

Restraining Order Upheld for Threatening Comments at Public Meetings

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In a decision that provides guidance to public agencies on obtaining restraining orders to protect employees, the Court of Appeal for the Second District recently upheld issuance of a restraining order against an individual who had repeatedly threatened a deputy city attorney at city council meetings. (*City of Los Angeles v. Herman* (Aug. 10, 2020, B298581) __ Cal.App.5th __ [2020 WL 5106765].) This opinion reinforces the standard applicable to restraining orders under the Workplace Violence Prevention Act (Code of Civil Procedure, section 527.8), which provides that employers may request a restraining order on behalf of an employee who has suffered violence in the workplace or has been threatened. The Court found the individual's repeated comments at meetings constituted a "credible threat of violence" which justified issuance of a restraining order keeping him away from the deputy city attorney.

Background

Please be advised that this summary contains quotes from the Court's opinion which may be disturbing to some readers.

The defendant, Herman, regularly attended city council meetings in Los Angeles and Pasadena, and was frequently removed from meetings for disruptive behavior (he admitted he had been removed "more than 100 times"). He and the Deputy City Attorney, Stefan Edward Fauble, knew each other for several years from attending these meetings. In April of 2019, Herman was present at a meeting during which he stated publicly, in a threatening manner, "F-k Mr. Fauble," and revealed Fauble's home address to those present. He repeated it at the next meeting, and described the location of Fauble's home in relation to the location of the city council meeting. He also submitted public speaker cards with swastikas and other "SS" imagery, a drawing of a Ku Klux Klan hood, and the statement, "F-k you Edward Fauble." Finally, on May 1, 2019, he was disruptive at another Los Angeles City Council meeting and was escorted out, but before leaving, he said loudly and in a threatening manner, "F-k you, Fauble, I'm going back to Pasadena and f-k with you."

As Fauble's employer, the City filed a petition for a workplace violence restraining order, seeking to preclude Herman from harassing, threatening, contacting, or stalking Fauble or disclosing the address of Fauble's residence, and requiring Herman to stay at least 10 yards away from Fauble while at meetings. The trial court eventually granted the restraining order,



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despite the fact that Herman testified that he had no intent to threaten Fauble, claiming he was “upset” with his homelessness and a change in city council rules. He said his use of Nazi symbolism was to make the point he was “living in a holocaust.” The trial court rejected these arguments and found in favor of the City.

Decision

On appeal, the Second District found the evidence established Herman had made a “credible threat of violence” and the restraining order had been properly issued, based on several factors. First, videos of the meetings showed that Herman was “very agitated, very angry.” Second, his disclosure of Fauble’s home address combined with the statement that he was “going back to Pasadena and f–k with [Fauble]” constituted an actual threat. His use of Nazi and KKK imagery was also evidence of a threat in light of his prior statements indicating he believed Fauble is Jewish. Finally, the Court found that Herman’s threats were likely to recur unless a restraining order was issued.

The Court relied on the statutory definition of “credible threat of violence,” which includes a “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.” (Code of Civil Procedure, § 527.8(b)(2).) It found that Herman’s disclosure of Fauble’s home address served “no legitimate purpose,” and in context, could only be viewed as a threat. As the court stated: “The threatening context of these disclosures is further shown by Herman’s direct threat that he would ‘go back to Pasadena and f–k with’ Fauble. The circumstances of the threats, including Herman’s angry demeanor, supported the trial court’s conclusion that the threats could reasonably be viewed as serious.”

The Court held that Herman’s “subjective intent,” as he testified to, was irrelevant. According to the Court, the restraining order was supported by the evidence of Herman’s statements that would have placed a reasonable person in fear for his or her safety, “regardless of Herman’s subjective intent.” The Court found no violation of Herman’s First Amendment right of free speech, because “[t]rue threats are not constitutionally protected speech.” As the Court stated: “A constitutionally unprotected threat is one that a reasonable listener would understand, in light of the context and surrounding circumstances, to constitute a true threat, namely, a serious expression of an intent to commit an act of unlawful violence rather than an expression of jest or frustration.” Protecting employees from “credible threats” of violence furthers the two important goals of reducing “the fear of violence” and “the disruption that fear engenders,” according to the Court.

Impact

This decision provides helpful guidance in interpreting the legal standards applicable to



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determining if a threat rises to the level at which obtaining a restraining order is possible. This case arose in a context all too familiar to elected public officials such as school board members and other government employees, all of whom may be protected under the Workplace Violence Prevention Act. Each case must be analyzed under its specific facts, but this opinion gives reassurance that courts are willing to step in to prevent credible threats of violence.

If you have any questions, please do not hesitate to contact a DWK attorney in our Labor, Employment and Personnel (LEAP) or Board Ethics, Transparency and Accountability (BETA) Groups.

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