SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Family Division

Michael D. Antonovich Antelope Valley Dept. - A10

MS011482

ALLINGTON, AMBER LEE VS SILVA, PETER

February 2, 2018
8:30 AM

Honorable Valerie L. Skeba, Commissioner

Jocelyn Keating, Judicial Assistant

Tiana Harrelson, Court Reporter
Alexander Ramirez, Deputy Sheriff

NATURE OF PROCEEDINGS: Hearing on Remittitur and Termination of Restraining Order

The following parties are present for the aforementioned proceeding:

Norma Nava Franklin, Attorney for Petitioner (via Court Call)
Rosa Hirji, Attorney for Respondent (via Court Call)

The matter is called for hearing.

The attorneys for both parties appear via Court Call and verbally stipulate that Commissioner Valerie L. Skeba may hear this matter as Judge Pro Tem.

The Court finds that the Court of Appeals has reversed the orders of September 25, 2015, made by Commissioner Robert McSorely in case number MS011482 and MS011484.

Pursuant to the ruling of the Court of Appeals, the Court dissolves the Restraining Order After Hearing/CH-130 that was issued on September 25, 2015 in both cases.

A copy of this minute order is sent to the Sheriff's Department this date in order for the Restraining Order After Hearing/CH-130 to be removed from CLETS.

Clerk shall give notice.

CLERK'S CERTIFICATE OF MAILING/ NOTICE OF ENTRY OF ORDER

I, Sherri R. Carter, Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Notice of Entry of the above minute order of February 2, 2018 upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States Mail at the courthouse in Lancaster, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

MS011482
ALLINGTON, AMBER LEE VS SILVA, PETER

February 2, 2018
8:30 AM

Dated: February 5, 2018

By: /s/ Jocelyn Keating
Jocelyn Keating, Deputy Clerk

✓

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Court of Appeal,
Second District, Division 3, California.

A. A., Plaintiff and Respondent,
v.
J. M., Defendant and Appellant.
A. A., Plaintiff and Respondent,
v.
P. S., Defendant and Appellant.

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B268601
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Filed 10/31/2017

APPEAL from orders of the Superior Court of Los Angeles County, Robert McSorley, Commissioner. Reversed. (Los Angeles County Super. Ct. Nos. MS011482, MS011484))

Attorneys and Law Firms

RKH Law Offices, Law Offices of Hirji & Chau, Rosa K. Hirji, Jenny Chau and Justyn Howard, for Defendants and Appellants.

Garcia Hernandez Sawhney and Norma Nava for Plaintiff and Respondent.

Opinion

BACHNER, J.*

*1 Defendants and appellants, J.M. and P.S. appeal orders granting three-year civil restraining orders entered against them in favor of A.A., their daughter's former teacher, under Code of Civil Procedure section 527.6.[1] Because there was insufficient evidence appellants made either a credible threat of violence or engaged in a harassing course of conduct, and because there was an insufficient showing harassment was likely to recur in the future, we reverse.

BACKGROUND

Respondent A.A. (Teacher) is a teacher at a Los Angeles County public elementary school. J.M. and P.S. (Mother, Father, or Parents) have a child (Daughter) who is a pupil at the school. During the 2014–2015 school year, Teacher was Daughter's third grade teacher. On September 1, 2015, Teacher filed petitions requesting the issuance of Civil Harassment Restraining Orders against Parents (§ 527.6). The petitions, signed under penalty of perjury, detailed a course of conduct by Parents that Teacher contended was harassing and threatening. The trial court issued temporary restraining orders. On September 18, 2015, Parents filed responses opposing the petitions and provided a letter, signed under penalty of perjury, explaining the basis for their opposition. The trial court held a contested hearing on September 25, 2015, at which Parents, Teacher, and the school principal (Principal) testified.

According to Parents, Daughter has a rare congenital genetic disorder that causes her body to produce too much insulin and ammonia, and she must have constant access to water, snacks, and restroom facilities to manage the condition. She has an Individualized Education Plan (IEP) that so provides. If Daughter does not drink sufficient water, her ammonia levels will rise to an unhealthy or dangerous extent.

In October 2014 another student pulled Daughter's ponytail as she walked by Daughter's desk. Teacher and Principal worked "very hard to strategize the perfect spot for [Daughter] to sit" so that the other child could not "swipe her." Parents, however, were unhappy with Teacher's handling of this "bullying" situation. On October 14, 2014, Father emailed Teacher to say there was tension between Teacher and Daughter, and Parents wished to schedule a meeting to air their grievances. Teacher called Father after school in response to the email; Mother was also on the line. They discussed the ponytail-pulling situation. Teacher stated she was very sorry and would try to correct the other child's behavior and ensure it did not happen again. During the telephone conversation, however, Father raised his voice, screamed at Teacher, and "cuss[ed]" at her. In Teacher's view, the discussion was unhealthy and "threatening." Teacher advised that if Parents wished to speak with her in the future, they could do so when Principal was present. She

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then terminated the call. Father admitted to arguing with Teacher and using "a curse word" during the conversation.

*2 In Teacher's view, from that point on her relationship with Parents headed into "a downward spiral." Parents met with Principal multiple times to discuss classroom events and would "constantly nit pick[ ] everything" Teacher did. Daughter had a code word she used to allow her to be sent to the office to call Parents to advise them of what was going on in class. On several occasions, Parents complained to Principal that Teacher was not allowing Daughter access to water, snacks, and the restroom. Principal testified that in fact, Teacher always allowed Daughter to have access to water, food and the restroom. Parents also believed Teacher was "verbally abusing" and "bullying" Daughter and was "purposely sabotaging" her tests by marking correct items incorrect.[2] In Principal's opinion, Teacher attempted to ensure Daughter had the "best education that she could possibly have." Teacher had nine years of teaching experience and had never before been accused of bullying students.

On January 22, 2015, Mother spoke with the school nurse about Daughter's health. Mother told the nurse "she was going to do anything she could" to "bring [Teacher] down" or "get [her] fired."[3] Mother also made these statements to other parents.

On January 23, 2015, Mother "snuck in unannounced" to Teacher's classroom. Mother then passed out her own telephone number to various pupils in the classroom. Teacher did "not know what was happening" and Mother's conduct made Teacher feel nervous, as earlier in the year Mother had told Teacher "that she was a former FBI agent and sniper and she carried around six handcuffs and she was not afraid to use them." Mother had reiterated these statements the preceding day.[4] It was undisputed that Mother was a retired federal law enforcement officer,[5] and Father explained that Mother "carrie[d] Con Air field cuffs" because she was a retired federal agent.[6]

Mother maintained that she had simply arrived early to pick Daughter up for a hair appointment. Also, she had a single sheet of paper with her phone number which she intended to give one student, for the student to provide to her mother, but "[a]ll the other kids started asking if they could have one too." Mother then "watched through the door as [Teacher] verbally abused two students in front of the entire class."

As a result of Mother's classroom visit, Teacher filed an incident report with the school district. Principal banned Mother from Teacher's classroom, and thereafter all communication between Teacher and Parents was channeled through Principal. Principal explained he banned Mother from the classroom because he felt Teacher had been threatened.

Some point later, the third grade class took a field trip to a planetarium near the school. Teacher told her students they would be back in time for lunch and did not need to bring anything. On February 20, 2015, Parents filed a formal complaint with the school district stating that Teacher had prohibited Daughter from bringing water on the field trip. According to Mother, Teacher had stated that Daughter would survive without water. Parents took offense because Daughter needs water to survive due to her disability. Principal explained that Teacher had told the entire class not to bring anything, and may have told the students they would survive. But the comments were not directed to Daughter and Teacher did not prohibit Daughter from bringing water. Principal could "see how" Teacher's statements might have been "misinterpreted," and advised Teacher to choose her words more carefully and ensure Daughter had water.

*3 On February 26, 2015, Parents and Daughter left on a month-long trip to Europe. When they returned, Teacher was on maternity leave. According to Teacher, as a result of Parents' harassment she went into preterm labor and her infant son was born with a congenital heart defect.

On August 20, 2015, after Daughter had been promoted to fourth grade, Mother and Daughter saw Teacher in the school hallway. Although according to Parents' letters, and testimony at the hearing, Teacher and Mother exchanged "pleasant hellos," in an email to Principal dated August 21, 2015, Father stated that Teacher had "snubbed" Daughter in the hallway. Teacher explained that she and Parents were not to have contact by order of the Principal.

On August 26, 2015, Parents met with Principal and stated that they believed Teacher's conduct during the previous year had violated the federal Americans With Disabilities Act of 1990 (42. U.S.C. § 12101 et seq.) (ADA). They asked for a written apology from Teacher. Principal suggested that Parents would not want an apology that was not genuine, and they agreed.

According to Father, except for the August 2015 hallway contact and various "pleasant e-mails," Parents had not communicated with Teacher since February 20, 2015. At the time of the hearing, Daughter still attended the same school, but was in fourth grade and was no longer in Teacher's class. Daughter's new classroom was upstairs,

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not next door to Teacher's room.

Teacher just wanted Parents to "leave [her] alone."

Parents, on the other hand, characterized the petitions as "a sad story of retaliation and revenge" by Teacher and a "fraudulent, malicious and vengeful attempt to keep [them] away from [their] special needs daughter." They maintained that they were statutorily entitled to complain about Teacher's conduct and had complied with the school district's complaint policy and procedures. Without any specifics, Parents conclusorily alleged that Teacher had "bullied" Daughter and created a "hostile learning environment." They blamed Teacher for Daughter's numerous stomach aches and a headache, as well as increases in her ammonia levels.[7] They admittedly did not like or respect Teacher and wanted her removed from her post, but denied threatening her with violence. They disputed Teacher's suggestion that her preterm labor and her baby's heart defect could have been related to their conduct.

The trial court found Teacher had met her burden of proof to show by clear and convincing evidence that Parents had "engaged in conduct which is found to be civil harassment." Accordingly, it granted Civil Harassment Restraining Orders against Mother and Father, for a three-year period. The court ordered Parents not to harass, intimidate, molest, attack, strike, stalk, threaten, assault, hit, or abuse Teacher or her family, destroy their personal property, disturb their peace, or contact them in any way. The order required Parents to stay 100 yards away from Teacher, her family, home, vehicle, workplace, and school, and her children's school and childcare facilities. Parents were also prohibited from possessing guns.

*4 Parents timely appealed.[8] (§ 904.1, subd. (a)(6).)

DISCUSSION

1. *Applicable legal principles and standard of review*

Section 527.6 was enacted to protect " ' "the individual's right to pursue safety, happiness and privacy" ' " by " 'providing expedited injunctive relief to victims of harassment.' " (*Duronslet, supra*, 203 Cal.App.4th at p. 724.) To that end, the statute provides that a victim of harassment, as statutorily defined, may petition for both a temporary restraining order and an injunction prohibiting harassment. (*Ibid.*; see *R.D. v. P.M.* (2011) 202 Cal.App.4th 181, 188.) The court may issue a temporary restraining order with or without notice upon an affidavit that shows reasonable proof of harassment and great or irreparable harm. (*Duronslet, supra*, at p. 724.) After issuance of the temporary restraining order, the court must hold a hearing on the injunction petition. At that hearing the court "shall receive any testimony that is relevant, and may make an independent inquiry." (§ 527.6, subd. (i); *Duronslet, supra*, at p. 724; *Harris v. Stampolis* (2016) 248 Cal.App.4th 484, 496.) The court may consider hearsay evidence, including declarations. (*Duronslet, supra*, at pp. 721, 728–729.)[9] "If the judge finds by clear and convincing evidence that unlawful harassment exists, an order shall issue prohibiting the harassment." (§ 527.6, subd. (i); *Duronslet, supra*, at p. 724; *Harris v. Stampolis, supra*, at p. 496.) The court need not make express findings; the granting of the injunction itself implies the court found the respondent knowingly and willfully engaged in a harassing course of conduct. (*Cooper v. Bettinger* (2015) 242 Cal.App.4th 77, 88–89.)

Section 527.6, subdivision (b)(3) recognizes three types of harassment: (1) unlawful violence; (2) a credible threat of violence; or (3) a "knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person," serves no legitimate purpose, and is not constitutionally protected activity. (§ 527.6, subd. (b)(3); *R.D. v. P.M., supra*, 202 Cal.App.4th at p. 188.) A "credible threat of violence" is a "knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety," or the safety of his or her immediate family, and that serves no legitimate purpose. (§ 527.6, subd. (b)(2).) "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 an individual, making harassing calls, or sending harassing correspondence. (§ 527.6, subd. (b)(1).) To constitute harassment, the "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).) Conduct that serves a legitimate purpose is not harassment and cannot be enjoined. (*Byers v. Cathcart* (1997) 57 Cal.App.4th 805, 812.) Speech that constitutes harassment within the meaning of section 527.6 is not constitutionally protected. (*Huntingdon Life Sciences, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.* (2005) 129 Cal.App.4th 1228, 1250.) "An injunction restraining future conduct is only authorized when it appears that harassment is likely to recur in the future." (*Harris v. Stampolis, supra*, 248 Cal.App.4th at p. 496.)

*5 We review the trial court's decision to grant a restraining order for substantial evidence. (*Harris v.*

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Stampolis, supra, 248 Cal.App.4th at p. 497; *Parisi v. Mazzaferro* (2016) 5 Cal.App.5th 1219, 1226; *R.D. v. P.M., supra*, 202 Cal.App.4th at p. 188.)[10] "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 [the 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. v. P.M., supra*, at p. 188, fn. omitted; *Harris v. Stampolis, supra*, at p. 497.)

2. *There is insufficient evidence to support the restraining orders*

The evidence presented here was insufficient to establish the existence of harassment as defined by section 527.6. There was no showing, and no allegation, that Parents engaged in actual violence toward Teacher or her family.

Nor was there evidence sufficient to establish the existence of a credible threat of violence. Parents' complaints, even if unfounded, and their request for a written apology, simply cannot be construed as threats of violence, express or implied. In addition to the complaints, Father screamed and cursed at Teacher while on the telephone with her. While screaming and cursing may be inappropriate and rude, the evidence presented did not demonstrate that this conduct was threatening. Teacher stated she felt threatened, but she did not describe any particular statements Father made that could reasonably have been perceived as threats. Father apparently lost his temper, yelled, and cursed, but absent evidence about the content of his statements, this behavior did not demonstrate a threat of physical harm.

There is also insufficient evidence Mother's conduct constituted a threat. At some point prior to January 2015, Mother told Teacher that she was a former federal agent and sniper, and carried handcuffs which she was not afraid to use. Veiled references to one's military history or weapons prowess *could* imply a threat. But there was absolutely no evidence presented in the instant matter regarding the context in which the statements were made. There was no evidence either parent possessed firearms, and both declared, in their responses to the requests for the restraining orders, that they did not own or control any guns or firearms. Contrary to Teacher's argument that Parents "threatened her with handcuffs," there was no evidence suggesting Mother's mention of the handcuffs was directed at Teacher or amounted to a threat. There was, for example, no testimony that Mother stated she would harm or handcuff Teacher if Teacher displeased her. Moreover, even if the handcuff comments can be viewed as an implied threat, there was no evidence Mother repeated them after January 2015, months before Teacher sought the restraining orders.

Second, Mother told the school nurse and other parents that she would do anything she could to bring Teacher down or get her fired, statements Teacher contends amounted to threats of violence. Certainly, under some circumstances a threat to "bring a person down" could be perceived as a threat of physical harm. But the parties here understood Mother's statements to refer to Mother's quest to get Teacher removed from her post, not to a threat of violence. Teacher did not testify that she was afraid Mother would physically harm her, or that she understood Mother's statement in this fashion.

*6 Third, Mother's unplanned and unannounced visit to the classroom was no doubt disruptive, but during that visit she did not do or say anything that would have placed a reasonable person in fear for his or her safety. She did not, for example, pull out the handcuffs, corner Teacher, verbally threaten Teacher, make any gestures, or otherwise explicitly or implicitly threaten to harm or restrain Teacher.

Under these circumstances we cannot conclude the evidence was sufficient to support a finding that either Parent made a credible threat of violence. *Harris v. Stampolis*, cited by Teacher, is distinguishable. There, school principal Harris had a "tense history" with Stampolis, a school board member; the two had exchanged contentious emails as a result of a teacher's complaint against Stampolis. (*Harris v. Stampolis, supra*, 248 Cal.App.4th at pp. 488–489.) Stampolis was chronically late to pick up his son, a student at Harris's school. When Harris approached him to discuss his tardiness, Stampolis raised his voice, yelled at Harris, raised his fists, put his fingers in her face in the shape of a gun, pointed his fingers at her, and stood so close that Harris could feel his breath on her face. He walked away and back toward her several times, and she believed he was going to hit her. A police officer who viewed a surveillance recording of the incident believed Stampolis was "not safe." (*Id.* at p. 489.) A vice principal who witnessed the interaction had been afraid Stampolis would "become physical" with Harris. (*Ibid.*) In an encounter the next day, Harris refused to give Stampolis a visitor's pass and he became angry, making "several movements that made" the school police officer think "he was going to try to come after" Harris. (*Id.* at p. 490.) The officer moved between Harris and Stampolis as a result. (*Ibid.*) The trial court's conclusion that Stampolis had made a credible

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threat of violence was upheld on appeal. (*Id.* at p. 497.) Based on Stampolis's hand gestures, his proximity to Harris, raised voice, and aggressive demeanor, Harris, the officer, and the vice principal were concerned for her physical safety. Thus, "even though Stampolis did not make an express verbal threat, there was substantial evidence that his actions constituted a 'knowing and willful statement or course of conduct' that would place a reasonable person in fear for [his] safety." (*Id.* at p. 498.) Here, in contrast, when Father raised his voice and cursed at Teacher, they were on the telephone, not in the same room. Teacher did not explain why she felt threatened and did not state that she was afraid for her physical safety. During her classroom visit, Mother did not make any gestures or engage in any aggressive conduct similar to Stampolis's.

Thus, we turn next to consideration of whether the evidence was sufficient to support a finding that either Parent engaged in a harassing course of conduct. "The elements of unlawful harassment, as defined by the language in section 527.6, are as follows: (1) 'a knowing and willful course of conduct' entailing a 'pattern' of 'a series of acts over a period of time, however short, evidencing a continuity of purpose'; (2) 'directed at a specific person'; (3) 'which seriously alarms, annoys, or harasses the person'; (4) 'which serves no legitimate purpose'; (5) which 'would cause a reasonable person to suffer substantial emotional distress' and 'actually cause[s] substantial emotional distress to the plaintiff'; and (6) which is not a '[c]onstitutionally protected activity.' " (*Schild v. Rubin* (1991) 232 Cal.App.3d 755, 762; § 527.6, subd. (b).)

*7 The evidence here showed that, at some point prior to January 2015, Mother stated she was a former federal agent and sniper who carried handcuffs. As noted, the circumstances in which this statement was made were not described. In the October 2014 telephone call, the parties discussed the ponytail-pulling incident and Parents' other grievances, and Father yelled and cursed. Following that, on January 22, 2015, Mother told the nurse that she would do anything she could to "bring [Teacher] down." She also told this to other parents. On January 23, 2015, Mother paid a surprise visit to Teacher's classroom, where she passed out her telephone number. Parents also criticized Teacher's performance; complained that she was not complying with the IEP's water requirements; met with Principal multiple times; and "nit picked" her performance in unspecified respects. On February 20, 2015, Parents filed a formal complaint regarding the field trip incident; and on August 21, 2015, they complained in an email that Teacher snubbed Daughter in the hallway and requested a written apology from teacher for her purported violations of the ADA the prior year.

These actions did amount to a course of conduct directed at Teacher, and we assume arguendo the evidence was sufficient to establish that Parents' conduct caused her substantial emotional distress. (See *Schild v. Rubin, supra*, 232 Cal.App.3d at pp. 762–763.) But we cannot say the bulk of Parents' actions were undertaken without a legitimate purpose. Criticisms of Teacher's performance, complaints about whether Teacher was complying with the IEP, and the field trip complaint—even if inaccurate—were undertaken for a legitimate reason: to ensure Daughter's well being. Mother's entry into the classroom was doubtless disruptive and disrespectful of Teacher's authority; but there is no showing she ever repeated the behavior once Principal banned her from the classroom. (See *Scripps Health v. Marin* (1999) 72 Cal.App.4th 324, 336 [fact restrained individual abided by promise to stay away from health care facility was a factor demonstrating the absence of future harm].) As noted, Father's yelling and cursing was inappropriate, but there is no showing he repeated that behavior after Teacher advised that communication between the parties had to occur in Principal's presence.

Teacher contends that Parents "willfully lodged fraudulent complaints" against her, without a legitimate purpose, in an attempt to get her fired, conduct which demonstrated a harassing course of conduct. A willful filing of a series of fraudulent complaints against a person in an effort to achieve his or her termination could be harassing. (See generally *Kobey v. Morton* (1991) 228 Cal.App.3d 1055, 1057 [among other things, defendant falsely stated victim was an AIDS carrier]; *Elster v. Friedman* (1989) 211 Cal.App.3d 1439, 1441 [harassing conduct included "numerous, meritless complaints" to animal regulation officers].) But the evidence here did not show the existence of such a pattern. Teacher did not establish that the majority of Parents' complaints were demonstrably false, as opposed to differences of opinion. It was undisputed that a classmate was "bullying" Daughter by grabbing her ponytail; therefore Parents' discussion of the situation with Teacher cannot be described as fraudulent, although Father behaved intemperately. Principal agreed that Teacher's statements regarding the field trip, while not improper, could have been misconstrued by Daughter. Teacher's assertion that Parents "nit-pick[ed]" her performance was too nonspecific to allow a conclusion that Parents' complaints were all false, bad faith attempts to get Teacher unjustifiably fired. Teacher is correct that Principal disagreed with Parents' contention that she had failed to comply with the IEP, but there is no showing Parents' concerns were less than genuine, even if mistaken.

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Father's complaint about the "snubbing" incident may have been disingenuous, as he characterized the chance meeting as involving "pleasant hellos," but nonetheless complained that Teacher had "snubbed" Daughter in the encounter. But we cannot find substantial evidence to support the issuance of the restraining order based on this single, petty complaint. Given the foregoing, the evidence falls short of demonstrating a series of fraudulent complaints brought in bad faith for the purpose of ensuring Teacher's termination.

***8** *R.D. v. P.M.*, cited by Teacher in support of her contention that false complaints can constitute a harassing course of conduct, does not assist her. There, a therapist obtained a section 527.6 restraining order against a former patient whom she believed was stalking and harassing her. Among other things, the patient called the therapist's home phone number repeatedly, threatened to stalk her, followed her to her son's school, made false police reports about her, filed an abandonment complaint with the licensing board, began volunteering at the therapist's children's schools, and posted numerous derogatory reviews and comments about the therapist on various websites. (*R.D. v. P.M.*, *supra*, 202 Cal.App.4th at pp. 184–186.) After the expiration of an initial section 527.6 restraining order, the court renewed it because the patient had resumed her harassment, including approaching the therapist at a market, offering to remove her negative internet postings if the therapist apologized, and distributing derogatory flyers at the therapist's office and her son's school. (*Id.* at pp. 183, 186–187.) The patient contended her conduct was not harassing and her distribution of flyers was constitutionally protected. (*Id.* at p. 187.) The appellate court disagreed. (*Id.* at p. 189.) The patient's past behavior, her history of angry outbursts and erratic behavior, and her obsessive focus on the therapist demonstrated harassment without a legitimate purpose. (*Id.* at p. 190.) The order did not prohibit her from contacting the therapist's licensing agency, distributing flyers, or posting derogatory criticisms on the internet. (*Id.* at p. 191.) Thus, it did not infringe upon the patient's free speech rights, but only prevented her from expressing her opinions in close proximity to the therapist and her family. (*Ibid.*)

R.D. v. P.M. is distinguishable from the instant matter. The patient's harassment of the therapist was far more severe, both in terms of quantity and nature, than is the alleged harassment here. Moreover, *R.D. v. P.M.* simply does not stand for the proposition that false reports constitute harassment; this was not the basis for the appellate court's ruling and, as discussed, the restraining order in that case did not prohibit the patient from distributing flyers and otherwise making false reports about the therapist.

Finally, even if the evidence had demonstrated a harassing course of conduct, it was insufficient to show the harassment was likely to recur in the future. (See *Harris v. Stampolis*, *supra*, 248 Cal.App.4th at p. 496; *Cooper v. Bettinger*, *supra*, 242 Cal.App.4th at p. 90 [an injunction should not be granted as punishment for past acts where it is unlikely they will recur].) Daughter was no longer in third grade and was no longer Teacher's pupil. There was no evidence Teacher would have future supervisory responsibilities over Daughter. There was no showing it was likely Teacher and Daughter, or Parents, would have frequent incidental contact on the school premises. Under these circumstances, there was a lack of substantial evidence the alleged harassment would continue. Teacher disagrees, pointing out that although the school year had ended, Parents complained about the "snubbing" incident and demanded a written apology from her regarding her alleged conduct during the prior school year. These facts, coupled with the past history of harassment, Teacher contends, demonstrated the harassment would likely continue. But, as Principal testified, Parents apparently dropped the demand for an apology. Nor does the evidence show Parents filed a formal complaint against Teacher based on the "snubbing" incident; instead, Father simply made a passing reference in an email to Principal that pertained to a variety of issues, including the requested apology, Parents' approval of Daughter's new fourth grade teacher, and Father's complaints about the PTA president. Teacher's citation to *R.D. v. P.M.* is, again, unavailing. She argues that there, the court granted a second restraining order after, inter alia, the patient demanded an apology from the therapist, and similarly here Parents demanded an apology from her after the school year had ended. But, as our discussion of *R.D. v. P.M.* makes clear, the harassment in that case extended far beyond a mere request for an apology.

In sum, from the evidence before it, and crediting Teacher's and Principal's accounts, the trial court could reasonably conclude Parents were unpleasant and perhaps intimidating. The fact a person is difficult or contentious does not justify injunctive relief absent harassment as defined in section 527.6. Here, the evidence before the court was insufficiently developed to establish Parents engaged in harassment as defined in section 527.6. In light of our conclusion, we do not reach Parents' contentions that their statements were protected speech;[11] that the statements were absolutely privileged under Civil Code section 47; that harassment may be enjoined only if it is unlawful by virtue of a source of law other than section 527.6; and that the restraining orders were

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overbroad in scope.

3. *Attorney fees*

*9 Parents, as the prevailing parties, request attorney fees. (See *Krug v. Maschmeier* (2009) 172 Cal.App.4th 796, 798.) Section 527.6, subdivision (s), provides that the "prevailing party in an action brought under this section may be awarded court costs and attorney's fees, if any." "Authorization for the recovery of attorney fees includes authorization for recovery of attorney fees incurred on appeal." (*Byers v. Cathcart*, *supra*, 57 Cal.App.4th at pp. 812–813.) Under this provision, the grant or denial of such an award is a matter within our discretion. (*Leydon v. Alexander* (1989) 212 Cal.App.3d 1, 5; *Krug v. Maschmeier*, *supra*, at p. 802.) We exercise our discretion to deny appellants' request. (See *Leydon v. Alexander*, *supra*, at p. 5.)

DISPOSITION

The orders of September 25, 2015, are reversed. Each party is to bear his or her own costs on appeal.

We concur:

EDMON, P.J.

LAVIN, J.

All Citations

Not Reported in Cal.Rptr.3d, 2017 WL 4927701

Footnotes

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

1 All further undesignated statutory references are to the Code of Civil Procedure.

2 The nature of the alleged "bullying" was not further specified, and it is unclear whether or when Parents complained about the purported bullying and test correction errors.

3 Parents argue that this testimony was double hearsay. However, hearsay is generally admissible in section 527.6 proceedings, and in any event they have forfeited any hearsay challenge because they made no hearsay objection below. (*Duronslet v. Kamps* (2012) 203 Cal.App.4th 717, 725, 728 (*Duronslet*).)

4 The record is unclear as to whether Mother's January 22 statements about her former employment and the handcuffs were made to Teacher or to the school nurse.

5 When the trial court asked whether Mother was a former FBI agent, Mother replied that she was "not at liberty to say." Father, however, confirmed that Mother was a "former federal law enforcement agent."

6 Father's use of the term "Con Air field cuffs" was apparently a reference to the film Con Air (Touchstone Pictures 1997).

7 Teacher countered that she had an email from Parents stating that Daughter's higher ammonia levels were in fact due to her diet.

8 At Parents' request, we ordered their appeals consolidated.

9 The trial court here considered the factual allegations in Parents' letter and Teacher's petition without objection from either party, as well as testimony at the hearing.

10 Although the trial court was required to apply the clear and convincing evidence standard, that standard was adopted for the guidance of the trial court, not as a standard for appellate review. Thus, if substantial evidence supports the trial court's finding, it will not be disturbed. (*In re Marriage of Saslow* (1985) 40 Cal.3d 848, 863; *Parisi v. Mazzaferro*, *supra*, 5 Cal.App.5th at p. 1227, fn. 11.)

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11 We note Parents' argument that advocating for a disabled student on issues related to federal and state educational rights is a protected activity and therefore legitimate, and their complaints about Teacher were constitutionally protected. They urge that penalizing parents for exercising rights afforded to them under the Individuals with Disabilities in Education Act is improper, "no matter how overzealous the parent," and that parents are entitled to complain to a teacher or school authorities about a teacher's behavior. Unquestionably, parents have the right to advocate for their disabled children (see *Lee v. Natomas Unified School Dist.* (E.D. Cal. 2015) 93 F.Supp.3d 1160, 1168 [advocating for a disabled student on issues related to federal and state educational rights is a protected activity under federal law, even if the advocate's concerns are inaccurate, as long as a genuine dispute exists regarding a potential violation]) and are not forbidden from making complaints about a child's education. However, such advocacy and complaints cannot take the form of threats or harassment. To the extent Parents intend to suggest that any behavior, no matter how harassing or inappropriate, is justified if characterized as advocacy, we disagree. (See *Huntingdon Life Sciences, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.*, *supra*, 129 Cal.App.4th at p. 1250 [harassment as defined in section 527.6 is not constitutionally protected].)

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