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GARY WILSON

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – CENTRAL DISTRICT, FAMILY LAW

NICOLE PRAUSE,

Petitioner,

v.

GARY WILSON,

Respondent.

Case No.: 20STRO01022

RESPONDENT'S MEMORANDUM OF POINTS AND AUTHORITIES IN REPLY TO OPPOSITION OF PETITIONER NICOLE PRAUSE TO RESPONDENT'S MOTION TO STRIKE THE REQUEST FOR A CIVIL HARASSMENT RESTRAINING ORDER

Date: August 6, 2020
Time: 8:30 a.m.
Dept.: 22

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I. INTRODUCTION

In her opposition, petitioner Nicole Prause ("Prause") does not challenge or dispute any of the evidence submitted by respondent Gary Wilson ("Respondent") in support of his Motion to Strike (the "Motion"). Thus, Prause concedes, among other things, that:

1) she has never met or spoken to Respondent;

2) Respondent has never posted Prause's home address or phone number on his website;

3) Respondent has never threatened Prause in any way;

4) her sworn statements in her Request for Civil Harassment Restraining Orders ("Request") that Respondent owns a gun and threatened her with a gun are lies;

5) her sworn statement in the Request that there were restraining orders already in effect against Respondent is a lie.

Rather than address her false claims regarding Respondent's conduct, Prause primarily argues that her Request does not arise from protected activity. Prause completely ignores the allegations she has made in the Request she filed in this action. In it, she alleges that all of the acts of Respondent she alleges to be "harassment" upon which her Request is based are public statements made by Respondent, primarily on his website, which Prause concedes is a public forum. (Request, ¶ 7a(3) and attachment 7b). Prause's argument that debate regarding the effects of pornography does not qualify as an issue of public interest also has no merit. Respondent's website which is devoted to this topic has thousands of unique visitors a day. Under the broad interpretation of the Anti-SLAPP statute, Respondent has easily satisfied the first prong for this Motion – that Prause's Request arises from protected activity under Code of Civil Procedure Section 425.16(e).

As for the second prong, Prause has utterly failed to establish a probability she will prevail on her Request for a restraining order. To obtain a restraining order, Prause must prove by clear and convincing evidence Respondent has unlawfully harassed Prause. Prause offers no evidence of such harassment, much less clear and convincing evidence. Prause acknowledges the past conduct she alleges Respondent has engaged in does not constitute unlawful harassment but claims she is entitled to a restraining order because she now has an apprehension Respondent may physically harm her in the future. Prause submits no evidence to support this nonsensical and frivolous claim. Instead, Prause submits only a vague, conclusory declaration filled with speculation about events that largely occurred years ago that clearly do not support or justify a restraining order as a matter of law, and is patently insufficient to satisfy her burden of proof on this Motion.

In fact, the evidence before the Court confirms that it is Prause who has been engaged in a campaign for years to falsely brand Respondent as a "stalker" subject to multiple orders that don't exist in an effort to stifle his right to free speech because he publically disagrees with her, and discredit him as a witness in two defamation lawsuits now pending against her .[1]

[1] Notably, Prause also does not challenge the declarations of Staci Sprout and Alex Rhodes filed in support of the Motion, two other individuals who, like Respondent, have been victimized by Prause's pattern of false accusations and frivolous claims.

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Accordingly, Respondent's Motion should be granted in its entirety.

II. ARGUMENT

A. Prause's Request For Restraining Order Does Arise From Protected Speech

As set forth in the Motion, the first step in deciding whether an action is a SLAPP is to determine "whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity." Navellier v. Sletten, 29 Cal.4th 82, 88 (2002). To meet this burden, a defendant simply has to demonstrate that the acts "underlying the plaintiff's cause fit one of the categories spelled out in Section 425.16(e)." The "critical consideration is whether the cause of action is based on the defendant's protected free speech or petitioning activity." Id. at 89.

Protected activity under Code of Civil Procedure Section 425.16(e) includes "any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest" or "any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest."

Prause lists the alleged acts of Respondent upon which Prause's Request are based in Attachment 7b to the Request. These acts consist almost exclusively of Respondent posting statements and information on his website, or allegedly filing complaints about Prause (a copy of Attachment 7b to Prause's Request is attached hereto as **Exhibit "A"** for reference). Prause's declaration in opposition to the Motion refers to largely the same allegations, primarily citing public statements made on Respondent's website and social media, which are public forums as a matter of law. Wong v. Jim, 189 Cal.App.4th 1354, 1367 (2010); GetFugu, Inc. v. Patton Boggs LLP, 220 Cal. App.4th 141, 145 (2013). Prause also cites complaints Respondent has filed with public entities (UCLA and the California Board of Psychology (the "Board"), which is part of the State Department of Consumer Affairs). These are activities protected by the constitutional right to petition. Smith v. Silvey, 149 Cal.App.3d 400, 406-407 (1983).

Clearly, Prause's Request arises from and is based on alleged acts of Respondent that constitute protected activity.

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Prause does not argue that the acts listed in 7b do not constitute protected activities. Instead, Prause argues these elements of public free speech provide "context to the formation of the present fear – that Wilson has been surveilling and stalking Prause with the intent of engaging in a physical altercation against her, her family or colleagues." (Opposition, p. 6, lines 7-9). However, this argument simply concedes the obvious – Prause's claimed (albeit contrived and completely unfounded) fear of physical harm is based on the protected activity of Respondent. This is a classic Anti-SLAPP action.

The fact Prause has requested "stay away" orders does not transform the gravamen of her action. The "anti-SLAPP statute's definitional focus is not the form of plaintiff's cause of action but, rather, defendant's activity that gives rise to his or her asserted liability – and whether that activity constitutes protected speech or petitioning." Navellier, supra, at 92. Indeed, in Thompson v. Quintero, 125 Cal.App.3d 635 (2005), relied on by Prause, the petitioner also sought "stay away" orders, but the Court found the action was subject to Anti-SLAPP because petitioner's request for these orders was based on protected activities. Id. at 643-644, 652.

B. Respondent's Protected Activity Clearly Involves A Public Issue

Prause concedes that Respondent's website and social media where the statements at issue in this matter were made are public forums. It is "beyond dispute that the anti-SLAPP statute, including the term 'public interest,' is to be construed broadly." Brodeur v. Atlas Entertainment, Inc., 248 Cal.App.4th 665, 674 (2016). It means "any issue in which the public is interested," in other words, "the issue need not be 'significant' to be protected by the Anti-SLAPP statute – it is enough that it is one in which the public takes an interest." Id. at 675.

Prause claims the public statements at issue made by Respondent amount to what is essentially a "private" battle with Prause involving a "small group" on the "far corners of the internet." (Opposition, p. 7, lines19-22). This statement is flatly contradicted by the undisputed evidence that Respondent's website averaged over 13,000 unique visitors a day in 2019 (See Declaration of Gary Wilson ("Wilson Declaration"), filed in support of Motion, at 2:11). It is also contrary to letters Prause has attached as Exhibit A to her declaration, such as the letter from Roger Libby who states: "I closely follow public debates about the effects of pornography and 'porn

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addiction.' While these discussions get heated, nothing compares to what Gary Wilson has been engaged in for the last seven years against Dr. Prause."

The public interest test is easily met in this case.

C. Prause Fails To Meet Her Burden To Show That There Is Any Probability She Could Prevail On The Merits

To meet her burden of proof, Prause must submit evidence that would be admissible at trial to make a prima facie showing of facts sufficient to support a judgment in her favor. Chavez v. Mendoza, 94 Cal.App.4th 1083, 1087 (2001). Because Prause must prove by clear and convincing evidence that unlawful harassment by Respondent exists to obtain a restraining order under Code of Civil Procedure Section 527.6(i), Prause must submit evidence sufficient to satisfy this burden of proof in opposition to the Motion. Christian Research Institute v. Alnor, 148 Cal. App.4th 71, 84 (2007). The Court may not consider "evidence that could never be admitted at trial." Sweetwater Union High School Dist. v. Gilbane Building Co., 6 Cal.5th 931, 948-949 (2019).

The only evidence offered by Prause is her declaration. Statements contained in declarations not based on personal knowledge or that are heresay or impermissible opinions, or argumentative, speculative, or conclusory, are insufficient to show probability a plaintiff will prevail. Gilber v. Sykes, 147 Cal.App.4th 13, 26 (2007). Prause's declaration consists almost entirely of such inadmissible statements (Respondent has filed evidentiary objections concurrently herewith).

Recognizing she cannot get an order under Code of Civil Procedure Section 527.6 restraining Respondent's constitutionally protected activity, Prause claims she is seeking the restraining order because she now fears a potential future threat of physical harm by Respondent. In her declaration, Prause offers nothing more than the following conclusory statement as support for this claim: "Given several incidents where I have suspected being surveilled and Wilson's physical appearance in Germany combined with Wilson's escalating rhetoric towards me and my work, I am in fear that I may be physically assaulted by Wilson or someone acting on his behalf. I believe I have no other remedy than to seek relief from the Court by applying for the requested Civil Restraining Order." (Prause Declaration, paragraph 9). Prause submits no evidence to support this conclusory statement, as confirmed by her declaration:

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- Prause does not say Respondent has ever surveilled her – she only claims in March 2016, she believed she saw a man "surveilling my office" but states she was not able to identify him as Respondent or even state this unidentified person was doing anything nefarious. (Prause Declaration, paragraph 11(8)).
- In her reference to the conference in Germany (the event that allegedly was the "escalation" that gave rise to her fear), Prause concedes she had no contact with Respondent there, and does not even say when the conference occurred (Prause Declaration, paragraph 11(6)).
- In fact, the German conference took place in April, 2018, and Prause was not an invited speaker or registrant. (Respondent's Reply Declaration, at 1:26-2:8). Two years later, Prause claims Respondent's presence at a 2018 conference she did not attend made her now believe that Respondent "was willing and able to make good on his threats." Prause provides no evidence of any "threats" by Respondent, nor could she because it doesn't exist.

In her opposition brief, Prause states that "four other people state they formed the opinion that Wilson poses a threat to Prause and at least one expresses concern of imminent physical harm." (Opposition, p. 9:8-10). However, Prause has not submitted any declarations from other people, only vague, general unauthenticated letters from four people who appear to be simply repeating lies told to them by Prause. These inadmissible letters are meaningless and simply illustrate the frivolous nature of Prause's claims.

It is also important to note that much of what Prause submits with her declaration is several years old (going back to 2013). As explained in the Respondent's Reply Declaration, the only pictures of Prause Respondent has posted are in social media posts by Prause herself (which are public communications), and are posted in order to document and attempt to counter her malicious activity towards and refute false and defamatory statements she has made about him and others. None of this information is evidence of threats or harassment of Prause by Respondent.

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California law is clear that to obtain a restraining order under Code of Civil Procedure Section 527.6, the petitioner must prove by clear and convincing evidence that "harassment already exists in fact." Schraer v. Berkeley Property Owner's Association, 207 Cal.App.3d 719, 733 (1989). Prause will not be able to succeed in this matter, where she has no evidence of any harassment by Respondent, only a contrived, false fear of possible physical harm by Respondent which is based on nothing.

III. CONCLUSION

For the reasons set forth above, Respondent respectfully requests the Court grant the Motion in its entirety.

Dated: August 3, 2020

SONGSTAD RANDALL
COFFEE & HUMPHREY LLP

By: _____
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EXHIBIT A

Attachment 7b – Previous Harassment

- Posted address where I live and work on his public websites and Twitter
- Contacted by the California Office of the Attorney General February 11, 2020, he refused to remove my physical address from his websites and Twitter
- Claims to have "another" physical address of mine on his website and Twitter
- Posted my name over 20,000 times on his websites
- Posted over 200 images of me on his websites
- Posted my name with his website links over 103,000 times on the Internet
- Filed over 12 vexatious complaints with my employer University of California, Los Angeles
- Filed a vexatious complaint over 200 pages in length against me with the California Board of Psychology, resulting in a 3-year investigation
- Filed a vexatious lawsuit against me in the World Intellectual Property Organization
- Filed a vexatious complaint with the Journal of Sexual Medicine claiming I fabricated my work
- Appeared on a video online stating "I hope they are watching...because I will never stop"
- Attempted to physically attend my scientific conference, despite having no college degree
- Tagged myself or my workgroup in public Twitter posts from his @YourBrainOnPorn account nearly 700 times in the last year alone, despite being blocked
- Received numerous no-contact orders from myself, publishers, and lawyers, continues to contact me almost daily for 7 years using public tags and website posts
- Posted that he created a secondary Twitter account about five years ago for the purpose of stalking me
- Posted on his website that I was trained to molest children at my workplace
- Posted on his website that I watch people have sex at my workplace
- Posted on his website that I test "porn stars" at my workplace
- Posted on his website that I am personally supported by the pornography industry
- Posted I have not filed stalking complaints against him with the FBI, despite having copies of the complaints
- Dissemination is a requirement of my grant funding, so I must be able to share my research without harassment on public forums. Despite blocking Gary Wilson on Twitter, LinkedIn, Facebook, Quora, and ResearchGate, Wilson brags that he created profiles to appear to be part of the general public to gain access to my accounts again. When I ignore him, he files another fraudulent complaint to force me to interact with him again.

PROOF OF SERVICE
Nicole Prause v. Gary Wilson
LASC Case No. 20STRO01022

I am employed in the County of Orange, State of California, over the age of eighteen years, and not a party to the within action. My business address is SONGSTAD RANDALL COFFEE & HUMPHREY LLP, 3200 Park Center Drive, Suite 950, Costa Mesa, California 92626.

On the date set forth below, I served the foregoing copy of the document(s) described as **RESPONDENT'S MEMORANDUM OF POINTS AND AUTHORITIES IN REPLY TO OPPOSITION OF PETITIONER NICOLE PRAUSE TO RESPONDENT'S MOTION TO STRIKE THE REQUEST FOR A CIVIL HARASSMENT RESTRAINING ORDER** as follows:

☐ **By Mail**: By placing the document(s) listed above in sealed envelope(s) with postage thereon fully prepaid for collection and mailing in Costa Mesa, California, addressed as set forth below, or as stated on the attached service list.

☒ **E-Mail:** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I sent the document(s) to the person(s) at the e-mail address(es) as set forth below, or as stated on the attached service list.

Brett A. Berman
The Berman Law Group
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Los Angeles, CA 90067
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I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☒ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on **August 3, 2020**, at Costa Mesa, California.

Lisa Iwata

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