Filed 8/31/18 Sullivan v. Cohen CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

CONSTANCE SULLIVAN, Plaintiff and Respondent, v. BATSHEVA COHEN, Defendant and Appellant.	B282766 (Los Angeles County Super. Ct. No. LS027753)
BATSHEVA COHEN, Plaintiff and Appellant, v. CONSTANCE SULLIVAN, Defendant and Respondent.	(Los Angeles County Super. Ct. No. LS027775)

APPEAL from orders of the Superior Court of Los Angeles County, Alicia Y. Blanco, Judge. Affirmed.

Batsheva Cohen, in pro. per.; and Shahaab M. Tehrani for Appellant Batsheva Cohen.

No appearance for Respondent Constance Sullivan.

Batsheva Cohen appeals from (1) an order granting Constance Sullivan's request to renew a restraining order against Cohen, and (2) an order denying Cohen's request to renew a restraining order against Sullivan. We affirm the orders.

FACTUAL AND PROCEDURAL SUMMARY[1]

Cohen and Sullivan are neighbors in the same Tarzana apartment complex. In March 2016, Sullivan filed a request for a restraining order against Cohen pursuant to Code of Civil Procedure section 527.6. The request sought protection for herself and her then 11-year-old son. (*Sullivan v. Cohen* (Super. Ct. L.A. County, 2016, No. LS027753).)

In April 2016, Cohen requested a civil harassment restraining order against Sullivan. (*Cohen v. Sullivan* (Super. Ct. L.A. County, 2016, No. LS027775).)

Cohen's request included documents referring to the following incidents:

(1) On May 22, 2015, Cohen's car received multiple scratches, which Cohen blamed on Sullivan;

(2) On May 26, 2015, Sullivan elicited her son, some "street kids," and neighbors to stand outside Cohen's apartment and, in loud voices, accuse Cohen of being a child molester; Sullivan also denied damaging Cohen's car and told Cohen that she would "kick [her] ass" before she would do something to Cohen's car;

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[1] Cohen's brief sets forth numerous facts without citation to or support in the record. We have limited our factual summary to the facts disclosed by the record. (See *Regents of University of California v. Sheily* (2004) 122 Cal.App.4th 824, 826-827 & fn. 1.)

(3) On August 24, 2015, someone spilled coffee on Cohen's car, and Cohen believed Sullivan did it in retaliation for prior confrontations;

(4) On February 11, 2016, Cohen spoke to Sullivan about how Sullivan's son had been calling Cohen a child molester and saying that she is crazy; in response, Sullivan yelled at Cohen demanding that Cohen apologize to her son for calling him a "black mother f[uc]ker";

(5) On March 15, 2016, Cohen noticed that someone "key[ed]" Sullivan's car; Sullivan accused Cohen of the act and yelled at her: "I will hurt you! . . . Don['t] walk next to me," and "I will attack you physically" (capitalization omitted);

(6) On March 21, 2016, Sullivan's boyfriend told Cohen that Sullivan's son saw Cohen scratch Sullivan's car; when Cohen responded by saying that the son is a liar, Sullivan's boyfriend ran up to her and "very close to [her] face," yelled at Cohen that the son is not a liar and called Cohen a "fucking crazy bitch" (capitalization omitted).

On April 20, 2016, the court granted each party's request for restraining orders, and barred each from coming within three yards of the other. The restraining order against Cohen also protected Sullivan's son.

Sullivan did not appeal.

Cohen appealed and, on September 28, 2017, we affirmed the restraining order against her. (*Sullivan v. Cohen* (Sept. 28, 2017, No. B272111) [nonpub. opn.] (case No. B272111).) In particular, we held that "[s]ubstantial evidence supports the trial court's findings that Cohen engaged in a pattern of harassment against Sullivan" and that "Cohen's course of conduct was such as would cause a reasonable person to suffer substantial emotional distress and

actually caused Sullivan substantial emotional distress." (*Id.* at p. 5.)[2]

In March 2017, Cohen and Sullivan each filed a request to renew the restraining order against the other.[3]

On May 3, 2017, the court held an evidentiary hearing on the renewal requests at which Sullivan and Cohen testified. When the court asked Sullivan if the statements she made in her renewal request are true, she responded, "Yes." Sullivan also testified about an incident that occurred within the preceding year where Cohen said something to her minor son that caused the son to become upset and call the police.

Regarding Cohen's request for the renewal of the restraining order against Sullivan, Sullivan testified that she has not done or said anything to Cohen since the restraining order was issued, and that her son does not go near Cohen. She further stated that she is "not going to do anything to her" or "say anything to her."

Cohen testified about four incidents that had taken place since the restraining orders were issued. The first incident occurred when Cohen was walking her dog in front of her apartment building; Sullivan was watching her from her balcony and directed her son to run up next to Cohen. The second incident occurred about two months later when Sullivan again sent her son to stand close to Cohen while Cohen was walking her dog.

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[2] On our own motion, we take judicial notice of our prior opinion and of the contents of the record in case No. B272111.

[3] Although our record indicates that Cohen and Sullivan each filed a request to renew their respective restraining orders, Cohen did not designate either request for inclusion in the appellate record.

The third incident occurred when a neighbor served Sullivan with Cohen's request to renew Cohen's restraining order. When the neighbor handed Sullivan the papers, Sullivan yelled at the neighbor, saying, "She's crazy," and referred to Cohen as a "dirty jew." Cohen observed the interaction and became "very aggravated."

The fourth incident occurred when Sullivan's adult son looked at her and said, "She [is] so weird."

The court renewed the restraining order against Cohen for five years. The court denied Cohen's renewal request, stating: "I need to believe [Cohen] in order to grant [her request], and I don't."

DISCUSSION

A civil harassment restraining order issued under Code of Civil Procedure section 527.6 "may be renewed, upon the request of a party, for a duration of no more than five additional years, without a showing of any further harassment since the issuance of the original order." (Code Civ. Proc., § 527.6, subd. (j)(1).) The renewal of a restraining is not automatic, however, and should be ordered "only when the trial court finds a reasonable probability that the defendant's wrongful acts would be repeated in the future." (*Cooper v. Bettinger* (2015) 242 Cal.App.4th 77, 90 (*Cooper*).) An express finding of such a probability is not required; in the absence of a contrary indication, the court's renewal of the restraining order implies the necessary finding. (*Harris v. Stampolis* (2016) 248 Cal.App.4th 484, 500-501 (*Harris*).) We review the court's finding to determine whether it is supported by substantial evidence. (*Id.* at p. 497.)

I. Appeal from the Order Granting Sullivan's Request to Renew the Restraining Order against Cohen

Cohen requests that we vacate the restraining order against her. We deny the request.

The sufficiency of the evidence to support the court's original restraining order against Cohen and, more particularly, the court's finding that Cohen engaged in a pattern of harassment against Sullivan, was established in our prior opinion and cannot now be challenged. The question in this appeal is whether sufficient evidence supports the court's implied finding that Cohen's wrongful conduct is likely to recur. (See *Harris*, *supra*, 248 Cal.App.4th at p. 499.)

" 'A judgment or order of the lower court is presumed correct. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown.' " (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564, italics omitted.) It is appellant's burden to provide an adequate record on appeal that will assist in overcoming the presumption of correctness. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295.)

Cohen has not provided an adequate record to review the order granting Sullivan's renewal request. Our record does not include, for example, Sullivan's request for a renewal of her restraining order, and Cohen did not designate that request in her notice designating the record on appeal. The absence of the request is fatal to Cohen's challenge to the order. In the reporter's transcript of the hearing on the renewal requests, the court asked Sullivan if the statements made in her request for renewal are true and correct, and Sullivan responded, "Yes." Because we do not have

Sullivan's request for renewal, we cannot review the statements she affirmed at the hearing.

Because we indulge all presumptions in support of the judgment as to matters upon which the record is silent (*Denham v. Superior Court*, *supra*, 2 Cal.3d at p. 564), we must presume that whatever facts were alleged in Sullivan's renewal request and affirmed by her in court are sufficient to support the required finding. Because Cohen has not referred us to anything in the record to rebut that presumption, she has failed to establish error. We therefore affirm the order granting Sullivan's request to renew the restraining order against Cohen.

II. Appeal from the Order Denying Cohen's Request to Renew the Restraining Order against Sullivan

Cohen challenges the court's denial of her request to renew the restraining order against Sullivan.

The trial court properly denies a restraining order or its renewal when it finds that the defendant's wrongful conduct is unlikely to recur. (*Cooper*, *supra*, 242 Cal.App.4th at p. 90.) We will affirm the denial if that finding is supported by substantial evidence. In reviewing the sufficiency of the evidence, we do not reconsider the trial court's credibility determinations. (*Katsura v. City of San Buenaventura* (2007) 155 Cal.App.4th 104, 107.) We defer to the trial court's credibility findings because the trial judge "is in a superior position to observe the demeanor of witnesses" (*In re George T.* (2004) 33 Cal.4th 620, 634) and can "hear not only the words used but how they are used" (*Score Family Fun Center, Inc. v. County of San Diego* (1990) 225 Cal.App.3d 1217, 1219-1220, fn. 2).

Here, Cohen testified about two incidents in which Sullivan directed her son to run up close to Cohen while Cohen was walking her dog, a third incident in which Sullivan reacted angrily and yelled an ethnic slur about Cohen when she was served with the request to renew the restraining order, and, lastly, Sullivan's adult son said Cohen was "weird."[4] Sullivan denied these statements and stated that she has not done or said anything to Cohen or gone near her, and that her son does not go near her. She further stated that she is "not going to do anything to her" or "say anything to her."

After hearing the testimony by both parties, the trial court repeatedly stated that it did not believe Cohen or consider her testimony credible, and explicitly based its ruling on that finding. As noted above, we will not reconsider the court's credibility findings and must, therefore, accept the court's determination that Cohen's testimony was not credible. In the absence of other evidence that could support a finding that Sullivan's wrongful conduct was likely to recur, we conclude that the court did not err in denying Cohen's request.

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[4] Cohen attached to her opening brief numerous documents that do not appear to have been before the trial court, are not part of the record, and are not judicially noticeable. We do not, therefore, consider them. (See Cal. Rules of Court, rule 8.204(d) [party may attach to a brief "materials in the appellate record"]; *Hodge v. Kirkpatrick Development, Inc.* (2005) 130 Cal.App.4th 540, 546 [attachments to brief not permitted by rule are not considered].)

DISPOSITION

The order granting Sullivan's request to renew the restraining order against Cohen and the order denying Cohen's request to renew the restraining order against Sullivan are affirmed.

The parties shall bear their own costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

JOHNSON, J.

BENDIX, J.