

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
JOSEPH A. LANE, CLERK

DIVISION 2

FILED
Superior Court of California
County of Los Angeles

APR 13 2011

Los Angeles County Superior Court
111 North Hill Street
Los Angeles, CA 90012

John A. Clarke, Executive Officer/Clerk
By *Marlene Gonzalez*, Deputy
MARLENE GONZALEZ

CONSERVATORSHIP OF THE PERSON/ESTATE OF BRITNEY J. SPEARS.

P. SPEARS et al.,
Plaintiffs and Respondents,
v.
JON EARDLEY,
Intervener and Appellant;
OSAMA (SAM) LUFTI,
Objector and Appellant.
B214749
Los Angeles County No. BP108870

*** REMITTITUR ***

I, Joseph A. Lane, Clerk of the Court of Appeal of the State of California, for the Second Appellate District, do hereby certify that the attached is a true and correct copy of the original order, opinion or decision entered in the above-entitled cause on February 02, 2011 and that this order, opinion or decision has now become final.

Respondents are entitled to its costs on appeal

Witness my hand and the seal of the Court
affixed at my office this

Joseph A. Lane, Clerk

JM Guzman

by: J. Guzman,
Deputy Clerk

APR 7 - 2011



cc: All Counsel (w/out attachment)

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

Conservatorship of the Person and Estate of
BRITNEY JEAN SPEARS.

B214749

(Los Angeles County
Super. Ct. No. BP108870)

JAMES P. SPEARS, as Coconservator,
etc., et al.,

Petitioners and Respondents,

v.

JON JAY EARDLEY,

Objector and Appellant.

COURT OF APPEAL - SECOND DIST.

FILED

FEB -2 2011

JOSEPH A. LANE

Clerk

Deputy Clerk

APPEAL from an order of the Superior Court of Los Angeles County.
Aviva K. Bobb, Judge. Affirmed.

Law Offices of Jon Jay Eardley and Jon Jay Eardley for Defendant and Appellant.

Bird, Marella, Boxer, Wolpert, Nessim, Dooks & Lincenberg, Joel E. Boxer and
Bonita D. Moore for Plaintiffs and Respondents.

Jon Jay Eardley (Eardley) appeals a probate court order restraining him from acting on behalf of conservatee Britney Jean Spears (Britney). We conclude that Eardley has not met his burden on appeal. His arguments are unpersuasive and not supported by an adequate record. Accordingly, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Eardley Contacts Britney

On January 28, 2008, Eardley sent Britney an unsolicited letter, offering to represent her pro bono in her highly publicized legal matters. Eardley does not direct us to any evidence in the appellate record indicating whether she responded to his letter.

Eardley's Efforts to Terminate the Conservatorship

On January 31, 2008, Britney was admitted to UCLA Medical Center on a Welfare and Institutions Code section 5150 psychiatric hold. The following day, the probate court instituted temporary conservatorships over the person and estate of Britney.¹ The probate court also issued a notice of hearing and temporary restraining order (TRO) against Osama (Sam) Lufti (Lufti), a man who Britney's mom claimed "inserted himself into [Britney's] life, home, and finances," had "disabled all of Britney's cars," had harassed Britney by calling her a host of derogatory names, had made her house phones "unworkable," and had ground up Britney's pills and put them in her food, among other things.

On February 6, 2008, pursuant to a hearing held two days prior, the probate court extended both letters of conservatorship to February 14, 2008. In conjunction with extending the letters of conservatorship, the probate court found and ordered that Britney did not have the capacity to retain counsel.

¹ Britney's father, James P. Spears (James), was appointed temporary conservator of the person; James and Andrew M. Wallet were appointed temporary coconservators of Britney's estate; and Samuel D. Ingham III (Ingham) was designated Britney's court-appointed attorney. James, Andrew M. Wallet, and Ingham collectively are referred to as respondents.

On February 14, 2008, the day the temporary letters of conservatorship would expire absent further extension by the probate court, Eardley, purporting to act as Britney's attorney, filed a notice of removal of action in the United States District Court in Los Angeles. Specifically, after the probate court concluded its afternoon hearing at which it extended the temporary letters of conservatorship until March 10, 2008, Eardley filed the notice of removal in the Los Angeles court.

Five days later, James filed a motion to remand in federal court. On February 26, 2008, the district court issued an order granting James's motion to remand the conservatorship proceedings to probate court. It found that "Eardley had no authority to remove the case from state court. He is neither a defendant nor a party. While he claims to be [Britney's] attorney, the Probate Court appointed [Ingham] as her attorney and found that she was incapable of retaining her own counsel."

On March 24, 2008, after Eardley filed further papers in federal court purportedly on behalf of Britney, the district court ordered the documents stricken and admonished Eardley: "As previously stated by this Court's order, . . . Eardley has no authority to act on behalf of Britney Further filings by . . . Eardley in this matter that purport to be on behalf of Britney . . . will warrant sanctions."

Temporary Restraining Order Against Eardley

On January 30, 2009, the probate court issued a TRO against Eardley and Lufti. The TRO provides: "You are prohibited from: (1) acting on [Britney's] behalf, or purporting to act on her behalf; (2) inducing or assisting any other person to take action on [Britney's] behalf, or to purport to take action on her behalf; and (3) filing, or inducing or assisting any other person to file, legal pleadings that purport to be filed on [Britney's] behalf."

Eardley's Appeal from TRO

Eardley filed a notice of appeal on March 6, 2009, purporting to appeal from "the orders of Permanent Conservatorship over the person and the estate of [of Britney], dated January 5, 2009; . . . the Letters of Conservatorship over the person and the estate [of Britney], dated January 9, 2009 . . . [and] the Temporary Restraining Order issued against

[him], dated January 30, 2009.” His appeal was dismissed in two parts: (1) On May 14, 2009, this court issued an order dismissing those portions of Eardley’s appeal relating to the orders and letters of permanent conservatorship over Britney’s person and estate. (2) Later, on January 19, 2010, this court issued an order dismissing Eardley’s appeal from the TRO, finding that the appeal had “been rendered moot by the issuance of a three-year restraining order” (discussed below).

On March 16, 2010, this court issued an order imposing sanctions in the amount of \$5,154.06 against Eardley in connection with his failure to dismiss the appeal of the TRO.

Three-Year Restraining Order

A six-day evidentiary hearing was then held on February 23 and 25, March 18, and April 1, 21, and 28, 2009. The probate court denied Eardley’s motion to dismiss. It then found that Eardley had “no evidence to present to the Court in defense to the allegations.”

On April 28, 2009, the probate court issued a three-year restraining order against Eardley and Lufti pursuant to Code of Civil Procedure sections 527.6 and 527.9² and Welfare and Institutions Code section 15657.03. The restraining order issued against Eardley mirrors the TRO; it provides: “You are prohibited from: (1) acting on [Britney’s] behalf, or purporting to act on her behalf; (2) inducing or assisting any other person to take action on [Britney’s] behalf, or to purport to take action on her behalf; and (3) filing, or inducing or assisting any other person to file, legal pleadings that purport to be filed on [Britney’s] behalf.”

² Code of Civil Procedure section 527.9 relates to the relinquishment of firearms. As the probate court crossed out the paragraphs in the Judicial Council Form that pertains to the prohibition of firearms, the reference to this statute appears to have been inadvertent and is irrelevant.

Appeal

Eardley's timely appeal ensued; he challenges the three-year restraining order entered against him.³

DISCUSSION

I. Standard of review

““The law is well settled that the decision to grant [a restraining order] rests in the sound discretion of the trial court.” [Citation.] “A trial court will be found to have abused its discretion only when it has “exceeded the bounds of reason or contravened the uncontradicted evidence.”” [Citation.] “Further, the burden rests with the party challenging the [trial court's order] to make a clear showing of an abuse of discretion.” [Citation.]’ [Citation.]”, (*Biosense Webster, Inc. v. Superior Court* (2006) 135 Cal.App.4th 827, 834 (*Biosense*).)

“Pure questions of law, however, are reviewed de novo.” (*Foster v. Snyder* (1999) 76 Cal.App.4th 264, 267.)

II. The probate court did not abuse its discretion in issuing the restraining order against Eardley

A. The restraining order does not violate the First Amendment of the United States Constitution or the California Probate Code

Eardley argues that the restraining order improperly enjoins speech, publication, and the right to petition, in violation of the First Amendment. He similarly asserts that the restraining order violates the California Probate Code. We disagree.

1. First Amendment

It is well-established that the First Amendment does not protect speech that has been adjudicated as unlawful or in violation of a specific statutory prohibition. “[O]nce a court has found that a specific pattern of speech is unlawful, an injunctive order prohibiting the repetition, perpetuation or continuation of that practice is not a prohibited

³ Lufti also appealed the probate court's three-year restraining order. He later filed a request for dismissal, and the Court of Appeal dismissed his appeal.

‘prior restraint’ of speech.” (*Aguilar v. Avis Rent A Car System, Inc.* (1999) 21 Cal.4th 121, 140 (*Aguilar*).)

“In California, speech that constitutes ‘harassment’ within the meaning of [Code of Civil Procedure] section 527.6 is not constitutionally protected, and the victim of the harassment may obtain injunctive relief.” (*Huntingdon Life Sciences, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.* (2005) 129 Cal.App.4th 1228, 1250.) Likewise, our Probate Code protects conservatees from “unwarranted petitions, applications, [and] motions other than discovery motions” because they “create an environment that can be harmful to the conservatee and are inconsistent with the goal of protecting the conservatee.” (Prob. Code, § 1970, subd. (a).) It follows that an aggressor who harasses a conservatee with unwarranted petitions and the like may be subject to a restraining order. (*Aguilar, supra*, 21 Cal.4th at p. 141, fn. 8 [“courts have upheld injunctions prohibiting the continuation of a course of expressive conduct that violates a specific statutory prohibition”].)

Here, after a six-day evidentiary hearing, Eardley’s conduct was found to constitute harassment under Code of Civil Procedure section 527.6 and abuse of a dependent adult under the Elder Abuse Act, pursuant to Welfare and Institutions Code section 15657.03. Ample evidence supports this finding. (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873–874.) In particular, regardless of whether she had the power and authority to do so, there is no evidence that Britney retained Eardley in connection with these proceedings.⁴ In spite of the fact that there is no indication that Britney

⁴ Eardley repeatedly asserts in his opening brief that Britney contacted him after she received his January 28, 2008, letter. This assertion is not supported by any citation to any evidence in the appellate record. (*Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115–1116.) It is well-established that we do not consider evidence purportedly contained in the briefs. (*Westoil Terminals Co., Inc. v. Industrial Indemnity Co.* (2003) 110 Cal.App.4th 139, 152.) Eardley attempts to direct us to Britney’s father’s testimony, but there are at least three problems with his efforts: (1) Eardley elected to proceed on appeal without a reporter’s transcript; (2) Even we rely on the reporter’s transcript designated by Lufti, what he provided is incomplete; and (3) Setting aside these

retained Eardley, he attempted to remove the conservatorship proceedings to federal court. Within a couple of weeks, the district court remanded the proceedings back to state court, finding that Eardley had no authority to remove the case from state court. But Eardley was relentless, and one month later filed further papers, purportedly on Britney's behalf, in federal court. The district court ordered the papers stricken and admonished Eardley, reminding him that he had no authority to act on Britney's behalf and any further filings would warrant sanctions. In light of this evidence, a restraining order was proper to stop Eardley from continuing to act purportedly on Britney's behalf.

Eardley further attempts to refute this finding by arguing that the January 28, 2008, letter he sent to Britney was constitutionally protected. This argument is irrelevant. Setting aside whether the letter was permissible and/or protected by the litigation privilege (Civ. Code, § 47, subd. (c)), Eardley engaged in a host of subsequent conduct that warranted the imposition of a restraining order.⁵ And there is no indication from Eardley that the probate court relied upon the solicitation letter when it granted respondents' request for a restraining order.

Eardley also argues that his conduct was protected pursuant to Civil Code section 47, subdivision (b), the litigation privilege. His argument appears to be as follows: Because the litigation privilege protects Eardley's conduct (the filing of legal pleadings), a restraining order was improper. We disagree.

The litigation "privilege applies to any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) that have some connection or logical relation to the action." (*Silberg v. Anderson* (1990) 50 Cal.3d 205, 212.) Here, there is no evidence that Eardley was "authorized by law" to file any legal pleadings on Britney's

procedural obstacles, James did not testify that Britney retained Eardley. Rather, he stated that Britney did *not* tell him that she wanted to hire Eardley to represent her.

⁵ According to respondents, the solicitation letter was not entered into evidence in the restraining order hearing.

behalf. (*Ibid.*) As set forth above, Eardley offers no record citation to support his claim that Britney retained him to act on his behalf. Certainly Eardley knew before he filed papers a second time in federal court that he had no authority to do so. And, the appellate record indicates that Eardley was well-aware of the probate court's finding that Britney lacked the capacity to retain counsel. Because Eardley was not authorized to act on Britney's behalf, the litigation privilege does not apply. (*Wise v. Thrifty Payless, Inc.* (2000) 83 Cal.App.4th 1296, 1304.)

Because Eardley's conduct is not constitutionally protected, the restraining order does not violate the First Amendment.

2. Probate Code

The probate court's findings compel us to reject Eardley's additional argument that the restraining order violates the Probate Code. Admittedly, portions of the Probate Code permit an "interested party" or "friend" to file petitions on behalf of a conservatee. (See, e.g., Prob. Code, §§ 1820, subd. (a)(5), 1829, subd. (d), 2651.) But those statutes do not preclude a court from finding that a person created a harmful environment for a conservatee. And that is exactly what the probate court here determined.

Eardley's reliance upon *Organization for a Better Austin v. Keefe* (1971) 402 U.S. 415 is misplaced. The activity improperly enjoined in that case included peaceful pamphleteering. (*Id.* at p. 417.) At all times, the distribution of leaflets had been peaceful, did not disrupt pedestrian or vehicular traffic, and caused no fights, disturbances, or other breaches of the peace. (*Ibid.*) In contrast, Eardley's speech and conduct were found to have violated at least two statutes. Thus, the probate court properly enjoined it.

B. The restraining order does not violate the Supremacy Clause of the United States Constitution

Citing *Biosense, supra*, 135 Cal.App.4th at page 827 and *Donovan v. City of Dallas* (1964) 377 U.S. 408 (*Donovan*), Eardley argues that to the extent the restraining order enjoins him from filing litigation, including a federal action, purportedly on

Britney's behalf, it violates the Supremacy Clause of the United States Constitution. Eardley stretches and misstates the holding of these cases.

In *Biosense*, the Court of Appeal considered the viability of a temporary restraining order prohibiting an employer "from commencing or taking any action to enforce any noncompetition agreement or restrictive covenant against three of its former employees in any court other than the Los Angeles County Superior Court or federal court in the State of California." (*Biosense, supra*, 135 Cal.App.4th at p. 830.) We held that the temporary restraining order in that case was "irreconcilable" with the principles espoused in *Advanced Bionics Corp. v. Medtronic, Inc.* (2002) 29 Cal.4th 697 (*Advanced Bionics*). (*Biosense, supra*, at p. 835.) In particular, courts should use the power of injunctive relief to prohibit a party from resorting to a foreign court "rarely and sparingly." (*Id.* at p. 836, citing *Advanced Bionics, supra*, at pp. 705–708.) Thus, "enjoining proceedings in another state requires an exceptional circumstance that outweighs the threat to judicial restraint and comity principles." (*Biosense, supra*, at p. 836, quoting *Advanced Bionics, supra*, at p. 708.) "In sum, [the *Biosense* court held] that the *Advanced Bionics* exceptional circumstance test is applicable to whether a TRO or antisuit injunction seeks to restrain pending litigation or the filing of an action in a foreign court." (*Biosense, supra*, at p. 839.)

Those facts are not present in the instant action. The probate court's order does not enjoin Eardley from instituting proceedings in another state; rather, it restrains him from continuing to purport to act under color of authority of Britney or inducing others to do the same.

For the same reasons, *Donovan* does not compel a different result. In *Donovan, General Atomic Co. v. Felter* (1977) 434 U.S. 12, and *General Atomic Co. v. Felter* (1978) 436 U.S. 493, "the United States Supreme Court . . . made clear that state courts are without power to enjoin the commencement or prosecution of in personam actions in federal court." (*Biosense, supra*, 135 Cal.App.4th at p. 839.) At the risk of sounding redundant, we reiterate: The probate court's order does not preclude Eardley from filing

federal actions. He only is prohibited from acting or inducing others to act on Britney's behalf or purportedly on her behalf.

C. Whether substantial evidence supports the probate court's findings that an injunction was proper pursuant to Code of Civil Procedure section 527.6 and Welfare and Institutions Code section 15657.03

Code of Civil Procedure section 527.6 provides, in relevant part, that 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." (Code Civ. Proc., § 527.6, subds. (a) & (b).)

Eardley argues that the evidence does not support an injunction pursuant to Code of Civil Procedure section 527.6 because "'constitutionally protected' activity cannot, as a matter of law, qualify as a tort that would warrant the issuance of an injunction" pursuant to this statute. For the reasons set forth above, we disagree. Eardley was not engaging in constitutionally protected conduct or speech.⁶

Eardley further asserts that the restraining order was improper because there is no evidence that his conduct caused Britney "substantial emotional distress" (Code Civ. Proc., § 527.6, subd. (b)) and/or "physical harm or pain or mental suffering" (Welf. & Inst. Code, § 15610.07, subd. (a)). The problem with this argument is that Eardley failed to provide an adequate record on appeal.

⁶ Consequently, *Smith v. Silvey* (1983) 149 Cal.App.3d 400 is distinguishable. In that case, "the anticipated course of conduct enjoined [amounted] to constitutionally protected activity." (*Id.* at p. 403.)

In addressing an appeal, we begin with the presumption that a judgment or order of the trial court is correct, and reversible error must be affirmatively shown by an adequate record. (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574; *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) The appellant must "present argument and authority on each point made" (*County of Sacramento v. Lackner* (1979) 97 Cal.App.3d 576, 591; Cal. Rules of Court, rule 8.204(a)(1)(B)) and cite to the record to direct the reviewing court to the pertinent evidence or other matters in the record that demonstrate reversible error. (Cal. Rules of Court, rule 8.204(a)(1)(C); *Guthrey v. State of California, supra*, 63 Cal.App.4th at p. 1115.)

Eardley elected to proceed on appeal without a reporter's transcript. Even if we relied on the reporter's transcript designated by Lufti, that record is inadequate because he failed to designate the entire transcript; the transcript is incomplete. Without a complete reporter's transcript, we cannot determine whether respondents presented evidence regarding Britney's alleged emotional distress. As a consequence, we cannot consider this theory on appeal. (*Brown v. Boren* (1999) 74 Cal.App.4th 1303, 1320–1321.)

It follows that the probate court properly denied Eardley's motion to dismiss.

D. Eardley's due process rights were not violated

Eardley argues that his due process rights were violated because Britney did not testify, was not deposed, and was not cross-examined at the hearing. Again, Eardley has not met his burden on appeal. (Cal. Rules of Court, rule 8.204(a)(1)(B); *Guthrey v. State of California, supra*, 63 Cal.App.4th at p. 1115.)

While Eardley provides us with the notice to attend trial that he directed to Britney, he offers us no evidence that the trial court denied his request that Britney appear or be deposed. On this ground alone, Eardley's argument fails.

For the sake of completeness, we point out that we located and reviewed that portion of the appellate record in which the probate court considered Eardley's request

that Britney testify at the restraining order hearing.⁷ We conclude that the probate court did not err in denying Eardley's request for a reopening of the evidence.

At the hearing on April 1, 2009, Eardley rested. Then, on April 10, 2009, he served a notice to attend trial, requesting that Britney either testify at the hearing or submit to a deposition. Nearly two weeks later, at the time designated by the probate court for closing argument, Eardley asked that the trial be reopened so that he could present Britney's "critical" testimony. Given that Eardley knew what was at stake, and what evidence would be necessary to defend against respondents' request for a restraining order, we conclude that the probate court did not abuse its discretion in denying Eardley's belated request to reopen.⁸ (*Horning v. Shilberg* (2005) 130 Cal.App.4th 197, 208; *People v. Marshall* (1996) 13 Cal.4th 799, 836.)

III. All remaining arguments are moot

Eardley's remaining arguments do not compel reversal. His claim that the restraining order is overly broad⁹ is not supported by adequate reasoned argument. (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852 [appellant bears the burden of supporting a point with reasoned argument]; *County of Sacramento v. Lackner*, *supra*, 97 Cal.App.3d at p. 591 [appellant must present argument on each point made].) His challenge to the trial court's alleged finding that he, Lufti, and at least one other individual improperly engaged in a civil conspiracy is not supported by any accurate

⁷ Eardley's purported citations to the reporter's transcript are wrong, requiring us to comb through the appellate record. (*Del Real v. City of Riverside* (2002) 95 Cal.App.4th 761, 768.)

⁸ The probate court also denied Eardley's request on the grounds that notice was not proper, a finding that Eardley ignores in his opening brief. Eardley fails to satisfy his burden on appeal by demonstrating that this finding was erroneous.

⁹ While Eardley asserts in one sentence that the restraining order prohibits him from talking to any entity *about* Britney, we see no such language in the probate court's order. Perhaps that is why Eardley neglects to provide us with a record citation supporting this remark in his opening brief.

reference to the appellate record. (Cal. Rules of Court, rule 8.204(a)(1)(C); *Guthrey v. State of California, supra*, 63 Cal.App.4th at p. 1115 [appellate court is not required to make an independent, unassisted search of the appellate record].) His attempt to explain why the fact that the district court remanded the case back to state court does not support a finding that there was no basis for filing it in federal court is irrelevant. And, he spends many pages making arguments purportedly on Britney's behalf without demonstrating that he has standing or authority to do so.

DISPOSITION

The order of the trial court is affirmed. Respondents are entitled to costs on appeal. The clerk is directed to forward a copy of this opinion to the State Bar for review in conjunction with our March 16, 2010, order.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
BOREN

_____, J.
CHAVEZ