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LEGAL UPDATE

August 9, 2019

To: **Superintendents/Presidents/Chancellors, Member Community College Districts**

From: **Kaitlyn Schwendeman, Schools Legal Counsel** KAS

Subject: **New Restraining Order Case and Managing Disruptive Persons on Campus**
Memo No. 11-2019(CC)

In June, the California Court of Appeal issued a decision interpreting Code of Civil Procedure § 527.8, which allows employers to seek a workplace violence restraining order against an individual on behalf of an employee.

The case, *Los Angeles Unified School District v. Andy Obinna*, Case No. B290225, 2019 WL 298399 (Cal. App. June 17, 2019) ("*Obinna*"), attached to this Legal Update, reviewed the conduct of a parent with "bad behavior," and the reasonableness of the grant of a three-year restraining order. Under California Code of Civil Procedure § 527.8, employers seeking a restraining order must show that the employee has suffered "unlawful violence or a **credible threat of violence from an individual in the workplace**." The Court upheld the restraining order in *Obinna* based on the "escalating nature of Obinna's actions, his inability to change his behavior after receiving two reprimands, the frequency and severity of his threats and angry outbursts at the school, and the violent nature of the videos he sent the school by Facebook Messenger," which included images of a person holding a gun and a knife.

In the event there is a need to remove a disruptive person from campus, clients have many legal options that may be utilized in addition, or prior to, seeking a restraining order under Code of Civil Procedure § 526.8. Below is a brief review of some of the options available under the various laws; however, we recommend consulting with legal counsel regarding each specific event.

Acts Likely to Interfere with Peaceful Conduct[1] – Community colleges may ask non-students and non-employees to leave the premises when it reasonably

[1] Penal Code § 626.6.

appears that the person is committing any act likely to interfere with the peaceful conduct of the campus; however, such requests cannot be motivated by a desire to restrict free speech.

Withdrawal of Consent to Remain on Campus[2] – Community colleges may remove any person "whenever there is reasonable cause to believe that such person has willfully disrupted the orderly operation" of the campus/facility, as long as notice is given and an opportunity for a hearing is provided. Courts have interpreted § 626.4 to be limited to removals only if "conduct or words are such as to constitute, or incite to, a substantial and material physical disruption incompatible with the peaceful functioning of the academic institution and those upon its campus," and "only when the person excluded has committed acts proscribed by other statutes."

Willful Disruption of Orderly Campus Operation[3] – Anyone (student, faculty, staff, or administration) on a community college campus that is found after a hearing to have willfully disrupted the student body may be subject to a suspension.

Please contact our office with questions regarding this Legal Update or any other matter.

[2] Penal Code § 626.4.
[3] Education Code § 66017.

LOS ANGELES UNIFIED SCHOOL DISTRICT v. ANDY OBINNA

Filed 6/17/19 Los Angeles Unified School Dist. CA2/7

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

LOS ANGELES UNIFIED SCHOOL DISTRICT,

Plaintiff and Respondent,

v.

ANDY OBINNA,

Defendant and Appellant.

B290225

(Los Angeles County

Super. Ct. No.18STRO00991)

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

Jaaye Person-Lynn for Defendant and Appellant.

David Holmquist, General Counsel, Robert M. Cuen, Interim Associate General Counsel, Office of the General Counsel, for Plaintiff and Respondent.

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INTRODUCTION

The Los Angeles Unified School District, on behalf of its employee Charity Weber, filed a petition under Code of Civil Procedure section 527.8 seeking a workplace violence protective order against Andy Obinna, the father of a student enrolled at a school, after a series of incidents in which Obinna threatened violence. The trial court granted a temporary restraining order and, after a two-day court trial, issued a three-year restraining order. Obinna argues that substantial evidence does not support the restraining order and that the trial court violated his due process rights. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. Obinna Confronts Employees of His Son's School and Makes Credible Threats of Violence
B.
Obinna's son was a student at an elementary school where Weber worked as the principal. Obinna complained to Weber numerous times that his son "was being treated violently in the school" by students and staff and that the school's response was unsatisfactory. Obinna expressed his dissatisfaction in a series of confrontations with Weber and others at the school.

The first incident occurred on September 14, 2017, when Obinna had a conversation with Weber at dismissal. Obinna was angry and screaming at a school employee. Obinna used profanity "in a very loud and aggressive manner in front of staff, parents and students, and stated that he was a 'violent man,'" which made Weber and another school employee feel "very nervous and physically threatened by Mr. Obinna's actions." Obinna told Weber that "no one intimidates him. No one can threaten him. That he will unleash on them. He told [Weber] he knew martial arts and that he would finish them." As a result of this incident, the District issued Obinna a disruptive person letter, which Obinna subsequently appealed and Weber rescinded.

On November 28, 2017, also during dismissal, Obinna addressed a student who was not his child. In response to this incident, the District issued another disruptive person letter. Even after this letter, Obinna confronted the child on several occasions.

On December 13, 2017, while police officers were on campus, Obinna confronted Weber, stating: "I am above the law. I do not fear police. They fear me. I challenge the police." Obinna also said: "When you try to challenge a guy like me, I fight back. You don't go after me." And: "If the police want to shoot me, I am ready to die. If you push me to the wall I am ready to die." Weber felt intimidated and feared for her safety.

In January 2018 Obinna sent the school by Facebook messenger 13 threatening videos that Weber received as the administrator of the school's Facebook page. One of these videos featured a person pumping a shotgun and brandishing a 12-inch blade while claiming to shoot and kill people. The person in the video stated: "You dang clowns wanna fuck with me? I'll fuck you up, fuck you up—Nigger! You come near me, you gonna *[face]* tomahawk

—Nigger! Throw this thing right in your fuckin' face. Wanna knife battle? I'll fuckin' knife battle you. Guys are fucking scary!! I'll fuck you up!! Nigger!! Don't fucking come near me or you're getting a face fulla lead." After viewing the video, Weber feared for her life and for the lives of her students and staff. She was afraid Obinna would bring a gun to the school. She found this video "so fatally and physically threatening" that she drove to the police department to report it.

Finally, on February 5, 2018 Obinna came to the school at dismissal and screamed profanities at students, parents, and staff. Obinna asked Weber if she had heard what someone had said to his son, and Weber said she had been speaking to another parent. Obinna said, "Fuck you. Fuck you. Fuck this school. Fuck everyone here." Obinna walked toward Weber in an aggressive and physically threatening manner and charged at her as if he was going to strike her. Several parents and a school employee intervened and separated her from Obinna. Weber stated that, but for the intervention of another employee, Obinna would have hit her.

C. The Trial Court Issues a Temporary Restraining Order and a Permanent Injunction
D.
The District filed a petition pursuant to Code of Civil Procedure section 527.8, seeking a workplace violence temporary restraining order that would require Obinna to stay 100 yards away from Weber, the school, and the school's students and staff. The trial court issued a temporary restraining order. Obinna withdrew his son from the school and enrolled him in a private school.

After a two-day trial, the court granted the District's petition for a three-year restraining order. The court found by clear and convincing evidence Obinna engaged in a course of conduct, including "yelling, screaming, abusing school staff, frightening children on campus, lunging at Ms. Weber" and "sending a violent video to the school Facebook site, for which there could not have been any legitimate purpose, other than . . . frightening and terrorizing the recipients." The court found that this behavior, combined with Obinna's statements to Weber "that he challenged police to shoot him" and that "he was a violent man," and Obinna's "transmission of a violent video," reasonably caused the District to believe he posed a credible threat. The court also cited Obinna's "aggression" and "angry outbursts" in the courtroom, which had caused the court to admonish Obinna several times during trial to control his courtroom behavior and to ask counsel for Obinna at one point to speak with his client "about gesturing wildly." The court found that Obinna's "escalation of aggressive behavior and [Obinna's] demonstration of his inability or unwillingness to control that behavior even in this courtroom over the last two days creates the probability of future similar behavior, making issuance of a restraining order necessary." Obinna timely appealed from the trial court's order.

DISCUSSION

A. Section 527.8 Workplace Violence Petitions

B.

Section 527.6 authorizes a "person" who has suffered harassment to obtain an injunction to prevent further harassment. Section 527.8, subdivision (a), provides the same right to an employer: "Any employer, whose employee has suffered unlawful violence or a credible threat of violence from any individual, that can reasonably be construed to be carried out or to have been carried out at the workplace, may seek a temporary restraining order and an order after hearing on behalf of the employee and, at the discretion of the court, any number of other employees at the workplace, and, if appropriate, other employees at other workplaces of the employer." "[I]njunctive proceedings under section 527.8 are intended to parallel those under section 527.6, which are procedurally truncated, expedited, and intended to provide quick relief to victims of civil harassment." (Kaiser Foundation Hospitals v. Wilson (2011) 201 Cal.App.4th 550, 557; see Robinzine v. Vicory (2006) 143 Cal.App.4th 1416, 1423 ["section 527.8 was enacted to allow employers to seek protections comparable to those offered under section 527.6 to enjoin workplace threats or acts of violence against employees"]; Scripps Health v. Marin (1999) 72 Cal.App.4th 324, 333 (Scripps) [the Legislature enacted section 527.8 "to establish parallel provisions to section 527.6" and to allow an "employer to pursue a [temporary restraining order] and an injunction on behalf of its employees to prevent threats or acts of violence by either another employee or third person"].) The Legislature's intent in enacting section 527.8 "was to address the growing phenomenon in California of workplace violence by providing employers with injunctive relief so as to prevent such acts of workplace violence." (USS-Posco Industries v. Edwards (2003) 111 Cal.App.4th 436, 443.)

To obtain an injunction under section 527.8, an employer must prove its employee has suffered unlawful violence or a credible threat of violence from an individual in the workplace. (§ 527.8, subds. (a), (e).) The employer "must establish by clear and convincing evidence not only that a defendant engaged in unlawful violence or made credible threats of violence, but also that great or irreparable harm would result to an employee if a prohibitory injunction were not issued due to the reasonable probability unlawful violence will occur in the future." (Scripps, supra, 72 Cal.App.4th at p. 335; see § 527.8, subd. (f); City of San Jose v. Garbett (2010) 190 Cal.App.4th 526, 537-538.) "[T]he requirement of establishing the reasonable probability wrongful acts, or simply unlawful violence, will occur in the future guarantees that injunctive relief will be issued to prevent future harm instead of punishing past completed acts." (Scripps, at p. 335, fn. 9.)

"[W]e review an injunction issued under section 527.8 to determine whether the necessary factual findings are supported by substantial evidence. [Citation.] Accordingly, we resolve all factual conflicts and questions of credibility in favor of the prevailing party, and draw all reasonable inferences in support of the trial court's findings." (City of San Jose v. Garbett, supra, 190 Cal.App.4th at p. 538.)

C. Substantial Evidence Supported the Trial Court's Finding That District Employees Were at Risk of Future Harm

D.

Obinna argues the trial court erred in granting the District's petition for a restraining order because "no evidence was presented to demonstrate that there was any threat of future harm to petitioner or its employees, students, or facilities." According to Obinna, the trial court made statements following Weber's testimony demonstrating that the court did not consider the likelihood that Obinna would engage in future unlawful violence. Obinna also argues the court failed to take into account that, because Obinna's son had transferred to another school, there was no need for an injunction.

There was substantial evidence, however, that Obinna was reasonably likely to commit future acts of violence against Weber and the staff and students of the school, even though his child was no longer enrolled there. The escalating nature of Obinna's actions, his inability to change his behavior after receiving two reprimands, the frequency and severity of his threats and angry outbursts at the school, and the violent nature of the videos he sent the school by Facebook messenger, constituted substantial evidence that, absent an injunction, there was a reasonable probability of future unlawful violence. (See City of San Jose v. Garbett, supra, 190 Cal.App.4th at pp. 532, 542, 543 [substantial evidence supported a restraining order against a citizen with a "history of threatening conduct toward City employees" who regularly attended and spoke at city council meetings and who said to a city clerk, referring to a man who had killed six people during a city counsel meeting, "What do I need . . . to do to get things done around here? Do I need to take matters into my own hands like that Black man did in Missouri?"].) Obinna's behavior at trial confirmed he was still angry at the school and continued to pose a threat even though his son was no longer a student there. Indeed, it was a reasonable inference from the evidence that Obinna blamed the school for forcing him to transfer his son to another school.

Obinna argues the trial court "applied an incorrect standard" and "stated that the matter was decided on the basis of the Facebook videos alone." Obinna refers to an exchange with the trial court when counsel for Obinna sought to introduce evidence of his complaints against the school for failing to protect his child. In ruling this evidence was not relevant, the court, referring to the Facebook video, stated: "So far, based only on the video, they have sustained their burden. And that has nothing to do with any complaints your client could possibly have made about the treatment of his child." To the extent the court's statement suggested the court had made a decision on the petition before Obinna had presented his case and the court had heard all the evidence at the trial, the court's statement gives us pause. (See Noergaard v. Noergaard (2015) 244 Cal.App.4th 76, 95 ["'"The trial of a case should not only be fair in fact, but it should also appear to be fair.' [Citations.] A prime corollary of the foregoing rule is that 'A trial judge [must] keep an open mind until all the evidence is presented to him [or her].'"'"].) The context of the court's statement, however, suggests the court meant only that the District had met its initial burden of proving a prima

facie case. Indeed, the court subsequently stated: “All right. Prima facie case has been made. You [counsel for Obinna] may call your first witness.” In addition, in ruling on the petition the court referred to the “overall considerations in this case” and stated the protective order was based on the evidence of the incidents at school, “coupled with and followed by [Obinna’s] transmission of a violent video,” as well as Obinna’s behavior during the trial.

Obinna’s reliance on Scripps, supra, 72 Cal.App.4th 324, is misplaced. Scripps arose from a single incident between hospital administrators and the defendant regarding the discharge of the defendant’s mother from the hospital. When the administrator insisted the defendant remain, and stood in front of the door to prevent the defendant from leaving, the defendant opened the door, which hit the administrator and pushed her into the wall. (Id. at p. 328.) The trial court issued a restraining order under section 527.8, and on appeal the defendant argued there was no substantial evidence of a threat of future harm to hospital employees. (Id. at pp. 327, 330.) The Court of Appeal held that these facts, along with the defendant’s agreement not to return to the hospital, were insufficient to show the defendant would engage in future violent conduct against hospital staff. (Id. at p. 337.) Unlike the defendant in Scripps, who committed a single act of violence and gave no indication he would commit any future acts of violence, Obinna instigated multiple confrontations of increasing severity with school officials, students, and parents over a period of several months, culminating with verbal threats to school employees and parents and an assault on the school principal. Obinna also displayed hostility toward the school during the trial, which occurred long after his son had ceased attending the school.

E. The Trial Court Did Not Violate Obinna’s Due Process Rights
F.
Obinna contends the trial court violated his due process rights by precluding him from presenting a defense. (See Nora v. Kaddo (2004) 116 Cal.App.4th 1026, 1028 [“‘[a]lthough the procedures set forth in the harassment statute are expedited, they contain certain important due process safeguards,’” including “‘a full opportunity to present his or her case, with the judge required to receive relevant testimony’”].) Obinna asserts the trial court limited Obinna’s ability to present a defense by questioning Obinna’s nine-year-old son directly rather than allowing Obinna “to question his own witness.” The trial court, however, did not limit Obinna’s ability to question his witnesses; the court asked questions, which the court is entitled to do under Evidence Code section 775. (See Hernandez v. Kieferle (2011) 200 Cal.App.4th 419, 439 [“[t]he court may question witnesses and comment on evidence, but it should not distort testimony [citation] or make comments that ‘indicate more than a slight leaning to one side’”].) The court also questioned Weber, the District’s principal witness. Moreover, counsel for Obinna had the opportunity to and did question Obinna’s son, who testified in response to counsel’s questions about the February 5, 2018 incident

that his father did not raise his voice or threaten Weber and that the police did not intervene. The court did not restrict counsel for Obinna's questioning, and even overruled objections by counsel for the District during the son's testimony.

Obinna also argues the court denied him due process by not continuing the trial (further) to allow a school police officer to testify. At the conclusion of the first day of trial, counsel for Obinna stated he wanted to call the school police officer, but counsel had a preliminary hearing in another case the next morning. The court continued the trial to 1:30 p.m. the following day to allow counsel for Obinna to attend the preliminary hearing. The court reminded the parties that the trial would conclude after the officer testified, that the District should bring any rebuttal witnesses, and that counsel should be prepared to present closing arguments. The court denied a request by counsel for the District that the court limit the officer's testimony to the February 5, 2018 incident and ruled counsel for Obinna could question the officer about any incident the officer had witnessed.

When the trial resumed at 1:35 p.m. the next day, however, the officer was not present in court. After two more recesses, counsel for Obinna reported the officer was running late because he had been involved in a car accident and was waiting for clearance from his supervisor to go to court. By 1:55 p.m. the officer had still not arrived, and counsel for Obinna said the officer was 10 to 15 minutes away. When counsel for Obinna asked if the court wanted to call the officer, the court stated: "No, Sir. I gave you the opportunity. And you gave me the information that you don't know when or whether he will be here. That he had some sort of an incident on the way here, and you . . . indicated that he is waiting for somebody to tell him something and not that he'll be here in 10 minutes. He'll be here in one hour. I don't know that he'll be here at all. So I'm not going to wait for somebody who may or may not show." The court then took another recess to allow counsel for Obinna to call the officer, after which counsel reported the officer had not yet contacted him, although counsel stated at 2:15 p.m. he received a text message estimating the officer would arrive in 12 minutes. The court decided it could not wait any longer and told counsel to present their closing arguments.

The trial court did not abuse its discretion in proceeding with closing arguments. (See Natkin v. California Unemployment Ins. Appeals Bd. (2013) 219 Cal.App.4th 997, 1012 ["A trial court has broad discretion to control the proceedings before it in the furtherance of justice."]; Dailey v. Sears, Roebuck & Co. (2013) 214 Cal.App.4th 974, 1004 [the "decision to grant or deny continuance is committed to the sound discretion of the trial court"]; Midwest Television, Inc. v. Scott, Lancaster, Mills & Atha, Inc. (1988) 205 Cal.App.3d 442, 456 ["It is the duty of the trial court to vigorously insist upon cases being heard and decided in the most timely manner possible, unless there are compelling reasons to the contrary."]; see also Sheldon v. Landwehr (1911) 159 Cal. 778, 781 ["An application for continuance on the ground of the absence of a witness is addressed to the sound discretion of the trial court, and an order denying the application will not be deemed ground for reversal unless it is

clear to the appellate court that the court below has abused its discretion."].) The court initially continued the trial to the afternoon of the second day to accommodate counsel for Obinna. When the witness did not appear when trial resumed, the court took several recesses to give counsel for Obinna an opportunity to secure the officer's attendance at trial. After waiting additional time, the court decided to conclude the trial "as we planned." The trial court did not abuse its discretion or violate Obinna's due process rights to present his defense.

And Obinna in fact presented his defense. In addition to asking his son to testify, Obinna called Weber, who admitted she granted Obinna's appeal of the first disruptive person letter and rescinded the letter. Obinna testified he did not intend to send the video to Weber, but merely posted the video on his Facebook page to help the video "go viral," which automatically sent it to everyone on his friends list. He stated that he had over 15 meetings with Weber and that she never indicated she was fearful of him. He said he never threatened, struck, or attempted to strike her. He denied he was a violent person, had any criminal convictions for violence, or had any restraining orders against him. Obinna testified about the September 2017 incident and the disruptive person letter (and its rescission) and about the December 13, 2017 incident, stating he did not recall saying he was above the law and did not fear the police. Obinna also gave his version of the February 5, 2018 incident. According to Obinna, Weber approached him with an "entourage of security" and "two policemen," he spoke to Weber about students who had attacked his son in her presence, Weber responded by saying, "What? What?", an "old man with gang tattoos everywhere" threatened him, and Obinna "walked away." Obinna denied charging at Weber and stated he never threatened or acted aggressively toward Weber or anyone else at the school. He also testified he had no desire, plans, or reason to go to the school now that his son was no longer a student there. That the trial court did not credit Obinna's testimony did not mean Obinna did not have a full and fair opportunity to present his defense to the petition.

DISPOSITION

The order is affirmed.

SEGAL, J.

We concur:

PERLUSS, P. J.

FEUER, J.