Filed 7/25/18 Barstis v. Jones 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**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**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

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| JOHN L. BARSTIS,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>MARY RUTH JONES,<br><br>Defendant and Appellant. | B282493<br><br>Los Angeles County<br>Super. Ct. No. BS167947 |

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

Mary Ruth Jones, in pro. per., for Defendant and Appellant.

Hill, Farrer & Burrill and Patrick E. Michela for Plaintiff and Respondent.

## INTRODUCTION

Mary Ruth Jones appeals from a three-year civil harassment restraining order protecting her former doctor, John L. Barstis, and his family. Finding no error, we affirm.

## FACTUAL BACKGROUND

Barstis is a retired physician who was an oncology specialist at UCLA Health. He worked at UCLA's hospital in Westwood, maintained an office at UCLA's Santa Monica Specialty Care center, and worked part time at the Henry Mayo Newhall Hospital in Santa Clarita. Jones was one of Barstis's patients at the UCLA Medical Clinic and the Santa Monica center from 2010 through 2013.

Barstis last treated Jones during an office visit in July 2013. During that visit, Jones told Barstis that she wanted to have a romantic relationship with him. Barstis replied that he was not interested in starting a relationship with Jones, he does not socialize with his patients, and he believed it would be inappropriate for a physician to have a relationship with his patient. In August 2013, Jones sent Barstis a letter stating that she was being treated by other doctors and no longer needed Barstis's medical care.

Between 2013 and 2015, Jones sent Barstis about 500 text messages, many of which professed her love for the doctor and questioned why he refused to start a romantic relationship with her.[1] Although Barstis blocked Jones's original phone number,

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[1] For example, Jones texted Barstis: "I am sorry but I have to reach out to you. And, I am sorry if [I] embarrassed you in front of your employer. My only thought was my driving need to be with you. Please

Jones changed her phone number multiple times and continued to send messages to Barstis's phone. Barstis eventually changed his own phone number.

After terminating the doctor-patient relationship, Jones also tried contacting Barstis several times in person, going to Barstis's offices in Santa Clarita and Santa Monica, his wife's office in Santa Monica (where his adult daughter also lives), and his home. According to Barstis, Jones contacted him between 8 to 12 times at the Henry Mayo campus in Santa Clarita. She also tried to contact Barstis at the UCLA Santa Monica center shortly before his retirement, loitering for three days in the center's treatment area. According to Barstis, he tried to make clear to Jones every time she confronted him that he was not interested in having a relationship with her.

On at least five occasions between November 2016 and February 2017, Barstis's wife saw Jones parked in front of the building where Barstis's wife works and where Barstis's daughter lives. And Jones went to Barstis's home twice in March 2017. On March 10, while Barstis and his wife were getting ready for bed, they heard someone banging on, and trying to open, their front door. The person shouted "Let me in, let me in!" Barstis later saw Jones flee down his driveway. On March 16, Barstis and his wife

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forgive me. But, I cannot and will not ever stop wanting you. You and no one has the power to shut my mouth. I am in love with you and want you badly ... you are my destiny and I am sorry you do not want to face this. If you are determined to make this public, then I am sorry for that ..[.] Just know I will spill my guts. Please come and see me. Please. Mj." She also texted him: "Please don't be afraid. I adore you ..[.] I want to be in your arms. I have never hurt you or said an unkind word to you. My heart is pure. Please can we talk?"

saw Jones sitting in a parked car across the street from their home. Barstis called the police and a private security company. The private security company prevented Jones from leaving the neighborhood until the police arrived. The police warned Jones to stay away from Barstis and advised Barstis to obtain a restraining order against Jones.

Jones also confronted Barstis's former medical partner, Dr. Rena Callahan, and Callahan's husband.[2] On March 9, 2017, Jones waited for Callahan in the Henry Mayo campus parking lot. As Callahan left her office, Jones came up to her and said, " 'I know of your affair. You are going to lose your license.' " Callahan was disturbed by the incident because she had never met Jones before and did not know how Jones knew her work hours.

On March 24, 2017, Jones went to Callahan's home and confronted Callahan's husband. Jones told Callahan's husband that he " 'needed to hear what she had to say.' … [¶] 'This is about your wife; this is for your family. You have no idea what is going on, your wife is having an affair with John Barstis. Andrew, this is very important for you, I am an angel. You have two boys don't you? This is all going to come back to haunt you … this will come out in a few days.' " Callahan's husband was concerned for his safety because Jones was holding a large purse, which he believed might have contained a weapon.

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[2] In April 2017, the Regents of the University of California (Regents), acting on Callahan's behalf, obtained a temporary restraining order prohibiting Jones from harassing or otherwise contacting Callahan and her family. That order also prohibited Jones from going within 100 yards of Callahan, her family, her family's home, her workplace, and her vehicle.

## PROCEDURAL BACKGROUND

On March 24, 2017, Barstis filed an ex parte application for a civil harassment restraining order against Jones under Code of Civil Procedure[3] section 527.6. Barstis requested an order prohibiting Jones from contacting, harassing, or going within 100 yards of him, his wife, and his daughter. Barstis attached to the application a copy of his declaration, a copy of his wife's declaration, copies of 12 text messages that Jones had sent to his phone, and a copy of a business card a police officer had given Barstis on March 16, 2017, advising him to "immediately" seek a restraining order against Jones. Barstis's application, and the attached declarations, were signed under penalty of perjury under the laws of the State of California.

The court issued a temporary restraining order (TRO) against Jones on March 24, 2017. The TRO prohibited Jones from, among other things, harassing, contacting, or going within 100 yards of Barstis, his wife, and his daughter. The TRO was set to expire on April 12, 2017, the date the court scheduled a hearing on Barstis's request for a permanent restraining order against Jones.

In response to Barstis's request for a permanent restraining order, Jones filed more than 180 pages of documents, including, among other things, an "ex-parte motion to dissolve plaintiff's temporary restraining order," a "request for dismissal due to lack of harm [pled]," a motion to strike Barstis's wife and daughter from the TRO, a "demand for jury trial," a "demurrer to the petition for failing to state a claim," and a request for judicial

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

notice of the definitions of various terms of art. The court denied all of Jones's motions and requests.

Jones also filed several declarations setting forth her account of her relationship with Barstis. Jones claimed she fell in love with Barstis in March 2011, when she was a patient at UCLA Ronald Reagan Medical Center. Shortly thereafter, they entered a long-term sexual relationship. Around February 2017, Barstis and Callahan started having an affair. According to Jones, Callahan controls Barstis and can make him do "anything[,] even kill people." Jones claimed that Callahan made Barstis seek a restraining order, "to keep [Barstis] and [Jones] apart for the rest of their senior years until they die never to see each other again."

Jones confirmed that she sent Barstis several hundred text messages between August 2013 and June 2015. According to Jones, she sent Barstis "one or two texts almost every day Monday through Friday" during that period. Jones claimed, however, that the fact she sent Barstis so many text messages only helped prove he wanted to be in a relationship with her, since "only once for a couple of days did he block [her] phone number." Jones also confirmed that she went to Barstis's house on March 10 and March 16, 2017.

On April 12, 2017, the court granted Jones's request to continue the hearing on the permanent restraining and set a new hearing for May 3, 2017, until which date the TRO remained in effect.

On May 3, 2017, the court held a hearing on Barstis's application for a permanent restraining order. Jones appeared without counsel and Barstis appeared with counsel. After hearing from Jones and Barstis's counsel, the court granted Barstis's

application and issued a three-year restraining order against Jones, protecting Barstis, his wife, and his daughter from harassment and any other type of contact by Jones. The restraining order prohibits Jones from going within 100 yards of Barstis, his wife, his daughter, his home, his wife's work, his daughter's home, his family's cars, and the Henry Mayo campus.

Jones filed a timely notice of appeal from the May 3, 2017 order.

## DISCUSSION

### 1. Applicable Law and Standard of Review

Section 527.6, subdivision (a), permits a victim of harassment to obtain a "temporary restraining order and an order after hearing 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." Subdivision (b)(1) defines a " 'Course of conduct' " 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." To warrant issuing a restraining order under the statute, "[t]he 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." (§ 527.6, subd. (b)(3).) Constitutionally

protected activity is excluded from the statute's definition of " 'Course of conduct.' " (See § 527.6, subd. (b)(1).)

The trial court must issue a restraining order if it finds by clear and convincing evidence that unlawful harassment exists. (§ 527.6, subd. (i).) But an injunction restraining future conduct is only authorized if it appears the 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. (*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.]" (*Ibid.*)

**2. Substantial evidence supports the court's decision to issue the three-year restraining order.**

Here, substantial evidence supports a finding that Jones engaged in a harassing course of conduct that would cause a reasonable person to suffer emotional distress. Jones admitted that she sent Barstis more than 500 text messages within a two-year period, many of which solicited a sexual relationship with him. All of these text messages were sent *after* Barstis had told Jones he was not interested in having a relationship with her, and many were sent after Barstis had blocked Jones's phone number. Jones also confronted Barstis between 8 to 12 times at the Henry Mayo campus, waited for him for three days at UCLA's

Santa Monica center, went to his home twice, and parked outside his wife's office and his daughter's home on at least five occasions, all of which also occurred *after* Barstis told Jones he did not want to have a relationship with her. These activities clearly constitute harassment that would cause a reasonable person to suffer substantial emotional distress. (See *Ensworth v. Mullvain* (1990) 224 Cal.App.3d 1105, 1111–1112 [defendant engaged in a harassing course of conduct when he followed the plaintiff, circled the plaintiff's office building, kept the plaintiff's home under surveillance, made numerous phone calls to the plaintiff, and sent the plaintiff threatening letters].)

There was also evidence that Jones's conduct caused Barstis to suffer substantial emotional distress. In his declaration, Barstis testified that Jones's conduct made him "very concerned for the safety of both [his] wife and [his] daughter" and caused him to hire a private security company to guard his home. And Jones's conduct was likely to recur in the future based on her relentless attempts to contact Barstis over several years despite the fact that he repeatedly told her he was not interested in having a relationship with her.

Jones argues the order lacks evidentiary support because there is no evidence she was a " 'true threat' " to Barstis or that she ever "stalked" him within the meaning of section 527.6, subdivision (b)(1). (All caps removed.) But Barstis was not required to prove Jones threatened him with violence or stalked him to obtain a restraining order under section 527.6, subdivision (b). Although evidence of such conduct may support granting a restraining order, it is not required if the petitioner otherwise establishes that the defendant engaged in a course of conduct, such as through harassing correspondence, that would cause a

reasonable person to suffer substantial emotional distress. (See § 527.6, subd. (b)(1) & (3).) As discussed above, the evidence supports a finding that Jones engaged in such conduct.

**3. Jones's other contentions lack merit.**

Jones raises other arguments challenging the court's decision to issue the three-year restraining order against her. As we explain below, all of these arguments lack merit or have been forfeited.

It is a fundamental rule of appellate practice that the judgment of a lower court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness. (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) To overcome this presumption of correctness, the appellant must affirmatively show error. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) As part of this burden, the appellant must provide the reviewing court with an adequate record, accurate citations to the parts of the record that support the appellant's claims, and sufficient legal argument. (*Yield Dynamics, Inc. v. TEA Systems Corp.* (2007) 154 Cal.App.4th 547, 556–557.) Any issues that are not supported by an adequate record, accurate record citations, or sufficient legal discussion will be deemed forfeited. (*Keyes v. Bowen* (2010) 189 Cal.App.4th 647, 655–656 (*Keyes*).)

Jones insists we should dismiss this case because Callahan coerced Barstis into filing "this TRO" and used "two superior courts to unlawfully continue her control over [Barstis] to keep him away from [Jones]." (All caps removed.) Jones appears to argue the court erred in granting Barstis's request for a restraining order because: (1) Callahan drugged and manipulated Barstis into seeking the restraining order; and (2) some of the

same documents filed in the underlying action were also filed in the action the Regents brought on Callahan's behalf seeking a restraining order against Jones. As to Jones's first point, there is no evidence in the record supporting this claim aside from Jones's testimony, which the trial court discredited and found was "extremely unusual." Even if such evidence did exist, Jones cites no authority that would require reversal of a restraining order on the grounds that a third party convinced a petitioner to seek a restraining order against a defendant. As to Jones's second point, she cites no authority that evidence of harassing conduct by a defendant cannot be used simultaneously in two cases brought by different petitioners seeking restraining orders against the same defendant.

Jones also contends she was denied a hearing on the TRO and her various motions. But Jones was not entitled to a hearing before the court issued the TRO. Under section 527.6, subdivision (d), a court may issue a TRO "with or without notice" if the petitioner complies with the statute's other requirements and the court believes a TRO is warranted. (See § 527.6, subd. (d) ["A temporary restraining order may be issued with or without notice, based on a declaration that, to the satisfaction of the court, shows reasonable proof of harassment of the petitioner by the respondent, and that great or irreparable harm would result to the petitioner."].) As for the other matters on which Jones claims she was denied a hearing, she does not identify any specific motion or request for which she was denied an opportunity to be heard. In fact, the court conducted two hearings, one on April 6, 2017, and one on May 3, 2017, at which Jones appeared and at which the court ruled on the numerous motions and requests Jones had filed. Jones does not identify how

she was deprived of a hearing before the court ruled on these motions.[4]

Further, Jones appears to contend the court erred because it issued the restraining order based solely on the declarations of the parties, without hearing oral testimony from live witnesses. Jones has forfeited this claim of error by failing to cite any relevant authority. (See *Keyes*, *supra*, 189 Cal.App.4th at pp. 655–656.) In any event, her claim lacks merit. Although a court must hear oral testimony, *if such testimony is offered*, it may issue a permanent injunction based solely on the affidavits and declarations of the parties. (See *Schraer v. Berkeley Property Owners' Assn.* (1989) 207 Cal.App.3d 719, 732–733; see also § 527.6, subd. (i).) Because Jones never made a request to present oral testimony at the May 3, 2017 hearing, the court did not err in issuing the restraining order based on the parties' declarations.

In addition, Jones contends the court lacked personal jurisdiction over her when it issued the three-year restraining order because there is no proof of service in the "case file" showing that she was properly served with the TRO. (All caps removed.) We disagree. Certainly, section 527.6, subdivision (m) requires the defendant to be personally served with a copy of the petition and any TRO at least five days before the hearing on whether to issue a permanent restraining order. But Jones

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[4] There is also no basis to support Jones's contention that the court decided to issue the challenged order before the May 3, 2017 hearing. Although the court stated "the fact is that this has already been granted," the court was clearly referring to correction of the April 6 minute order to reflect that Jones's prior motion for a continuance had been granted.

expressly acknowledged in her response to Barstis's petition for a restraining order that she was served with the petition on April 3, 2017, more than five days before the original hearing on whether to issue the permanent restraining order, which was scheduled for April 12, 2017. And she implicitly conceded she was served with the TRO when she described the contents of that order in her response. In any event, Jones appeared at the April 12, 2017 hearing, at which the court granted her request to continue the hearing on the permanent restraining order to May 3, 2017. Jones also filed numerous motions and requests in opposition to Barstis's petition, and she appeared at the May 3, 2017 hearing and argued in opposition to Barstis's petition. As a result, Jones cannot show she was prejudiced by any failure to properly serve her with the TRO. (See *Freeman v. Sullivant* (2011) 192 Cal.App.4th 523, 527 ["A judgment is reversible only if any error or irregularity in the underlying proceeding was prejudicial."], citing § 475; Cal. Const., art. VI, § 13.)

In her reply brief, Jones argues the court should have dismissed Barstis's petition at the May 3, 2017 hearing because that hearing was scheduled for 8:30 a.m., but Barstis did not arrive in court until almost an hour later. Jones has forfeited this claim of error by not raising it in her opening brief (see *REO Broadcasting Consultants v. Martin* (1999) 69 Cal.App.4th 489, 500); she cites no authority to support this argument (see *Keyes*, *supra*, 189 Cal.App.4th at pp. 655–656); and she has not shown how she was prejudiced by the court starting the hearing around 9:30 a.m. Regardless, this contention lacks merit. A trial judge has broad discretion to control the manner in which she conducts proceedings in her courtroom, including the scheduling of any

hearings. (See § 128; *People ex rel. Reisig v. Acuna* (2017) 9 Cal.App.5th 1, 23 ["The trial judge has inherent and statutory authority to control the order of proceedings, regulate the order of proof, provide for the orderly conduct of the proceedings, and control the litigation."].)

Throughout her opening and reply briefs, Jones raises other general claims of error without identifying any specific erroneous acts, or that lack evidentiary support or reasoned legal analysis. Those claims are also forfeited. (See *Keyes*, *supra*, 189 Cal.App.4th at pp. 655–656.)

## DISPOSITION

The order is affirmed. Barstis shall recover his costs on appeal.

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

LAVIN, J.

WE CONCUR:

EDMON, P. J.

KALRA, 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.