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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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

KRISTINE M. BYRON, Plaintiff and Respondent, v. RENE MCCRAY, Defendant and Appellant.	B297234 (Los Angeles County Super. Ct. No. 18CHRO01083)

APPEAL from an order of the Superior Court of Los Angeles County, Dianna Gould-Saltman, Judge. Affirmed.

Law Offices of Majd & Associates, Farbood Majd and Daniel De Soto for Defendant and Appellant.

The Reape-Rickett Law Firm, Melanie Faith Gardner-Pawlak; Law Office of Bruce Adelstein and Bruce Adelstein for Plaintiff and Respondent.

Following an evidentiary hearing the trial court granted 72-year-old Kristine M. Byron's petition pursuant to Code of Civil Procedure section 527.6[1] for a civil harassment restraining order (CRO) against her 71-year-old neighbor Rene McCray. On appeal McCray contends the court's findings are not supported by substantial evidence, the findings are legally insufficient to meet the statutory requirements for a CRO and the court abused its discretion in excluding evidence about Byron's alleged motive in seeking the CRO. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Byron has lived at the California West Condominium Community in Chatsworth for 30 years; McCray has lived there for 15 years. Their homes are five units away from each other on Shadow Valley Circle. Byron and McCray share a driveway with 13 other residents.

1. *Byron's Evidence of Harassment*

Byron testified at the hearing on her petition for a CRO and submitted a declaration detailing McCray's conduct toward her, which was admitted into evidence. According to Bryon, McCray has been harassing her since 2005. He has stared at Byron from their shared driveway; yelled at her, including shouting "Heil Hitler"; and made the Nazi salute and other inappropriate gestures in her direction. McCray also has yelled insults and disturbing language, including "Heil Hitler," and directed Nazi salutes at Byron's husband Robert, her daughter, grandchildren and other neighbors. Byron, her children and grandchildren are Jewish; and Byron explained in her

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[1] Statutory references are to the Code of Civil Procedure unless otherwise stated.

declaration that McCray's antisemitic conduct had been "extremely distressing" to her.

Byron described McCray's conduct as becoming more "constant," "agitated" and "threaten[ing]" over the years. As a result of McCray's conduct, Byron is afraid to be outside of her home alone; she feels "terrified all the time" and unsafe around McCray; and she has gone to the emergency room for anxiety attacks caused by his harassment.

Byron and several witnesses provided detailed testimony concerning three specific incidents.

a. *August 28, 2015 incident*

On August 28, 2015 Byron was out for a walk when she passed by McCray standing in his driveway. McCray threatened to kill her and yelled, "You piece of shit. I'm coming after you. I'm going to get you. I'm going to take you down." Byron was upset and scared. As she quickly continued on her walk, she encountered Harlene Husereau in front of Earl Stan Stafford's garage. Husereau, hysterical and crying, informed Byron that McCray had just driven by and yelled at her. Byron responded, "That's nothing. He threatened to kill me." According to Byron, upon hearing this exchange Stafford said he was going to get his gun and have a conversation with McCray. The incident scared Byron, and she filed a police report about the incident the same day.

b. *May 9, 2016 incident*

On or around May 9, 2016 Byron and Jose Antonio Gonzales, whose company provided gardening services at the Cal-West Community, were standing at the curb in front of Byron's garage. McCray backed out of his driveway and headed in their direction, speeding by and narrowly missing Byron by

approximately two feet. Byron was terrified that McCray was going to run them over. Gonzales, who testified at the hearing on Byron's behalf, observed that Byron was badly shaken by the incident.

c. *June 22, 2018 incident*

On June 22, 2018 Byron was walking with her friends Gail Ransdell and Linda Bowen in the direction of McCray's home when McCray came out of his garage, ran toward them with his dog on a leash and screamed in an accusatory tone that they should talk to his attorney about an unidentified embezzlement scheme.

Following this incident Byron filed her petition for a CRO and obtained a temporary restraining order against McCray. Since issuance of the temporary restraining order, McCray has not threatened Byron.

2. *McCray's Evidence of the Alleged Incidents*

McCray testified and disputed the version of events presented by Byron and her witnesses. He denied ever making the Nazi salute in Bryon's direction or shouting antisemitic phrases at her or her family members. McCray said he believes the Nazi salute is "abhorrent" and Nazis are "the worst people that ever lived." McCray testified he is half-Jewish, his wife and son are Jewish and he worked at Sinai Temple "to create a bond between Blacks and Jews." He also explained he used exercise bands in his garage to stretch his arms and some of the stretches may have been misinterpreted as Nazi salutes.

McCray denied the August 28, 2015 and May 9, 2016 incidents ever happened and also denied ever driving close to Byron at a fast speed. Stafford, a friend of McCray's, testified he never saw McCray make any rude gestures, yell or threaten

Byron or her husband. Contrary to Byron's recounting of the purported August 28, 2015 incident, Stafford testified neither Byron nor Husereau was in front of his home on that day. Stafford specifically denied he had said he wanted to get his gun and confront McCray about the statements McCray allegedly made to Byron.

Regarding the June 22, 2018 incident, McCray testified he was standing by his garage when Byron, Ransdell and Bowen walked by him. According to McCray, the three women were "connected to the [homeowners association] board" and have "been a major source of pain for my wife and I for 15 years."[2] When McCray saw them on June 22, 2018, in a "culmination of angst" he said to them that the board had embezzled $9 million from the homeowners association and accused the women of making him out to be the "bad guy" to divert attention from the embezzled funds. McCray contradicted Byron's account that he ran toward her that day, testifying that, because of knee surgeries, he cannot run.

3. *The Trial Court's Ruling*

At the conclusion of the evidentiary hearing the court granted Byron's petition and issued a CRO for a period of three years.[3] In its ruling from the bench the court found Byron

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[2] A significant portion of McCray's testimony focused on what he perceives as a campaign to force him to move from the Cal-West Community. McCray believes "from day one that what they've been doing is trying to get us out" and thinks the negative conduct toward him, including the use of racial slurs, is partially motivated by the fact he is a Black man.

[3] McCray must stay at least 20 yards away from the Byrons, their vehicles and their home.

had not produced clear and convincing evidence of a credible threat of violence. However, relying on the three incidents in August 2015, May 2016 and June 2018, the court found McCray's course of conduct amounted to harassment. Specifically, the court found "yelling, name-calling, and . . . speeding closely by" were actions directed at Byron that "served no legitimate purpose" and were "intended to alarm, harass, or annoy" her.

DISCUSSION

1. *Governing Law and Standard of Review*

Section 527.6, subdivision (a)(1), provides, "A person who has suffered harassment as defined in subdivision (b) may seek a temporary restraining order and an order after hearing prohibiting harassment as provided in this section." Subdivision (b)(3) of section 527.6 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." A "'course of conduct' is 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 . . . ." (§ 527.6, subd. (b)(1).) "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).) The trial court may issue a CRO only after finding by clear and convincing evidence that unlawful harassment exists and is reasonably likely to recur. (§ 527.6, subd. (i) [requiring showing "by clear and convincing evidence"].)

"[W]hen presented with a challenge to the sufficiency of the evidence associated with a finding requiring clear and convincing evidence, the [reviewing] court must determine whether the record, viewed as a whole, contains substantial evidence from which a reasonable trier of fact could have made the finding of high probability demanded by this standard of proof." (*Conservatorship of O.B.* (2020) 9 Cal.5th 989, 1005 (*O.B.*).) "Consistent with well-established principles governing review for sufficiency of the evidence, in making this assessment the appellate court must view the record in the light most favorable to the prevailing party below and give due deference to how the trier of fact may have evaluated the credibility of witnesses, resolved conflicts in the evidence, and drawn reasonable inferences from the evidence." (*Id.* at p. 996.)

"[W]hether 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. v. P.M.* (2011) 202 Cal.App.4th 181, 188; accord, *Harris v. Stampolis* (2016) 248 Cal.App.4th 484, 497.)

2. *Substantial Evidence Supports the Trial Court's Findings*

McCray contends the August 28, 2015, May 9, 2016 and June 22, 2018 incidents, properly viewed, do not constitute substantial evidence sufficient to support the CRO, citing evidence in the record that contradicts Byron's description of the events. This argument fundamentally misapprehends the scope of appellate review and the deference we give to the trial court's evaluation of the credibility of the witnesses and resolution of

conflicting evidence. (See *O.B., supra,* 9 Cal.5th at p. 996; *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 334 ["'questions as to the weight and sufficiency of the evidence, the construction to be put upon it, the inferences to be drawn therefrom, the credibility of witnesses . . . and the determination of [any] conflicts and inconsistencies in their testimony are matters for the trial court to resolve'"].) While McCray's and Stafford's testimony about the incidents and the factual inconsistencies within the testimony provided by Byron and her supporting witnesses—points McCray vigorously notes—were certainly relevant to the trial court's determination of what happened, it was the trial court's task, not ours, to weigh these statements and ultimately make the factual finding as to whether and how the incidents occurred.

Based on the trial court's resolution of the evidentiary conflicts in favor of Byron, substantial evidence exists from which the court could find by clear and convincing evidence that McCray engaged in a course of conduct toward Byron that seriously alarmed, annoyed or harassed her. During the three incidents described by Byron, McCray called her names, threatened to kill her, screamed accusations at her and drove his vehicle at a high speed within two feet of where she was standing. (See *Doe v. Regents of University of California* (2016) 5 Cal.App.5th 1055, 1074 ["the testimony of a single witness, even that of a party, is sufficient to provide substantial evidence to support a finding of fact"]; accord, *In re Marriage of Mix* (1975) 14 Cal.3d 604, 614.) In addition, Ransdell and Gonzales provided testimony that corroborated Byron's descriptions of these incidents.

Other evidence also established McCray engaged in a course of conduct intended to alarm, annoy and harass Byron. On May 1, 2018 Byron was returning home from visiting a new neighbor when McCray drove by, rolled down his window and started yelling at her. McCray then stopped in front of Byron's house; got out of his car; started filming her with his cell phone; and yelled at her, "There she is, the welcoming committee. Thank you God, perfect! She thinks she's the welcoming committee." Byron reported this incident to the police.

Gonzales testified to yet another incident when he and Byron were standing on front of Byron's garage when McCray started yelling and cursing at Byron. Byron and her family members also testified to rude and antisemitic statements and gestures McCray made toward them on a number of occasions. Robert Byron testified about an incident in March 2017 when he was walking back to his home and McCray came out of his garage and said, "You're going down. You're going down. You're going to die."

Although these additional interactions were not identified by the trial court as part of its basis for issuance of the CRO, we properly look at the record as a whole to determine whether the trial court's findings are supported by substantial evidence. (See *O.B.*, *supra*, 9 Cal.5th at p. 1005; *Beam v. Bank of America* (1971) 6 Cal.3d 12, 25 [trial court's conclusion affirmed after "[e]xamining the instant record as a whole"]; see also *Alamo v. Practice Management Information Corp.* (2013) 219 Cal.App.4th 466, 481, fn. 5 ["we review a trial court's ruling, not its reasoning, and we may uphold the ruling 'on any basis presented by the record whether or not relied upon by the trial court'"].) Here, the

evidence was more than sufficient to support the trial court's findings.

3. *The Court's Findings Are Legally Sufficient To Establish Civil Harassment Under Section 527.6*

In addition to contending substantial evidence does not support the trial court's findings, McCray argues those findings are insufficient to demonstrate a "pattern of conduct" within the meaning of section 527.6, subdivision (b)(1). McCray's legal challenge to the CRO lacks merit.[4]

The trial court's findings and the evidence in the record clearly established a course of conduct—a series of acts over a period of time—by McCray that constituted harassment within the meaning of the statute. McCray physically confronted Byron when she was out for her walks, yelled at her and made

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[4] McCray also contends, in a single passing reference, the CRO "has wrongfully deprived him of basic Constitutional rights." Absent citation to legal authority or development of a legal argument to support a constitutional claim, the issue has been forfeited. (See *Hernandez v. First Student, Inc.* (2019) 37 Cal.App.5th 270, 282 ["Appellants have not provided any record citations to support these claims, cited any legal authority or developed any legal argument to support their claims of error. They have forfeited this claim"]; *Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956 ["'Appellate briefs must provide argument and legal authority for the positions taken. "When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived"'"]; see also *People v. Bryant, Smith and Wheeler* (2014) 60 Cal.4th 335, 363-364 ["[i]f a party's briefs do not provide legal argument and citation to authority on each point raised, '"the court may treat it as waived, and pass it without consideration"'"].)

inappropriate gestures in her direction, drove his vehicle close to Byron at a high speed and videotaped Byron, all of which annoyed or alarmed Byron and served no legitimate purpose. (See *Brekke v. Wills* (2005) 125 Cal.App.4th 1400, 1413-1414 [finding several vitriolic letters and telephone calls constituted a "course of conduct"]; cf. *Leydon v. Alexander* (1989) 212 Cal.App.3d 1, 4 [finding petitioner failed to establish a "course of conduct" based on one incident].)

Focusing solely on what occurred on June 22, 2018, the only one of the three incidents specifically identified by the trial court that McCray concedes occurred, McCray argues in his reply brief that this single event is insufficient to establish Byron suffered substantial emotional distress, which, as discussed, is a necessary element of harassment within the meaning of section 527.6, subdivision (b)(3). Even were this contention properly before us,[5] McCray once again misapprehends the governing principles of appellate review.

In granting the injunction the trial court impliedly found Byron had established the elements of substantial emotional distress and the likelihood of future harassment. (See *Cooper v. Bettinger* (2015) 242 Cal.App.4th 77, 92 [upholding issuance of injunction under section 527.6 based on implied findings]; *Ensworth v. Mullvain* (1990) 224 Cal.App.3d 1105, 1112 ["[t]he statute does not require the court to make a specific finding on

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[5] "Generally, arguments raised for the first time in a reply brief are forfeited." (*Sweetwater Union High School Dist. v. Julian Union Elementary School Dist.* (2019) 36 Cal.App.5th 970, 987; accord, *People v. Rangel* (2016) 62 Cal.4th 1192, 1218-1219 ["'arguments made for the first time in a reply brief will not be entertained because of the unfairness to the other party'"].)

the record that harassment exists, nor does it require specific findings of the statutory elements of harassment as defined in subdivision (b)"], disapproved on another ground in *O.B.*, *supra*, 9 Cal.5th at p. 1010, fn. 7.)

As we have described, McCray's conduct would unquestionably cause a reasonable person to suffer substantial emotional distress. And Byron testified as to her own, actual emotional distress, including being "terrified all the time," feeling unsafe around McCray and having to go to the emergency room for an anxiety attack caused by his conduct. This evidence was legally sufficient to meet the substantial emotional distress requirement of section 527.6, subdivision (b)(3). (See *Harris v. Stampolis*, *supra*, 248 Cal.App.4th at p. 487 [evidence was sufficient to show reasonable person would suffer substantial emotional distress from defendant's aggressive conduct after he was confronted about regularly being late to pick up his son from school; petitioner submitted evidence she went to the emergency room and was diagnosed with acute anxiety after incident with defendant].)

Byron's evidence was also legally sufficient to establish the likelihood of future harassment absent injunctive relief. "'[T]he determination of whether it is reasonably probable an unlawful act will be [occur] in the future rests upon the nature of the unlawful [harassment] evaluated in the light of the relevant surrounding circumstances of its commission and whether precipitating circumstances continue to exist so as to establish the likelihood of future harm.'" (*Harris v. Stampolis*, *supra*, 248 Cal.App.4th at pp. 499-500 [trial court's implied finding that harassment was likely to recur was proper because petitioner, who was the principal of the school that defendant's child

attended, would likely have future interactions with defendant].) Because Byron and McCray continue to live near each other, and there is no evidence either of them intends to move, the "'precipitating circumstances continue to exist so as to establish the likelihood of future harm.'" (*Ibid.*)

4. *The Trial Court Did Not Abuse Its Discretion in Excluding McCray's Complaint Against the Cal-West Community Homeowners Association*

McCray contends the trial court committed prejudicial error by excluding evidence of the second amended complaint for damages he had filed against the Cal-West Community homeowners association. Although Byron was not a named defendant, she was mentioned in the pleading. McCray insists the document was relevant to his attack on Byron's credibility because it established her retaliatory motive in seeking a CRO against him.

McCray's evidentiary challenge lacks merit. "We review a trial court's decision to admit or exclude evidence 'for abuse of discretion, and [the ruling] will not be disturbed unless there is a showing that the trial court acted in an arbitrary, capricious, or absurd manner resulting in a miscarriage of justice.'" (*People v. Powell* (2018) 5 Cal.5th 921, 951; accord, *Zhou v. Unisource Worldwide* (2007) 157 Cal.App.4th 1471, 1476; *Austin B. v. Escondido Union School Dist.* (2007) 149 Cal.App.4th 860, 885.) We may reverse a judgment for the erroneous exclusion of evidence only upon a showing the error prejudiced the losing party. (Cal. Const., art. VI, § 13; Evid. Code, § 354; *People v. Koontz* (2002) 27 Cal.4th 1041, 1091; *People v. Hansel* (1992) 1 Cal.4th 1211, 1223.)

The trial court's determination the contents of the second amended complaint were not relevant was well within its discretion. Byron testified, although she knew McCray had sued the homeowners association, she had not seen the document and was unaware she was mentioned in it until her deposition was taken in this case. Accordingly, it was reasonable for the court to conclude the pleading did not tend to establish Byron's CRO petition was filed in retaliation for the lawsuit.

Moreover, although excluding the document from evidence, the trial court took judicial notice of the existence of the second amended complaint and gave McCray the opportunity to testify about its allegations. Accordingly, McCray could not possibly have been prejudiced by the court's ruling.

DISPOSITION

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

PERLUSS, P. J.

We concur:

FEUER, J.

DILLON, J.*

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