

Code of Civil Procedure section 527.6. **Harassment; temporary restraining order and injunction; procedure; domestic violence; support person; costs and attorney fees; punishment**

(a) A person who has suffered harassment as defined in subdivision (b) may seek a temporary restraining order and an injunction prohibiting harassment as provided in this section.

(b) For the purposes of this section, "harassment" is 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. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the plaintiff.

As used in this subdivision:

(1) "Unlawful violence" is any assault or battery, or stalking as prohibited in Section 646.9 of the Penal Code, but shall not include lawful acts of self-defense or defense of others.

(2) "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.

(3) "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, including, but not limited to, the use of public or private mails, interoffice mail, fax, or computer e-mail. Constitutionally protected activity is not included within the meaning of "course of conduct."

(c) Upon filing a petition for an injunction under this section, the plaintiff may obtain a temporary restraining order in accordance with Section 527, except to the extent this section provides a rule that is inconsistent. A temporary restraining order may be issued with or without notice upon an affidavit that, to the satisfaction of the court, shows reasonable proof of harassment of the plaintiff by the defendant, and that great or irreparable harm would result to the plaintiff. In the discretion of the court, and on a showing of good cause, a temporary restraining order or injunction, issued under this section may include other named family or household members who reside with the plaintiff. A temporary restraining order issued under this section shall remain in effect, at the court's discretion, for a period not to exceed

15 days, or, if the court extends the time for hearing under subdivision (d), not to exceed 22 days, unless otherwise modified or terminated by the court.

(d) Within 15 days, or, if good cause appears to the court, 22 days from the date the temporary restraining order is issued, a hearing shall be held on the petition for the injunction. The defendant may file a response that explains, excuses, justifies, or denies the alleged harassment or may file a cross-complaint under this section. At the hearing, the judge shall receive any testimony that is relevant, and may make an independent inquiry. If the judge finds by clear and convincing evidence that unlawful harassment exists, an injunction shall issue prohibiting the harassment. An injunction issued pursuant to this section shall have a duration of not more than three years. At any time within the three months before the expiration of the injunction, the plaintiff may apply for a renewal of the injunction by filing a new petition for an injunction under this section.

(e) This section does not preclude either party from representation by private counsel or from appearing on the party's own behalf.

(f) In a proceeding under this section if there are allegations or threats of domestic violence, a support person may accompany a party in court and, if the party is not represented by an attorney, may sit with the party at the table that is generally reserved for the party and the party's attorney. The support person is present to provide moral and emotional support for a person who alleges he or she is a victim of domestic violence. The support person is not present as a legal adviser and may not provide legal advice. The support person may assist the person who alleges he or she is a victim of domestic violence in feeling more confident that he or she will not be injured or threatened by the other party during the proceedings if the person who alleges he or she is a victim of domestic violence and the other party are required to be present in close proximity. This subdivision does not preclude the court from exercising its discretion to remove the support person from the courtroom if the court believes the support person is prompting, swaying, or influencing the party assisted by the support person.

(g) Upon the filing of a petition for an injunction under this section, the defendant shall be personally served with a copy of the petition, temporary restraining order, if any, and notice of hearing of the petition. Service shall be made at least five days before the hearing. The court may for good cause, on motion of the plaintiff or on its own motion, shorten the time for service on the defendant.

(h) The court shall order the plaintiff or the attorney for the plaintiff to deliver a copy of each temporary restraining order or injunction, or modification or termination thereof, granted under this section, by the close of the business day on which the order was granted, to the law enforcement agencies within the court's discretion as are requested by the plaintiff. Each appropriate law enforcement agency shall make available information as to the existence and current status of

these orders to law enforcement officers responding to the scene of reported harassment.

An order issued under this section shall, on request of the plaintiff, be served on the defendant, whether or not the defendant has been taken into custody, by any law enforcement officer who is present at the scene of reported harassment involving the parties to the proceeding. The plaintiff shall provide the officer with an endorsed copy of the order and a proof of service that the officer shall complete and send to the issuing court.

Upon receiving information at the scene of an incident of harassment that a protective order has been issued under this section, or that a person who has been taken into custody is the subject of an order, if the protected person cannot produce a certified copy of the order, a law enforcement officer shall immediately attempt to verify the existence of the order.

If the law enforcement officer determines that a protective order has been issued, but not served, the officer shall immediately notify the defendant of the terms of the order and shall at that time also enforce the order. Verbal notice of the terms of the order shall constitute service of the order and is sufficient notice for the purposes of this section and for the purposes of Section 273.6 and subdivision (g) of Section 12021 of the Penal Code.

(i) The prevailing party in any action brought under this section may be awarded court costs and attorney's fees, if any.

(j) Any willful disobedience of any temporary restraining order or injunction granted under this section is punishable pursuant to Section 273.6 of the Penal Code.

(k)(1) A person subject to a protective order issued under this section shall not own, possess, purchase, receive, or attempt to purchase or receive a firearm while the protective order is in effect.

(2) The court shall order a person subject to a protective order issued under this section to relinquish any firearms he or she owns or possesses pursuant to Section 527.9.

(3) Every person who owns, possesses, purchases or receives, or attempts to purchase or receive a firearm while the protective order is in effect is punishable pursuant to subdivision (g) of Section 12021 of the Penal Code.

(l) This section does not apply to any action or proceeding covered by Title 1.6C (commencing with Section 1788) of the Civil Code or by Division 10 (commencing with Section 6200) of the Family Code. This section does not preclude a plaintiff from using other existing civil remedies.

(m) The Judicial Council shall promulgate forms and instructions therefor, and rules for service of process, scheduling of hearings, and any other matters required by this section. The petition and response forms shall be simple and concise, and their use by parties in actions brought pursuant to this section shall be mandatory.

(n) A temporary restraining order or injunction relating to harassment or domestic violence issued by a court pursuant to this section shall be issued on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice pursuant to subdivision (i) of Section 6380 of the Family Code. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial Council and approved by the Department of Justice shall not, in and of itself, make the order unenforceable.

(o) Information on any temporary restraining order or injunction relating to harassment or domestic violence issued by a court pursuant to this section shall be transmitted to the Department of Justice in accordance with subdivision (b) of Section 6380 of the Family Code.

(p) There is no filing fee for a petition that alleges that a person has inflicted or threatened violence against the petitioner, or stalked the petitioner, or acted or spoken in any other manner that has placed the petitioner in reasonable fear of violence, and that seeks a protective or restraining order or injunction restraining stalking or future violence or threats of violence, in any action brought pursuant to this section. No fee shall be paid for a subpoena filed in connection with a petition alleging these acts. No fee shall be paid for filing a response to a petition alleging these acts.

(q)(1) Subject to paragraph (4) of subdivision (b) of Section 6103.2 of the Government Code, there shall be no fee for the service of process of a protective order, restraining order, or injunction to be issued, if any of the following conditions apply:

(A) The protective order, restraining order, or injunction issued pursuant to this section is based upon stalking, as prohibited by Section 646.9 of the Penal Code.

(B) The protective order, restraining order, or injunction issued pursuant to this section is based upon a credible threat of violence.

(C) The protective order, restraining order, or injunction is issued pursuant to Section 6222 of the Family Code.

(2) The Judicial Council shall prepare and develop application forms for applicants who wish to avail themselves of the services described in this subdivision.

RUSSELL v. DOUVAN (2003) 112 Cal.App.4th 399

Here we reaffirm the long-standing principle that a prohibitory injunction may not issue unless the court finds there is a threat of future harm.

FACTUAL AND PROCEDURAL BACKGROUND

Thomas Douvan and Lance Russell are attorneys who represented opposite sides in a dispute. Russell claimed that after a court appearance Douvan followed him into an elevator and forcefully grabbed his arm. Russell filed a petition for an injunction prohibiting harassment under Code of Civil Procedure section 527.6.FN1 Following an evidentiary hearing, the court concluded that Douvan committed a battery and issued an injunction. Russell did not attribute any other violent act or threat to Douvan. At the time of the hearing, Russell no longer represented a party in the underlying action. Russell and Douvan advised the court that they do not “regularly do business with [each other] or oppos[e] each other.” The court stated: “[T]he legislature has given *401 a quite clear message that if there's a battery or an assault committed and that's demonstrated by clear and convincing evidence, and that's it, that I am supposed to issue an injunction.” Douvan challenges the order because the court issued the injunction without first finding a threat of future harm. We reverse.

FN1. All statutory references are to the Code of Civil Procedure, unless stated otherwise.

DISCUSSION

The court misinterpreted section 527.6 in concluding an injunction must issue based on a single incident of battery without finding a threat of future harm. Section 527.6 provides injunctive relief to a person who has suffered harassment. Harassment is defined in part as “unlawful **139 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.” (§ 527.6, subd. (b).) Unlawful conduct is further defined to include “any assault or battery, or stalking as prohibited in Section 646.9 of the Penal Code, but shall not include lawful acts of self-defense or defense of others.” (§ 527.6, subd. (b)(1).) “If the judge finds by clear and convincing evidence that unlawful harassment exists, an injunction shall issue prohibiting the harassment. An injunction issued pursuant to this section shall have a duration of not more than three years.” (§ 527.6, subd. (d).) “ ‘Clear and convincing’ evidence requires a finding of high probability.” (*In re Angelia P.* (1981) 28 Cal.3d 908, 919, 171 Cal.Rptr. 637, 623 P.2d 198.)

A prohibitory injunction is “a writ or order requiring a person to refrain from a particular act.” (§ 525.) Characterized as “preventative relief,” a prohibitory injunction necessarily addresses future conduct. (Civ.Code, § 3420.) This notion was discussed by the court in *Scripps Health v. Marin* (1999) 72 Cal.App.4th 324, 85 Cal.Rptr.2d 86 (*Scripps Health*): “Preliminarily, the express codified purpose of a prohibitory injunction is to prevent future harm to the applicant by ordering the defendant to refrain from doing a particular act. [Citations.] Consequently, injunctive relief lies only to prevent threatened injury and has no application to wrongs that have been completed. [Citation.] It should neither serve as punishment for past acts, nor be exercised in the absence of any evidence establishing the reasonable probability the acts will be repeated in the future. Indeed, a change in circumstances at the time of the hearing, rendering injunctive relief moot or unnecessary, justifies denial of the request. [Citations.] Moreover, not only can injunctive relief be denied where the defendant has voluntarily discontinued the wrongful conduct [citation], there exists no equitable reason for ordering it where the defendant has in good faith discontinued the proscribed conduct [citation]. ‘Thus, to authorize the issuance of an injunction, it must appear with reasonable certainty that the wrongful acts will be continued or repeated.’ [Citation.]” (*Id.* at pp. 332-333, 85 Cal.Rptr.2d 86, italics added.)

*402 *Scripps Health* concerned section 527.8, the availability of injunctive relief based on a threat of violence towards employees in the workplace. “At the time section 527.8 was enacted, section 527.6 prevented harassment when there has been a knowing and willful course of conduct directed at a specific person which annoys or harasses the person and serves no legitimate purpose. The reasonable construction of this harassment provision required the applicant to establish a course of conduct giving rise to a threat of future harm necessitating injunctive relief. In other words, the course of conduct must be ongoing at the time the injunction is sought, as a single incident of harassment does not constitute a course of conduct entitling the applicant to injunctive relief. [Citation.]” (*Scripps Health, supra*, 72 Cal.App.4th at p. 333, 85 Cal.Rptr.2d 86, italics added, fn. omitted.)

Section 527.6 was amended in 1998 to parallel the provisions of section 527.8 by adding “unlawful violence” and the “credible threat of violence” to the definition of harassment along with the “course of conduct” language discussed by the *Scripps Health* court. (*Scripps Health, supra*, 72 Cal.App.4th at p. 333, fn. 7, 85 Cal.Rptr.2d 86; Stats.1998, ch. 581, § 2, pp. 3158-3160.)

Subdivision (d) of section 526.7 addresses the requirements for obtaining a permanent**140 injunction. The subdivision provides in part: “If the judge finds by clear and convincing evidence that unlawful harassment exists, an injunction shall issue prohibiting the harassment.” Not completely without reason, the trial court understood the statute to call for the issuance of an injunction upon the finding of a single act of past violence. This interpretation is, however, too narrow in view of the purpose of a prohibitory injunction and the broader context of the statute.

A literal interpretation of section 527.6, subdivision (d) is inconsistent with the purpose of injunctive relief. As the Scripps Health court explained, an injunction serves to prevent future injury and is not applicable to wrongs that have been completed. An injunction is authorized only when it appears that wrongful acts are likely to recur. (*Scripps Health, supra*, 72 Cal.App.4th at pp. 332-333, 85 Cal.Rptr.2d 86.) This analysis is consistent with well-settled California law. (*Rosicrucian Fellowship v. Rosicrucian Etc. Ch.* (1952) 39 Cal.2d 121, 144, 245 P.2d 481; *Hannah v. Pogue* (1944) 23 Cal.2d 849, 858, 147 P.2d 572; *Blake v. City of Eureka* (1927) 201 Cal. 643, 661-662, 258 P. 945; *Ball v. Kehl* (1891) 87 Cal. 505, 507, 25 P. 679.)

Nor is a literal interpretation of the subdivision consistent with the purpose of the statute itself. In construing a statute we rely on established principles of statutory interpretation: “ ‘ “The fundamental purpose of statutory construction is to ascertain the intent of the lawmakers so as to effectuate the purpose of the law. [Citations.] In order to determine this intent, we begin by *403 examining the language of the statute. [Citations.] But ‘[i]t is a settled principle of statutory interpretation that language of a statute should not be given a literal meaning if doing so would result in absurd consequences which the Legislature did not intend.’ [Citations.] Thus, ‘[t]he intent prevails over the letter, and the letter will, if possible, be so read so as to conform to the spirit of the act.’ [Citation.] Finally, we do not construe statutes in isolation, but rather read every statute ‘with reference to the entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness.’ [Citation.]” ‘ [Citations.]” (*Scripps Health, supra*, 72 Cal.App.4th at p. 332, 85 Cal.Rptr.2d 86.)

Section 527.6 is intended “to protect the individual's right to pursue safety, happiness and privacy as guaranteed by the California Constitution.” (Stats.1978, ch. 1307, § 1, p. 4294; see Cal. Const. art. I, § 1.) The court in *Smith v. Silvey* (1983) 149 Cal.App.3d 400, 197 Cal.Rptr. 15, recounted a portion of the legislative history in order to explain the statute's purpose: “An analysis prepared for the Senate Committee on Judiciary (1977-1978 Reg. Sess.-Assem. Bill No. 3093) saw the purpose as follows: ‘Under existing law, a victim of harassment may bring a tort action based either on invasion of privacy or on intentional infliction of emotional distress. Where great or irreparable injury is threatened, such victim may obtain an injunction under procedures detailed in C.C.P. Sec. 527(a). [¶] This bill would establish an expedited procedure for enjoining acts of “harassment” as defined, including the use of temporary restraining orders.... [¶] The purpose of the bill is to provide quick relief to harassed persons.’ ” (*Id.* at p. 405, 197 Cal.Rptr. 15.) It follows that if there is no likelihood of future harm, there is no necessity for an expedited procedure for relief. Indeed, under subdivision (d) a court cannot issue an injunction unless it finds by clear and convincing evidence that “unlawful harassment exists ” (§ 527.6, subd. (d), italics added), not that it existed in the past.

Additionally, we borrow from the reasoning of the Scripps Health court to find that a literal interpretation of **141 section 527.6, subdivision (d) “would result in the absurd consequence of placing a greater burden of proof on a plaintiff to obtain an

ex parte TRO than a permanent injunction.” (*Scripps Health, supra*, 72 Cal.App.4th at p. 334, 85 Cal.Rptr.2d 86.) Section 527.6, subdivision (c) provides that a “plaintiff may obtain a temporary restraining order ” upon filing an affidavit establishing “reasonable proof of harassment ... by the defendant, and that great or irreparable harm would result to the plaintiff.” (Italics added.) Under subdivision (d), a permanent injunction shall issue upon a finding by clear and convincing evidence that the defendant engaged in unlawful violence. Applying subdivision (d) literally, a plaintiff seeking a temporary restraining order would have to show that great or irreparable harm is threatened, while that same plaintiff would have to demonstrate only a single past act of unlawful violence to obtain the greater relief of a permanent injunction. *404 Common sense does not support such an interpretation. (*Scripps Health, supra*, 72 Cal.App.4th at p. 335, 85 Cal.Rptr.2d 86.)

When the court concluded that a single act of unlawful violence required the issuance of an injunction, it construed its role too narrowly. There may well be cases in which the circumstances surrounding a single act of violence may support a conclusion that future harm is highly probable. That finding, however, must be made and the court failed to do so here.