assistance," Porter stated, "my ability to represent myself is compromised." The court granted the request for an accommodation but stated "[t]he court may require direct responses from [Porter] instead of hearsay."

Following the hearing on January 20, 2016, the trial court denied the District's petition. After questioning Porter and his parents, the court, Judge Carol Boas Goodson, stated, "[A] restraining order is [not] the appropriate form to resolve this problem in light of [the messages'] limited publication, [the] unlikelihood of it occurring again, the lack of fear from [Somin]

until days before [the petition] was filed, no other acts of violence, no other appearances on campus that created a problem, no other approaches to the teacher and now a[n] order from this court that [Porter] stay off of all public social sites."

C. *Somin's Petition for a Civil Harassment Restraining Order*

Somin then sought a civil harassment restraining order against Porter pursuant to section 527.6. Like the District's petition, Somin's petition alleged Porter sent her 14 threatening messages on a social media platform, eight of which threatened to kill her unless she changed his grade. Somin attached the threatening messages to her petition. Somin's petition also alleged that Porter, after learning he had received a failing grade, came to Somin's office, shouted, and shook his fists at her. The court granted another temporary restraining order against Porter and set a hearing on Somin's petition for February 18, 2016.[3]

Porter's response to Somin's petition admitted he did "some or all of the things" Somin alleged, but he argued his actions were justified or excusable. Porter also filed the statement he had filed in response to the District's petition and a declaration from his mother stating Porter did not pose a threat to Somin. Porter's mother acknowledged the messages Porter sent Somin were

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[3] After the court granted a temporary restraining order in response to Somin's petition, but before the hearing on the petition, the District filed a petition for writ of mandate from the court's order denying the District's petition for a workplace violence restraining order. Another division of this court denied the petition because the District had an adequate remedy by way of appeal.

"inappropriate," but she asserted "there is no evidence beyond the messages themselves of any act by [Porter], or intention to take any act." Porter's mother noted that Porter took a class at the college during the fall 2015 semester and never approached Somin, her classroom, or her office. She also said the messages Porter sent were "a manifestation of his disability" and she apologized to Somin and the college for her son's behavior.

Porter again requested an accommodation pursuant to rule 1.100 for the February 18, 2016 hearing for his learning disabilities and autism. As he had in connection with the District's petition, Porter asked the court to accommodate him by allowing his parents to assist him "in addressing the court."

D. *The Hearing on Somin's Petition*

1. *Proceedings Before Judge Slawson*

The superior court initially assigned Somin's petition to Judge John A. Slawson. On February 16, 2016, two days before the hearing, Judge Slawson granted Porter's request for an accommodation in part, ruling that Porter would have to make "a showing in court on the record of the need" for the requested accommodation.

At the February 18, 2016 hearing Judge Slawson asked Porter questions to determine whether Porter understood why he was appearing in court that day and to gauge his ability to participate in the hearing. Among other things, Porter said he graduated from high school, took algebra in college, and passed the written and driving portions of the test required to get his driver's license.

After a brief recess, Judge Slawson asked Porter whether he wanted to have the hearing on his request for accommodations "right now" or in private. After Porter answered "right now," Judge Slawson asked him what type of accommodation he wanted. Porter said he had a "problem with language sometimes." Judge Slawson confirmed that Porter understood what Judge Slawson had said during the hearing so far and that Judge Slawson understood what Porter had said. Judge Slawson ruled that Porter had not demonstrated a need for any accommodation other than that the court "speak clearly."

Regarding Porter's request that his parents assist him in court, Judge Slawson said Porter had not yet provided sufficient evidence that Porter needed such an accommodation by, for example, providing medical evidence or a declaration from a doctor. Judge Slawson stated: "At this point my decision is I'm not going to grant an accommodation. I would strongly suggest you go down to the law library, do some research, let your parents get the books for you and so on, do some research because I need more than just a person saying, I need an accommodation, I need some medical records, I need other things or I need legal authority on that, and that's why I'm certainly going to give you the time to do that." After Porter said he wanted to consult with his parents, Judge Slawson offered to give him a new court date so that Porter would have more time to present evidence of his need for an accommodation.

Following another brief recess, Porter asked for a private hearing on his request for an accommodation. Judge Slawson said he would research the issue and reconvene the hearing at 1:30 p.m. Judge Slawson stated: "That's when we're going to hear it. I [will] have done the research at that time and I will

make a decision if you're back then. That's your choice. If you're not back, you're not in trouble, but I'm not doing the hearing right now [until] I determine the law and the way I have to proceed on this accommodation request. If you do some research in the meantime, legal research and cite cases to me, I will look at any appellate case and law on that issue so that the correct decision is made. Right now I don't have sufficient evidence to grant your request. And before I get any deeper, I need to look at the law on whether you're entitled to a private hearing. Okay. See you all at 1:30."

At 1:39 p.m. Judge Slawson resumed the hearing. A person identified as Porter's father was in the audience, but Porter did not appear. The court ruled Porter had a right to a private hearing on his request for an accommodation and delayed the hearing another 15 minutes "to give [Porter] a complete opportunity" to appear. The court agreed to wait for Porter until 2:00 p.m.

At 2:08 p.m. Judge Slawson resumed the hearing and Porter did not appear. Judge Slawson, however, disqualified himself because he realized the petition involved El Camino College and he taught night classes there. He said he was "uncomfortable even ruling on the accommodation issue" in light of his teaching position. Judge Slawson transferred the case to Commissioner Glenda Veasey in another department, sent the confidential folder on Porter's request for an accommodation, and "generate[d] a real quick minute order" to effect the transfer.[4]

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[4] The record does not include that minute order.

2. *Proceedings Before Commissioner Veasey*

At 2:32 p.m. Commissioner Veasey resumed the public hearing on Somin's petition in her courtroom. The record does not disclose whether Commissioner Veasey held a private hearing on Porter's request for an accommodation. If there was such a hearing, Porter was not present, and Porter's motion to augment the record on appeal with a transcript of any such private hearing on his request for accommodations included only another copy of the transcript of the public hearing on Somin's petition. In a declaration in support of Somin's opposition to Porter's motion to augment the record, however, counsel for Somin stated that Commissioner Veasey first asked everyone in the courtroom, including Porter's father, to leave while she considered Porter's request for an accommodation. Ten minutes later, Commissioner Veasey apparently directed the parties to return to the courtroom, but Porter was still not present.

During the hearing on Somin's petition, counsel for Somin argued that Porter, in his responses to the petitions by the District and Somin, admitted he had sent Somin threatening messages. Commissioner Veasey read into the record the relevant portion of Porter's statement in response to the District's petition: "Although I did send messages on [social media] to Professor Somin that were vulgar and improper and some of which used threatening words, I was only venting and verbalizing my frustration and never took any steps to act upon those messages, nor would I ever do so. Messages include language I do not use daily or here at home. Instead, they are words I have seen on the Internet or television and films of

people who seem angry. So I used them as script, as they seem to fit the frustration that I felt."

After reviewing Somin's petition, Porter's response, and the statements by Porter and his mother, Commissioner Veasey questioned Somin about her fear of Porter. Among other things, Somin testified that absent a restraining order she feared Porter would "continue to make threats of violence and perhaps do violence to [her]." Counsel for Somin argued that Porter's intent to take additional courses at the college made it likely he would encounter Somin again.

Commissioner Veasey noted Porter's absence and said she did not have the opportunity to observe his manner or demeanor. Based on the entirety of the court file and relevant portions of the file from the District's petition for a workplace violence restraining order, the court ruled Somin had "established her right to a civil harassment restraining order by clear and convincing evidence, in no small part due to Mr. Porter's not being present to address or respond to the allegations beyond what is set forth in the written record." Porter timely appealed.

DISCUSSION

A. *Section 527.6 and the Standard of Review*

"'Section 527.6 was enacted "to protect the individual's right to pursue safety, happiness and privacy as guaranteed by the California Constitution." [Citations.] It does so by providing expedited injunctive relief to victims of harassment.'" (*Parisi v. Mazzaferro* (2016) 5 Cal.App.5th 1219, 1226 (*Parisi*); accord, *Brekke v. Wills* (2005) 125 Cal.App.4th 1400, 1412.) Section 527.6, subdivision (a)(1), provides that "[a] person who has

suffered harassment . . . may seek a temporary restraining order and an order after hearing prohibiting harassment as provided in this section." Section 527.6, 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 court may issue a temporary restraining order under section 527.6, with or without notice, if the court finds that the petitioner's declaration provides reasonable proof of harassment by the respondent and that great or irreparable harm may result to the petitioner if the court does not issue the restraining order. (§ 527.6, subd. (d); *Harris v. Stampolis* (2016) 248 Cal.App.4th 484, 496 (*Harris*).) "Within 21 days . . . from the date . . . the petition for a temporary restraining order is granted or denied, the court shall hold a hearing on the petition." (*Harris*, at p. 496; see § 527.6, subd. (g).) "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 unlawful harassment exists, an order shall issue prohibiting the harassment.'" (*Harris*, at p. 496; § 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*, at p. 496; accord, *Russell v. Douvan* (2003) 112 Cal.App.4th 399, 402-403.)

"We review issuance of a protective order for abuse of discretion, and the factual findings necessary to support the protective order are reviewed for substantial evidence. [Citations.] 'We resolve all conflicts in the evidence in favor of respondent, the prevailing party, and indulge all legitimate and

reasonable inferences in favor of upholding the trial court's findings. [Citation.] Declarations favoring the prevailing party's contentions are deemed to establish the facts stated in the declarations, as well as all facts which may reasonably be inferred from the declarations; if there is a substantial conflict in the facts included in the competing declarations, the trial court's determination of the controverted facts will not be disturbed on appeal.'" (*Parisi*, *supra*, 5 Cal.App.5th at p. 1226; see *Bookout v. Nielsen* (2007) 155 Cal.App.4th 1131, 1137-1138 [restraining order under the Elder Abuse Act].) "Whether the facts are legally sufficient to constitute civil harassment within the meaning of section 527.6 is a question of law reviewed de novo." (*Parisi*, at p. 1226; see *R.D. v. P.M.* (2011) 202 Cal.App.4th 181, 188.) Porter challenges the restraining order for lack of substantial evidence; he does not contend the trial court abused its discretion in granting the order.[5]

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[5] Porter suggests the abuse of discretion standard of review does not apply because he argues the restraining order violated his constitutional right to due process. In *DVD Copy Control Association, Inc. v. Bunner* (2003) 31 Cal.4th 864 the Supreme Court restated the rule that a reviewing court independently reviews factual findings "'where a Federal right has been denied as the result of a [factual] finding . . . or where a conclusion of law as to a Federal right and a finding of fact are so intermingled as to make it necessary, in order to pass upon the Federal question.'" (*Id.* at p. 889, quoting *Fiske v. State of Kansas* (1927) 274 U.S. 380, 385-386.) Porter argues the trial court violated his right to due process by ruling on Somin's petition in his absence, but any violation of this due process right was not a result of a factual finding. Thus, the de novo standard of review for findings

B. *The Trial Court's Failure To Rule on Porter's Request for Accommodations Was Harmless Error*

"The purpose of rule 1.100 is to allow meaningful involvement by all participants in a legal proceeding to the fullest extent practicable." (*Biscaro v. Stern* (2010) 181 Cal.App.4th 702, 707 (*Biscaro*); see rule 1.100(b) ["[i]t is the policy of the courts of this state to ensure that persons with disabilities have equal and full access to the judicial system"].) To further this purpose, rule 1.100 requires the court, among other things, to "promptly inform the applicant of the determination to grant or deny an accommodation request," and if the request is denied in whole or in part, the court's "response must be in writing." (Rule 1.100(e)(2); see *Biscaro*, *supra*, 181 Cal.App.4th at p. 708 [a court's failure to address a request for accommodation perpetuates the historical failure "to acknowledge and accommodate litigants with disabilities"].) The court must also inform the applicant of the reason for any denial. (Rule 1.100(e)(2)(B).)

There is no evidence in the record that Commissioner Veasey ruled on Porter's request for an accommodation, in writing or otherwise. Her failure to do so violated rule 1.100 and was error. The error, however, was harmless.[6]

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of fact the Supreme Court applied in *DVD Copy Control Association, Inc. v. Bunner* does not apply here.

[6] Somin argues that Porter lacks "standing" to contest that ruling because Judge Slawson's February 18, 2016 response to Porter's application stating the court was granting Porter's application "in part" and "upon a showing in court on the record of the need" for the requested accommodation effectively granted

Rule 1.100 allows a court to deny a request for accommodation for only three reasons: (1) if the applicant failed to satisfy the requirements of rule 1.100, (2) if the requested accommodation would create an undue financial or administrative burden on the court, or (3) if the requested accommodation would fundamentally alter the nature of the service, program, or activity. (*Biscaro*, *supra*, 181 Cal.App.4th at p. 709; rule 1.100(f); see *In re Marriage of James M.C. & Christine J.C.* (2008) 158 Cal.App.4th 1261, 1265 ["[r]ule 1.100(f) permits a trial court to deny a request for accommodation under the ADA only if the court makes a determination of at least one of three specifically identified grounds"].) Rule 1.100 gives the trial court discretion to require additional information from an applicant about his or her "impairment that necessitates the accommodation."[7] (Rule 1.100(c)(2).) An applicant's failure to comply with a court's request for such information violates rule 1.100 and justifies a court's refusal to provide the requested accommodation. (See *Biscaro*, at p. 709.)

Porter's request. Not so. Judge Slawson made clear during the hearing on February 18, 2016 that he did not believe Porter had shown the requisite need for the requested accommodation. Moreover, rule 1.100 requires the court to provide the reason for denying any part of a request for accommodation, and Judge Slawson's February 18 response does not state any such reason. (See rule 1.100(e)(2).)

[7] The version of rule 1.100 in effect in February 2016 referred to an applicant's physical or mental "impairment." As of July 1, 2017, the rule refers to an applicant's "medical condition."

Judge Slawson stated that, without additional information from Porter, including medical information pertaining to Porter's impairment, he would deny Porter's request for accommodation.[8] Indeed, the reason for continuing the hearing on Somin's petition was to allow Porter to gather the requested information to support his request for an accommodation. Porter's failure to appear or to otherwise provide that information resulted in his failure to satisfy the requirements of rule 1.100.[9] Where the record shows the person requesting an accommodation under rule 1.100 did not satisfy the requirements of the rule, the court's failure to rule on the request is harmless because the court, had it ruled, would have had to deny the request. (*Biscaro*, *supra*, 181 Cal.App.4th at p. 708.) That is precisely the case here.

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[8] Porter does not challenge Judge Slawson's rulings prior to his voluntary disqualification. In general, such rulings may not be set aside without a showing of good cause. (See § 170.3, subd. (b)(4); *People v. Williams* (2007) 156 Cal.App.4th 949, 958.)

[9] Porter argues he "tried to offer Judge Slawson a confidential medical assessment, which Judge Slawson inexplicably refused." Indeed, after the second short recess in Judge Slawson's courtroom, Porter said, "I decided to have you take a look at this, but it's confidential. It's about my whole case here, the language-based learning disabilities." We assume "this" is the medical assessment to which Porter refers in his opening brief on appeal. Judge Slawson, however, did not "inexplicably refuse" Porter's evidence; he said he had to research whether Porter was entitled to a private hearing, and he invited Porter to submit evidence when the hearing resumed. Porter did not return to the continued hearing to submit any evidence.

Citing *Biscaro v. Stern*, *supra*, 181 Cal.App.4th 702, Porter argues the failure to rule on a request for accommodation under rule 1.100 was structural error. (*Biscaro*, at p. 710.) Porter contends *Biscaro* involved "almost identical" circumstances. *Biscaro*, however, is distinguishable.

In *Biscaro*, a woman petitioned for a restraining order against her former husband. (*Biscaro*, *supra*, 181 Cal.App.4th at p. 705.) At the hearing on a temporary restraining order, the husband requested accommodations for a neuropsychiatric disability that interfered with his ability to communicate and remember. (*Ibid.*) The court set a regularly noticed hearing for the following month and "promised [the husband] it would rule on his request for accommodation of his disabilities before the next hearing and that he would receive the ruling in the mail." (*Ibid.*) The court apparently never sent the husband a ruling, and the husband did not appear at the next hearing. (*Ibid.*) The court at that hearing waited over an hour for the husband, and, when he did not appear, the court "proceed[ed] based on [the petitioner's] declaration." (*Id.* at pp. 705-706.) The court granted the restraining order, and the husband appealed. (*Ibid.*)

The Court of Appeal reversed. The court in *Biscaro* acknowledged that ordinarily "the 'trial court is presumed to have been aware of and followed the applicable law' when exercising its discretion," and an appellate court will not presume error. (*Biscaro*, *supra*, 181 Cal.App.4th at p. 708.) The court, however, declined to accept the trial court's "tacit denial" of the husband's request for accommodations because rule 1.100 requires the trial court to respond to such a request in writing. (*Biscaro*, at p. 708.) The court in *Biscaro*, however, concluded

none of the three reasons listed in rule 1.100 for denying a request for a reasonable accommodation applied. (See *Biscaro*, *supra*, 181 Cal.App.4th at p. 708.) The same cannot be said of Porter's request.

Unlike the trial court in *Biscaro*, the trial court in this case indicated "it needed more information to rule on [the applicant's] request." (*Biscaro, supra,* 181 Cal.App.4th at p. 709.) By failing to comply with the authorized request, Porter failed to comply with the rule, and the court's subsequent failure to rule on the request was harmless. (See *Biscaro*, at p. 710 [only "wrongful denial of an accommodation is structural error . . . call[ing] for reversal per se"].) In light of Porter's failure to appear at the continued hearing, Porter could not have been harmed by the court's failure to rule on his request for accommodations.[10]

Porter argues he suffered prejudice because he did not know Judge Slawson or Commissioner Veasey would "move forward with a hearing on the merits as to the issuance of a permanent injunction." The hearing on Somin's petition, however, was noticed for February 18, 2016, and no party requested a continuance of the hearing date (despite Judge Slawson's invitation that Porter make such a request). Nothing in the record supports Porter's assumption that the hearing on the merits of Somin's petition would not follow immediately, without recess or further notice, from the continued hearing on Porter's request for accommodations.

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[10] Porter's father apparently appeared in Commissioner Veasey's courtroom at the prescribed time. Porter does not explain why he did not accompany his father, whom Porter wanted to speak for him in court.

C. *The Trial Court Did Not Violate Porter's Right to Due Process*

Porter contends the trial court violated his right to due process by ruling on Somin's petition in his absence after Judge Slawson told Porter "he did not need to be present in court that afternoon." While Judge Slawson did tell Porter he would not be "in trouble" if he did not return by 1:30 p.m. for the continued hearing, Judge Slawson did not tell Porter not to return. To the contrary, Judge Slawson stated, "We'll come back at 1:30," "the court needs to continue the case [until] 1:30," "[s]ee you all at 1:30," and "[w]e're in recess on this case until 1:30." Porter's father and brother apparently returned to Judge Slawson's courtroom at 1:30 p.m., and no one told Porter not to appear in Commissioner Veasey's courtroom at 2:30 p.m.

The case on which Porter relies is distinguishable. In *Schraer v. Berkeley Property Owners' Assn.* (1989) 207 Cal.App.3d 719 the trial court refused to allow the respondents in a proceeding under section 527.6 to present any oral testimony or to cross-examine the petitioner even though the parties were present in court. (*Schraer*, at p. 725.) The Court of Appeal held that due process and section 527.6 require courts to give a person charged with harassment a full opportunity to present his or her case, including by providing relevant testimony. (*Schraer*, at pp. 730-732.) The trial court here did not deny Porter a full opportunity to present his case. Instead, Porter chose not to show up.

D. *Substantial Evidence Supports the Restraining Order*

Porter contends substantial evidence does not support the court's order or its implied findings that Porter harassed Somin and that the harassment was likely to recur.[11] Among other things, Porter argues the court "appears to have ignored the evidence submitted in Porter's written response" and failed to take into account Porter's disabilities. Porter also argues the trial court's denial of the District's petition "underscores that the facts underlying both [petitions] were legally insufficient to constitute harassment under [section 527.6]."

1. *Porter Harassed Somin*

As noted, section 527.6, subdivision (b)(3), defines "harassment" as "unlawful violence, a credible threat of violence, 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." Any one of these types of harassment will support a civil harassment restraining order.

Substantial evidence supports the court's finding that Porter made a credible threat of violence against Somin, which section 527.6, subdivision (b)(2), defines as "a knowing and willful

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[11] Absent indication to the contrary, we presume the trial court followed applicable law and understood it had to find that there was harassment and that future harm was reasonably probable. (See *Harris*, *supra*, 248 Cal.App.4th at p. 500; Evid. Code, § 664.) Thus, we infer the trial court impliedly made these findings. (See *Harris*, at p. 501; see also *Fair v. Bakhtiari* (2011) 195 Cal.App.4th 1135, 1148-1149 [as a general rule, "'we must review the trial court's exercise of discretion based on implied findings that are supported by substantial evidence'"].)

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." (See *Harris*, *supra*, 248 Cal.App.4th at p. 496.) The record demonstrates Porter knowingly sent Somin the messages Somin identified in her petition. Indeed, Porter twice admitted in the trial court he sent Somin the messages: once in his response to the District's petition and again in his response to Somin's petition. Although Porter argues on appeal he did not knowingly send the messages because he did not understand how the messaging platform worked because of his "language processing disabilities," Porter forfeited this argument by failing to make it in the trial court, either in this case or in the case involving the District's petition. (See *Kern County Dept. of Child Support Services v. Camacho* (2012) 209 Cal.App.4th 1028, 1038 ["arguments not raised in the trial court are forfeited on appeal"].) In any event, Porter's declaration in response to the petitions supports an inference that Porter knew Somin would receive the messages. Among other things, Porter stated that when he sent the messages he "was not thinking about how Professor Somin might react" to them.

Substantial evidence also supports the court's finding that the messages would make a reasonable person fear for his or her safety. Somin testified the messages made her fear for her safety and for the safety of her mother who lived with her. The messages were hostile, referenced specific methods of killing Somin, and were sent over a long period of time, which suggested Porter's violent thoughts were not fleeting. (See *Harris*, *supra*, 248 Cal.App.4th at p. 498 [petitioner demonstrated a credible threat of violence where the respondent placed his hands close to

petitioner, raised his voice, pointed and gestured at petitioner, walked back and forth toward her, and may have mimicked a gun with his hands]; *Duronslet v. Kamps* (2012) 203 Cal.App.4th 717, 730 [petitioner demonstrated a credible threat of violence where the respondent told a nurse she intended to kill petitioner and commit suicide because the petitioner, respondent's downstairs neighbor, wanted to convert their co-owned building into condominiums].)

Finally, substantial evidence supported the court's finding that the messages served no legitimate purpose, and Porter does not argue otherwise. His contention that the trial court ignored his disabilities and the evidence he submitted in response to Somin's petition is belied by the trial court's statement that it had read Porter's response, including the statement from his mother, as well as the declaration Porter filed in connection with the District's petition. Moreover, the court based its findings on "the entirety of the court file and the portions of the court file from the related matter which the court has had an opportunity to review."

2. *It Was Reasonably Probable the Harassment Would Recur*

"'[T]he determination of whether it is reasonably probable an unlawful act will be repeated in the future rests upon the nature of the unlawful violent act evaluated in the light of the relevant surrounding circumstances of its commission and whether precipitating circumstances continue to exist so as to establish the likelihood of future harm.'" (*Harris*, *supra*, 248 Cal.App.4th at pp. 499-500; accord, *Scripps Health v. Marin* (1999) 72 Cal.App.4th 324, 335, fn. 9.) Porter contends it was not

reasonably probable he would harass Somin again because he had become "aware of the adverse impact his language challenges have had . . . on Somin, his family and his future educational opportunities at [El Camino College], and . . . Porter's parents, with whom he lives, [were] also aware of these issues and have and will continue to monitor Porter's activities on the computer."

The relevant circumstances surrounding Porter's harassment and the circumstances existing at the time the trial court granted Somin's petition support the reasonable probability finding. (See *Harris*, *supra*, 248 Cal.App.4th at p. 499.) Porter sent Somin 14 messages over 11 months; he sent the last message just three weeks before Somin reported Porter to the police and only six weeks before Somin filed her petition. Moreover, before Somin reported the messages to the police and her employer, Porter had enrolled in another course at El Camino College, placing him in close proximity to Somin. Porter argues that the fact he took this class from August to December 2015 and did not again physically confront Somin supports his position he posed no future threat to Somin. Porter, however, sent four of the 14 threatening messages to Somin between August and December 2015. His presence on campus without a physical incident hardly mitigated the threat of future harassment. (See *Harris*, at p. 501 [the likelihood that respondent would be on campus where petitioner worked supported the trial court's implied finding that future harassment was reasonably probable].) Porter's statements that he now understands his behavior was wrong and he will not engage in such behavior again do not mean there is no substantial evidence to support the trial court's order. (See *Parisi*, *supra*, 5 Cal.App.5th at p. 1226 [a trial court's determination of controverted facts will not be

disturbed on appeal where the facts included in competing declarations substantially conflict]; *Bookout v. Nielsen*, *supra*, 155 Cal.App.4th at p. 1138 [same]; *Estate of Wilson* (1980) 111 Cal.App.3d 242, 249 [if there is substantial evidence, "[i]t is of no consequence that believing other evidence, and drawing different inferences, the court might have reached a contrary conclusion"].)

3. *Porter Has Not Shown Collateral Estoppel Applies*

Porter, without mentioning the words "collateral estoppel" or "issue preclusion," contends the trial court's order is not supported by substantial evidence because Judge Goodson concluded the District's evidence in the trial court failed to meet the clear and convincing standard required by section 527.8. Porter argues the District's and Somin's petitions were based on "essentially . . . identical facts" and should produce the same result.

In general, the concept of collateral estoppel (or issue preclusion) ""precludes relitigation of issues argued and decided in prior proceedings."" (*Johnson v. GlaxoSmithKline, Inc.* (2008) 166 Cal.App.4th 1497, 1507 (*Johnson*); see *Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 896.) Although Porter has the burden to show collateral estoppel applies, including by establishing each of the requirements for its application (see *Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341; *Johnson*, at pp. 1507-1508), Porter does not argue collateral estoppel applies or attempt to establish any of its requirements. Moreover, because Porter did not raise collateral estoppel in the trial court, he has forfeited the argument on appeal. (See *Kern County Dept.*

of Child Support Services v. Camacho, *supra*, 209 Cal.App.4th at p. 1038.)

DISPOSITION

The order is affirmed. Somin is to recover her costs on appeal.

SEGAL, J.

We concur:

PERLUSS, P. J.

BENSINGER, J.*

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