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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

JOHN MICHAEL SANTA CRUZ, Plaintiff and Respondent, v. DESIREE THOMAS, Defendant and Appellant.	E079361 (Super.Ct.No. CIVSB2202471) OPINION

APPEAL from the Superior Court of San Bernardino County. Donald R. Alvarez, Judge. Affirmed.

Law Office of Sharon P. Babakhan and Sharon Paris Babakhan for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

John Michael Santa Cruz and Desiree Thomas are next-door neighbors. In a previous action, Thomas obtained a civil harassment restraining order against Santa Cruz. Thereafter, according to Santa Cruz, Thomas came onto his property “constantly”; yelled at him; videotaped him, his fiancée, and their property; “mad-dogged” him; made faces at

him; and flipped him off. As a result, the trial court granted Santa Cruz a civil harassment restraining order against Thomas.

Thomas's sole appellate contention is that there was insufficient evidence to support a restraining order. We disagree, and we will affirm.

I

STATEMENT OF THE CASE

In March 2022, Santa Cruz filed the current proceeding for a civil harassment restraining order against Thomas. The petition itself is not in the record. The trial court issued a temporary restraining order. Thomas did not file a response. In June 2022, the trial court granted a three-year restraining order.

II

STATEMENT OF FACTS

The following facts are taken from the oral testimony at the hearing on the petition.

Thomas had obtained a restraining order against Santa Cruz, requiring him to stay 50 yards away from her.

Thereafter, according to Santa Cruz, "[Thomas] c[ame] at me from her property, c[ame] through the railing fence that I had put up and charged at me and started yelling at me . . . ." Another time, she "c[ame] into my yard, c[ame] up to me aggressively, yelling at me, telling me I don't belong here . . . ."

Thomas then built her own fence between the two properties. However, it was too close to her wall, so it was impossible for her to get to her own electrical panel without going onto Santa Cruz's property. She "started to come onto [Santa Cruz's] property, constantly," claiming that she was just accessing her electrical panel.

"In recent weeks," according to Santa Cruz, "she has [been] trying to intimidate all of us by standing in her driveway or sitting in her car videotaping us for no reason and taunting us with face-making and flipping us off."

Thomas kept a video camera pointed at Santa Cruz's property. Santa Cruz testified that Thomas claimed "she knows [the] exact work schedule [of my fiancée] and what I'm doing in my front yard daily, as she is watching us on her camera . . . ."

The parties had some kind of dispute over their utility lines. Santa Cruz had Dig Alert — a company that locates underground utility lines — come out to his house. Thomas came up to the property line and started "mad-dogging" him. He felt threatened.

Thomas denied threatening Santa Cruz or going on his property. She testified, "When I go in and out of my house, [Santa Cruz] is out recording me. Turnabout has now become fair play. I record him." Thomas repeatedly accused Santa Cruz of being a "racist," adding, "He considers himself a white man; he's not; he's a Mexican, and he is no better than me."

III

THE SUFFICIENCY OF THE EVIDENCE OF HARASSMENT

Code of Civil Procedure section 527.6 (section 527.6) allows "[a] person who has suffered harassment" to seek "an order after hearing prohibiting harassment." (§ 527.6, subd. (a).)

"Harassment" includes "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. The course of conduct must be that which as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner." (§ 527.6, subd. (b).)

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 . . . . Constitutionally protected activity is not included within the meaning of 'course of conduct.'" (§ 527.6, subd. (b)(1).)

"At the hearing, . . . [i]f the judge finds by clear and convincing evidence that unlawful harassment exists, an order shall issue prohibiting the harassment." (§ 527.6, subd. (i).)

"[A]ppellate review of the sufficiency of the evidence in support of a finding requiring clear and convincing proof must account for the level of confidence this standard demands . . . . [T]he question before the appellate court is whether the record as a whole contains substantial evidence from which a reasonable fact finder could have

found it highly probable that the fact was true. 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." (*Conservatorship of O.B.* (2020) 9 Cal.5th 989, 995-996.)

Thomas's contention stumbles at the threshold because she has not included a copy of the petition in the appellate record. "'[[T]he appellant] has the burden of providing an adequate record. [Citation.] Failure to provide an adequate record on an issue requires that the issue be resolved against [the appellant].' [Citation.]" (*Jameson v. Desta* (2018) 5 Cal.5th 594, 609.) Any declarations attached to the petition were admissible at the hearing. (*Duronslet v. Kamps* (2012) 203 Cal.App.4th 717, 728-729.) For all we know, such declarations provided ample evidence to support the restraining order.

At the hearing, Santa Cruz referred to a flash drive that included video of the allegedly harassing conduct. Thomas points out, correctly, that the flash drive was not introduced at the hearing. However, Santa Cruz testified that the flash drive was already part of the "paperwork" filed in connection with the petition. Thus, it was properly before the trial court; however, it has not been provided to us.

If only out of an excess of caution, however, we also hold that Santa Cruz's testimony was sufficient to support the restraining order. Again, he testified that Thomas

came onto his property "constantly" and yelled at him; for weeks, she had been making faces at him and flipping him off. Her conduct of constantly videotaping him, his fiancée, and their house, from a permanent camera as well as from her car, and of bragging about her knowledge of their movements would be sufficient, standing alone, to support the restraining order.

Thomas argues that she videotaped only publicly visible portions of Santa Cruz's property. However, her videotaping was constant, and there was no legitimate purpose for it. The fact (if it was a fact) that he videotaped her did not justify her videotaping him. Thus, the trial court could find that the videotaping rose to the level of harassment.

Thomas then argues that there was no evidence of any "illegal conduct" on her part, but that is not required. She also asserts that she was "legally entitled" to mad-dog Thomas and to flip him off. However, she does not support this assertion with any reasoned argument or citation of authority. (See Cal. Rules of Court, rule 8.204(a)(1)(B).) Certainly she does not claim that this was constitutionally protected activity. (See § 527.6, subd. (b)(1).)

Next, Thomas argues that she was "within her rights" to go on Santa Cruz's property to check her electrical panel. Not so. It was necessary for her to do so only because she had had a fence built too close to her wall. This unilateral act did not give her a right to go on Santa Cruz's property. In any event, it was inferable that she was just using this as an excuse to go onto Santa Cruz's property and harass him.

Finally, Thomas argues that there was insufficient evidence that Santa Cruz experienced substantial emotional distress. He testified, however, "I am very worried for myself [and] my family . . . ." He felt "threatened" and "very, very intimidated." The trial court was able to observe his demeanor and could have inferred substantial emotional distress from that alone. In any event, given what Thomas did, it was inferable that he suffered substantial emotional distress.

IV

DISPOSITION

The order appealed from is affirmed.

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RAMIREZ
P. J.

We concur:

RAPHAEL
J.

MENETREZ
J.