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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

JACQUELINE ROSE NORVELL, Plaintiff and Respondent, v. WALI H. SMITH, Defendant and Appellant.	B290880 (Los Angeles County Super. Ct. No. 18STRO01292)

APPEAL from an order of the Superior Court of Los Angeles County, Laura Hymowitz, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Law Office of Philip A. Iadevaia and Philip A. Iadevaia for Defendant and Appellant.

Seyfarth Shaw, T. Larry Watts and Kiran A. Seldon for Plaintiff and Respondent.

Appellant Wali H. Smith appeals from the trial court's issuance of a restraining order protecting his tenant, Jacqueline Rose Norvell, and her son. Smith brought an unlawful detainer action against Norvell in 2016. After the parties settled the case by stipulated judgment, Smith began regularly videotaping and photographing Norvell and her guests, looking in Norvell's windows, and entering her home on false pretenses. Smith contends his conduct does not meet the standard for civil harassment under section 527.6 of the Code of Civil Procedure,[1] because it was done for the legitimate purpose of documenting lease violations and was constitutionally protected activity in furtherance of his right to petition the government. Smith also asserts the trial court deprived him of due process by not allowing him to cross-examine Norvell at the hearing, and the scope of the restraining order is unconstitutional. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Norvell's Request for a Restraining Order*

On February 23, 2018 Norvell filed a request for a restraining order against Smith. In an attachment incorporated into the request, Norvell asserted Smith "filed a meritless unlawful detainer action" against Norvell, which the parties settled by stipulated judgment in June 2016. Since then, Smith entered Norvell's home on 10 occasions for the pretext of maintenance but "never repaired anything." Norvell stated Smith "regularly leers at me and photographs me through my windows.

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[1] All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

He has even climbed atop a roof to see me in the shower." Norvell added, "When I come home from work, he is standing near my assigned parking space and when I leave my car, he mumbles 'fuck you' or 'bitch' [or] he calls me a 'clown' . . . ." Norvell also declared Smith had "approached [Norvell] with a hammer," "shoved [her] friend," and directed a "hand gesture to mimic a gun while saying 'pow-pow-pow'" at Norvell and her guests.

Norvell attached seven declarations from her guests attesting to Smith following, photographing, videotaping, and threatening Norvell or her guests. Norvell also attached Smith's notices to enter her home issued from August 2016 to June 2017, which show Smith entered Norvell's home 10 times in 10 months for inspection and repairs.

Norvell declared Smith's conduct harmed her by causing her migraines, vertigo, stress, and insomnia. Norvell requested a stay-away order and an order prohibiting Smith from harassing her, including taking photographs or videos of her or her guests.

On February 23, 2018 the trial court issued a temporary restraining order prohibiting Smith from harassing or contacting Norvell and her son, Joshua Bowen, and ordering Smith to stay at least five yards away from Norvell, Bowen, and their home.

B. *The Hearing on Norvell's Petition*

At the March 16, 2018 hearing, Norvell and Smith were represented by counsel. Norvell testified Smith was her landlord, and the two lived in different apartments within the same four-unit building. Smith had brought an unsuccessful unlawful detainer action against Norvell "a while back." According to Norvell, since then, "every time I go to work, every time I come home, [Smith] is videotaping me. He is taking pictures." Smith

used his cell phone to take the photographs and video. When the court inquired whether Smith had "done anything with these pictures," Norvell replied, "I don't know. He is leering in my windows. He's peeking inside. He is making excuses to come into my home. He gives me notice. For 10 months in a row he gave me notice to come in, and he walks around and looked and peers in closets . . . . It is to the point where I can't even come home at night and open a window. He'll make an excuse—act like he's watering the plants." Norvell added, "He had made gun gestures when I go to my car . . . . I secretly recorded him. I have him on video stopping whatever he's doing, making condescending remarks to me." Norvell explained she used a hidden camera to record Smith "so that [she] can have proof." Norvell's counsel informed the court Norvell was off work on doctor's orders and had recently been released from the hospital after being admitted "for several days with stress related vertigo" and high blood pressure.

The court then inquired of Smith, "[A]re you peering in her windows?" Smith replied, "No, I am not." The court asked, "Are you constantly taking pictures of her?" Smith responded, "No, I'm not." The trial court followed up, "So she says that you're harassing her. What are you doing?" Smith answered, "You know . . . I own the property. . . . I am basically protecting what is going on around the property. The fact that I am retired, I am usually gardening or taking care of things. You know, and it is just what I do every day in terms of taking care of the property."

Smith's attorney, Eric Bautista, explained the unlawful detainer action Smith brought against Norvell was settled by stipulation of the parties, with "mutual orders that they were not to harass each other." Bautista added that the stipulation allowed Smith to "have security cameras" and prohibited Norvell from

having "people staying there for more than 15 days because that was what precipitated this . . . the constant traffic that is going in and out of her unit."

The court asked Smith, "Has that stopped at all, sir?" Smith responded, "Well, it's slowing. I mean, it's no longer the periods of time, you know." When the court asked who Norvell had staying in her apartment, Smith stated, "She's had from relatives to friends." The court stated it was "legitimate" for Norvell to have friends and relatives over to her apartment. Bautista interjected Norvell had "incorporated a business" at her address and had employees. But Norvell explained her "business" was an organization called "Brown Bag Lady," which met at her home once a month to prepare lunches for the homeless, and Norvell did not derive a profit from the work.

Norvell informed the court she brought five videos showing Smith taking photographs or video of Norvell, and that a number of witnesses were present and ready to testify. The court declined to hear Norvell's witnesses, but agreed to view one of Norvell's videos.[2] Norvell showed the video to Smith and Bautista; then the court watched it. The video[3] showed Smith standing outside in a parking area, holding his cell phone up, appearing to take

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[2] Norvell has not challenged the trial court's decision to exclude the testimony of her witnesses and her four unviewed videos.

[3] We granted the parties' stipulated request to augment the record with the 2016 stipulated judgment and the video viewed by the court. Although the trial court did not formally admit the video exhibit into evidence, we consider the video on appeal because the record makes clear the trial court considered and relied on it.

photographs or video of Norvell, who was backing out of a parking spot and exiting the parking area while simultaneously recording Smith. An off-camera voice states, "Here I am on my way to a movie, here's my weird landlord who's videotaping me. Oh my god, he's a weirdo." A second voice speaks briefly off-camera, but is not decipherable.

After viewing the video, the trial court reflected, "Mr. Smith[] presents as a very good witness and very believable and very honest guy. And I was tending to not grant the restraining order because I think taking pictures of neighbors and doing this should not be so upsetting to neighbors that . . . their blood pressure is going up, and they are having this kind of re[ac]tion; however, Mr. Smith clearly said that he never videos her . . . ." Smith interjected, "No, I didn't say that." The court responded, "Yes, you did. You said you don't do that. In any case, sir, [in the video] you are standing out there. It's broad daylight. She is just going to her car, and it is clear that you are harassing her. I'm glad there is nothing more between you parties, but I am now tending to believe [Norvell]."

Bautista asked to "submit the [2016] stipulation," adding that Smith was entitled under the stipulated judgment to have security cameras. The court responded, "It is not relevant now as far as I am concerned. It looks like he is continuing to harass her, so I am going to grant the restraining order." The court found, "There is clear and convincing evidence by the petitioner and then the video that this is ongoing, annoying and harassing behavior and clearly causing substantial emotional distress."

The court issued a civil harassment restraining order after hearing, protecting Norvell and Bowen. The court limited its stay-away order to prevent Smith from coming within five feet of

Norvell (instead of five yards) and allowed Smith continued access to Norvell's apartment as long as he stayed five feet away from Norvell. The court added, "But it is mostly that he's not harassing her, not taking pictures of her, and not pointing fingers at her, and not looking in windows, if that's what he's doing." Smith timely appealed.[4]

DISCUSSION

A. *Standard of Review*

"We review issuance of a protective order [under section 527.6] for abuse of discretion, and the factual findings necessary to support the protective order are reviewed for substantial evidence." (*Parisi v. Mazzaferro* (2016) 5 Cal.App.5th 1219, 1226 (*Parisi*); accord, *Harris v. Stampolis* (2016) 248 Cal.App.4th 484, 497 [""The appropriate test on appeal is whether the findings (express and implied) that support the trial court's entry of the

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[4] Smith filed his notice of appeal on June 19, 2018. According to the March 16, 2018 restraining order, Smith was present at the hearing, and "[n]o other proof of service is needed." Neither the superior court clerk nor either party served a notice of entry of the order or a filed-endorsed copy of the order. Therefore, Smith had 180 days to file his notice of appeal from the order. (Cal. Rules of Court, rule 8.104(a); see *Alan v. American Honda Motor Co., Inc.* (2007) 40 Cal.4th 894, 902 [""Because the time limits for filing a notice of appeal are jurisdictional, we must apply [rule 8.104] strictly and literally according to its terms . . . ."]; *Los Angeles Times v. Alameda Corridor Transportation Authority* (2001) 88 Cal.App.4th 1381, 1390, fn. 7 ["Actual knowledge of the entry of judgment is not enough to waive the right to receive written notice of entry."].)

restraining order are justified by substantial evidence in the record.'"]; *R.D. v. P.M.* (2011) 202 Cal.App.4th 181, 188.) However, "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." (*R.D.*, at p. 188; accord, *Parisi*, at p. 1226; *Harris*, at p. 497.) "'We resolve all conflicts in the evidence in favor of . . . 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 . . . .'" (*Parisi*, at p. 1226; accord, *Harris*, at p. 499.)

B. *Standard for Issuance of a Civil Harassment Restraining Order Under Section 527.6*

Under section 527.6, subdivision (a)(1), "A person who has suffered harassment . . . may seek a temporary restraining order and an order after hearing prohibiting harassment as provided in this section." Harassment is defined 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." (§ 527.6, subd. (b)(3).) A course of conduct is defined as "a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including following or stalking an individual, making harassing telephone calls to an individual, or sending harassing correspondence to an

individual by any means, including, but not limited to, the use of public or private mails, interoffice mail, facsimile, or email." (§ 527.6, subd. (b)(1).)

"'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, supra*, 5 Cal.App.5th at p. 1227; accord, *Brekke v. Wills* (2005) 125 Cal.App.4th 1400, 1412.) "If the judge finds by clear and convincing evidence that unlawful harassment exists, an order shall issue prohibiting the harassment." (§ 527.6, subd. (i).) After finding harassment, upon a showing of good cause, the court may include named family or household members in the restraining order. (§ 527.6, subd. (c).)

"The statute does not require the court to make a specific finding on the record that harassment exists, nor does it require specific findings of the statutory elements of harassment as defined in subdivision (b)." (*Ensworth v. Mullvain* (1990) 224 Cal.App.3d 1105, 1112; accord, *Cooper v. Bettinger* (2015) 242 Cal.App.4th 77, 92.) Rather, the granting of the injunction implies the trial court found there was conduct constituting harassment under section 527.6. (*Ensworth*, at p. 1112 [upholding issuance of injunction under § 527.6 based on implied finding appellant engaged in harassing course of conduct that caused substantial emotional distress where appellant followed her prior psychologist, surveilled her house, called her repeatedly, and sent her threatening letters after the psychologist terminated treatment].)

C. *The Trial Court Did Not Abuse Its Discretion in Issuing Its Civil Harassment Restraining Order After Hearing*

Smith contends he did not engage in a course of conduct constituting harassment under section 527.6, subdivision (b)(3), because his conduct was for a legitimate purpose, was constitutionally protected, and did not otherwise rise to the level of harassment. We conclude substantial evidence supports the trial court's finding of harassment.

1. *Substantial evidence supports the trial court's implied finding Smith's videotaping and taking photographs of Norvell was not for a legitimate purpose or otherwise constitutionally protected*

Smith contends he took photographs and videos of Norvell for the legitimate purpose of documenting her lease violations, which was constitutionally protected activity in furtherance of his right to petition for enforcement of the 2016 stipulated judgment. The parties disagree on who had the burden to show Smith's conduct was not for a legitimate purpose or constitutionally protected. Even if Norvell bore the burden, she presented substantial evidence Smith's conduct lacked a legitimate purpose and was not otherwise constitutionally protected.

"Conduct which serves a legitimate purpose is outside the definition of 'harassment' and cannot be enjoined pursuant to the summary procedures of section 527.6, even if such conduct might ultimately be enjoinable according to normal injunctive procedures after full development of the facts and law." (*Byers v. Cathcart* (1997) 57 Cal.App.4th 805, 812 (*Byers*).) Here, Norvell testified, "every time I go to work, every time I come home, [Smith] is videotaping me. He is taking pictures." Norvell also presented

video evidence of Smith making a recording of her in her car leaving the building's parking area to go to a movie. Norvell's account of Smith regularly recording her coming to and leaving her apartment, in combination with the video showing Smith filming Norvell in her car, provided substantial evidence Smith's taking of photographs and videos was not done for the legitimate purpose of documenting lease violations.

Moreover, Smith failed to provide the trial court with any explanation for his conduct other than his right to "have security cameras" under the 2016 stipulated judgment.[5] Smith offered no evidence of Norvell's lease violations, instead admitting Norvell's

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[5] Smith notes in his opening brief the trial court "refused to admit" the 2016 stipulated judgment into evidence, "depriving Smith of its inclusion in the appellate record." However, at the parties' request, we have augmented the record to include the judgment. Further, to the extent Smith contends the trial court erred in failing to consider the judgment, he has failed to explain how the judgment supports his defense. (See *Hernandez v. First Student, Inc.* (2019) 37 Cal.App.5th 270, 277 ["'[T]o demonstrate error, an appellant must supply the reviewing court with some cogent argument supported by legal analysis and citation to the record.'"]; *City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 287 ["[W]e may disregard conclusory arguments that are not supported by pertinent legal authority or fail to disclose the reasoning by which the appellant reached the conclusions he wants us to adopt."].) Moreover, Bautista informed the trial court of the relevant terms of the stipulated judgment, which Smith claimed prevented Norvell from having guests stay longer than 15 days and granted Smith the right to have security cameras. With knowledge of these terms, the trial court found Smith's conduct was harassment. Smith does not argue the stipulated judgment allowed him to take photographs or videos of Norvell in a harassing manner.

guests were "no longer [staying] the periods of time" prohibited by the stipulated judgment. And as the trial court observed, it was "legitimate" for Norvell to have friends and relatives visit her home.

Byers, supra, 57 Cal.App.4th 805, relied on by Smith, is distinguishable. In *Byers*, the trial court had issued an order restraining the plaintiff from parking her car on a driveway easement. (*Id.* at pp. 809-810.) The Court of Appeal reversed, reasoning, "Since the general act of parking a car serves a legitimate need, and since there was no evidence in the record to support a conclusion that plaintiff was parking on the driveway easement for a purpose other than to meet this legitimate need, there is no support in the record for the necessary conclusion that the car parking constituted harassment." (*Id.* at p. 812.) By contrast, Smith's continuous recording of Norvell coming to and leaving her apartment did not on its face serve a legitimate purpose.

Smith's argument his actions were constitutionally protected also fails. Under section 527.6, subdivision (b)(1), "[c]onstitutionally protected activity is not included within the meaning of course of conduct." The right to petition the government, including by filing a lawsuit, is constitutionally protected activity. (*Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 736, fn. 5 ["Our past pronouncements emphasize that the right of access to courts is an aspect of the First Amendment right of petition."]; *Harris v. Stampolis, supra*, 248 Cal.App.4th at p. 502, fn. 5 [constitutionally protected conduct could not be considered as part of course of conduct, noting defendant's "filing of a harassment complaint . . . and his complaint of false imprisonment to the police were not considered

in [the trial court's] determination that harassment had occurred"]; *Byers, supra*, 57 Cal.App.4th at p. 809 [claim plaintiff caused police department to issue a citation and "used the 'legal system (i.e., Police and Courts) to harass, annoy and cause needless expenditure of money and time'" could not be considered in analysis of sufficiency of the evidence to support injunction under § 527.6].)

The right to petition encompasses "'breathing space'" that protects nonpetitioning conduct that is "(1) incidental or reasonably related to an actual petition or actual litigation or to a claim that could ripen into a petition or litigation [where] (2) the petition, litigation, or claim is not a sham." (*Tichinin v. City of Morgan Hill* (2009) 177 Cal.App.4th 1049, 1068 [defendant's hiring of private investigator to investigate possible legal claim was protected activity]; accord, *Pacific Gas & Electric Co. v. Bear Stearns & Co.* (1990) 50 Cal.3d 1118, 1134, 1136 [in order to provide "'breathing space'" for exercise of constitutional right to petition, liability for inducing a party to file litigation may not be imposed unless lawsuit is a sham]; *Takhar v. People ex rel. Feather River Air Quality Management Dist.* (2018) 27 Cal.App.5th 15, 28 (*Takhar*) [agency's investigation of company's alleged violation of air pollution laws, issuance of notice of violation, and offer of settlement fell within protected """breathing space""" of right to petition].)

Although Smith is correct taking photographs and videos could be a reasonable part of an investigation in support of litigation, Smith presented no evidence his recording of Norvell was done to prepare for legal action based on lease violations. As noted, Smith admitted Norvell's guests were "no longer [staying] the periods of time" in excess of 15 days. Norvell on the other

hand presented testimony and video evidence Smith recorded her every coming and going from her apartment, which conduct was not designed to show Norvell's guests were staying for prolonged periods. Substantial evidence therefore supports the trial court's implied finding Smith did not act within the "breathing space" of the right to petition when he took photographs and videos of Norvell because Smith's conduct was not incidental or reasonably related to possible litigation. (See *Tichinin, supra*, 177 Cal.App.4th at p. 1068 ["nonpetitioning conduct is within the protected 'breathing space' of the right of petition if that conduct is . . . incidental or reasonably related to an actual petition or actual litigation"]; *Takhar, supra*, 27 Cal.App.5th at p. 28 [same].)

2. *Substantial evidence supports the trial court's finding of harassment*

Norvell presented evidence Smith continuously took photographs and videos of her coming to and leaving her apartment, "leer[ed]" and "peek[ed]" into her home through her windows, and made a threatening hand gesture toward her mimicking a gun.[6] Smith argues these incidents were not sufficient to constitute a harassing course of conduct. But section 527.6, subdivision (b)(1), defines a course of conduct as "a pattern of conduct composed of a series of acts over a period of time,

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[6] Although the trial court did not expressly rely on Norvell's declaration in support of her application for the temporary restraining order, Norvell's averments that Smith "climbed atop a roof to see me in the shower," "walk[ed] by [her] window and sa[id] 'Fuck you,'" "yell[ed] 'Fuck you' at [her] when [she] was washing dishes," and called her a "bitch" and a "clown," lend further support to the trial court's finding of unlawful harassment.

however short, evidencing a continuity of purpose." Contrary to Smith's assertion his actions were at most isolated incidents, Norvell testified Smith's conduct was regular, recurring, and ongoing.[7] Substantial evidence therefore supported the trial court's implied finding Smith's actions constituted "a series of acts" that "seriously alarm[ed], annoy[ed], or harass[ed]" Norvell. (§ 527.6, subd. (b)(1) & (3).)

We reject Smith's argument his conduct would not cause a reasonable person to suffer substantial emotional distress. A reasonable tenant would be disturbed by her landlord "leering in her windows" and persistently taking photographs and videos of her whenever she leaves or comes to her apartment. Smith's argument on appeal Norvell's version of events is "exaggerate[d] to the point of hyperbole" ignores the trial court's credibility determination in favor of Norvell, to which we defer. (*Parisi, supra*, 5 Cal.App.5th at p. 1229 [reviewing court does not reassess witness credibility]; *City of Glendale v. Marcus Cable Associates, LLC* (2014) 231 Cal.App.4th 1359, 1385 ["'An appellate court does not reweigh the evidence or evaluate the credibility of witnesses, but rather defers to the trier of fact.'"].)

Finally, Smith's argument "Norvell did not prove that Smith specifically targets her for videotaping, as opposed to her guests,

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[7] Smith asserts Norvell's claim he was looking in her windows and making a gun gesture with his hand were "stale" and based on two-year-old allegations. But the trial court properly considered Smith's actions as occurring in the present based on Norvell's testimony "he is videotaping me" and "[h]e is leering in my windows. He is peeking inside." Smith did not challenge Norvell's description of events or attempt to establish these events occurred years before Norvell's request.

or that it occurs anywhere outside the apartment building or its perimeter" fails. Norvell's testimony and video provided substantial evidence from which the trial court could have concluded Smith intentionally recorded and photographed Norvell. Whether a second person was present in Norvell's car while Smith was videotaping Norvell is irrelevant—the video supports the conclusion Smith's recording was directed at Norvell.[8]

D. *The Trial Court Provided Smith Due Process*

Smith contends he was deprived of due process because the trial court did not give him an "opportunity to cross-examine Norvell and rebut the videotape." The record is to the contrary. "'[A]lthough the procedures set forth in the harassment statute are expedited, they contain certain important due process safeguards. Most notably, a person charged with harassment is given a full opportunity to present his or her case, with the judge *required* to receive relevant testimony and to find the existence of harassment

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[8] We decline Smith's request to make factual findings outside the record on appeal under section 909, which provides a "reviewing court may make factual determinations contrary to or in addition to those made by the trial court." Smith has made no showing of exceptional circumstances that would support the making of factual findings on appeal. (*In re Zeth S.* (2003) 31 Cal.4th 396, 408, fn. 5 ["'Absent exceptional circumstances, no such findings [based on the receipt of evidence outside the record on appeal pursuant to section 909] should be made.'"]; *In re B.D.* (2019) 35 Cal.App.5th 803, 815 [""'Although appellate courts are authorized to make findings of fact on appeal by Code of Civil Procedure section 909 . . . , the authority should be exercised sparingly. [Citation.] Absent exceptional circumstances, no such findings should be made.'""].)

by "clear and convincing" proof . . . ." (*Nora v. Kaddo* (2004) 116 Cal.App.4th 1026, 1028; accord, *Schraer v. Berkeley Property Owners' Assn.* (1989) 207 Cal.App.3d 719, 730-731.) "'To limit a defendant's right to present evidence and cross-examine . . . run[s] the real risk of denying such a defendant's due process rights . . . .'" (*Nora*, at p. 1029; accord, *Schraer*, at p. 733.)

Both Norvell and Smith testified at the hearing. At no point after the trial court viewed Norvell's video did Smith or his attorney request Smith provide additional testimony or question Norvell. Smith's attorney only requested the court admit the 2016 stipulated judgment to show he was entitled to take security camera footage, which request the court denied. Because Smith failed to request an opportunity to question Norvell, he has forfeited any argument he was denied due process on this basis. (See *In re Marriage of Minkin* (2017) 11 Cal.App.5th 939, 958-959 [wife forfeited due process challenge based on trial court cutting off cross-examination of husband where she failed to raise due process objection in the trial court]; *Mendoza v. Ramos* (2010) 182 Cal.App.4th 680, 687 [father forfeited argument he had no opportunity to cross-examine mother at child support hearing by not requesting opportunity].)

Our decision in *Nora v. Kaddo, supra*, 116 Cal.App.4th 1026, relied on by Smith, is distinguishable. In *Nora*, the trial court denied the parties' requests to present testimony at the hearing on the plaintiff's request for a restraining order, instead relying only on the declarations and exhibits submitted by the parties. (*Id.* at pp. 1028-1029.) We reversed, explaining the court's limitation on the defendant's right to present evidence and cross-examine witnesses ran "'the real risk of denying such a defendant's due process rights.'" (*Id.* at p. 1029.) Here, the trial court allowed both

parties to testify and did not bar Smith from questioning Norvell. Smith denied he peered into Norvell's windows and explained he was retired, owned the building, and every day was "basically protecting what is going on around the property" and "gardening or taking care of things." By the time Smith testified, Norvell had testified Smith recorded her every time she came to and left her apartment, but Smith failed to address why he was taking photographs or videos of her, instead simply denying he was "constantly taking pictures of her." The record does not support Smith's argument the trial court unduly truncated Smith's testimony or denied a request by Smith to examine Norvell.

E. *The Trial Court's Order Is Constitutional*

Smith argues the restraining order is unconstitutional because it constitutes a prior restraint on his speech and petitioning activity and is vague. This contention lacks merit.

"[T]he standard that governs whether [a restraining order] can pass muster under the federal and state Constitutions' free speech guarantees is . . . whether it imposes no more burden than is necessary to serve its legitimate governmental interests and whether it is thus a reasonable 'time, place, and manner' restriction in light of the importance of those interests."[9] (*R.D. v. P.M., supra*, 202 Cal.App.4th at p. 192; accord, *Madsen v. Women's Health Center, Inc.* (1994) 512 U.S. 753, 765 [evaluating constitutionality of injunction for "whether the challenged provisions of the injunction burden no more speech than necessary to serve a significant government interest"].)

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[9] Smith does not contend the restraining order is not content-neutral.

Smith has made no showing the restraining order burdens his speech more than necessary to achieve its important goals. To the contrary, the trial court carefully tailored the restraining order to the circumstances by reducing the stay-away zone to five feet and allowing Smith continued access to Norvell's apartment to perform his legitimate duties as landlord, as long as he maintains his physical distance from Norvell. Although at the hearing the court clarified that Smith could not take pictures of Norvell, this did not interfere with Smith's legitimate speech and petitioning rights because, as discussed, the trial court concluded Smith's conduct was not directed at documenting lease violations or any other legitimate or constitutionally protected purpose. Importantly, Smith is not restrained from gathering evidence for petitioning purposes through nonharassing means, such as installing security cameras.

We also reject Smith's argument the order is void for vagueness. "'Even if an injunction does not impermissibly constitute a prior restraint, the injunction must be sufficiently precise to provide "a person of ordinary intelligence fair notice that his contemplated conduct is forbidden." [Citations.] An injunction is unconstitutionally vague if it does not clearly define . . . the conduct prohibited.'" (*Parisi, supra*, 5 Cal.App.5th at p. 1231; accord, *Evans v. Evans* (2008) 162 Cal.App.4th 1157, 1167.) Smith has not shown the restraining order contains any prohibition that "fails to adequately delineate which of [Smith's] future statements [or actions] might violate the injunction." (*Parisi*, at p. 1231.) The trial court utilized Judicial Council form CH-130 to order Smith not to "harass, intimidate, molest, attack, strike, threaten, assault (sexually or otherwise), hit, abuse, destroy personal property of, or disturb the peace" of Norvell and Bowen. In the context of a

dispute between Smith and Norvell about Smith's excessive photographing and videotaping and looking into Norvell's windows, the scope of the prohibited conduct is clear. Smith may not "harass" Norvell or "disturb [her] peace" by intrusively recording or watching her.

Smith's reliance on *Parisi, supra*, 5 Cal.App.5th at page 1231 is misplaced. The *Parisi* court concluded a restraining order provision prohibiting the appellant from "writing letters to third parties that '. . . could be interpreted as a pattern of conduct with the intent to harass'" did not provide adequate notice of prohibited conduct, because "it [was] not limited to statements which the court has judicially determined to be harassing and defamatory." (*Ibid.*) Here, Smith was placed on notice his continuing to photograph and videotape Norvell in a harassing manner with no legitimate purpose would violate the restraining order.

DISPOSITION

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

FEUER, J.

WE CONCUR:

PERLUSS, P. J. ZELON, J.