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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re G.M., a Person Coming Under the  
Juvenile Court Law.

CONTRA COSTA COUNTY CHILDREN  
AND FAMILY SERVICES BUREAU,

Plaintiff and Respondent,

v.

M.M.,

Defendant and Appellant.

A135071

(Contra Costa County  
Super. Ct. No. J11-01481)

Defendant M.M. appeals from the juvenile court's issuance of a permanent restraining order preventing her from contacting her daughter G.M. and her daughter's maternal grandparents, except for supervised visitation with the child. She claims there was insufficient evidence to support the restraining order as to G.M. We affirm.

**FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

G.M. was born in October 2011. The child was removed from her parents by plaintiff the Contra Costa County Children and Family Services Bureau (the Bureau) the day after her birth, and was placed in foster care after defendant tested positive for morphine and amphetamines in the hospital. She reportedly admitted to having taken six Vicodin pills on the day she gave birth.

On December 16, 2011, the Bureau filed a written update on the case. The update indicates that defendant had been arrested for elder abuse. Reportedly, the incident

concerned alleged abuse of G.M.'s father's grandmother, with whom G.M.'s parents were residing. The grandmother had telephoned the sheriff's department several times due to fighting in the home and had asked that defendant be removed. She had reportedly been advised several times to obtain a restraining order. In an addendum report to the jurisdictional report, the Bureau reported the grandmother had told a Bureau social worker that she was going to court to obtain a restraining order against defendant. However, she had not followed through and G.M.'s parents continued to reside with her.

At the contested jurisdictional hearing held on February 8, 2012, social service worker Jennifer Weiss testified G.M.'s test results were positive for amphetamine and methamphetamine at birth. G.M.'s parents both told Weiss that they did not want services from the Bureau and would not discuss the case with her. They did not want to receive any phone calls concerning anything other than visitation with the child. The juvenile court found the child was as described pursuant to Welfare and Institutions Code section 300.<sup>1</sup> Specifically, the court sustained allegations that defendant had placed the child at substantial risk for harm in that the child had tested positive for drugs at birth, and had received limited prenatal care.

Also at the hearing, minor's counsel indicated that the child had been moved to her maternal grandmother's home from her foster care placement. On December 12, 2011, defendant had reportedly threatened to kill the maternal grandmother and burn down the house with the maternal grandparents and defendant's other two children inside.<sup>2</sup> The grandparents had asked counsel to file for a restraining order on their behalf as well as on G.M.'s behalf. An application, which includes the threat allegation, was presented to the court. Defendant's counsel stated that this was the first time defendant had heard of the application for the restraining order, and that she was both shocked and distressed. The court issued a temporary restraining order. The order restrained

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code except as otherwise indicated.

<sup>2</sup> G.M.'s maternal grandparents had been awarded guardianship of defendant's two older sons through the probate court.

defendant from having any contact with G.M., other than contact provided through the Bureau.

The Bureau filed its disposition report on February 24, 2012. In the report, the social worker states defendant was arrested on November 17, 2011, for elder abuse following an altercation with G.M.'s father's grandmother, and had spent several days in jail. In late January, the father's grandmother had reportedly stated that defendant "scares her to death." She said defendant had made numerous threats, told her to get out of town, and had destroyed items of personal property. By this time there was a permanent restraining order in place keeping defendant away from the father's grandmother.

At the disposition hearing, defendant's appearance was waived. Her counsel reported that they had met the prior evening for about two and a half hours. They went over the dispositional report, the recommendations, and the case plan in detail. The only aspect of the case plan that defendant disagreed with was the requirement of a mental health assessment. The juvenile court adopted the remaining recommendations contained in the report, as amended. G.M.'s attorney then moved to have the restraining order made permanent. Defendant's counsel objected, although she noted she did not have any evidence to go forward with the objection because defendant was not present. The trial court granted a three-year permanent restraining order. This appeal followed.

### **DISCUSSION**

Defendant's sole contention on appeal is that there was insufficient admissible evidence to support the juvenile court's issuance of the order restraining her from having contact with G.M. The contention lacks merit.

Section 213.5, subdivision (a), provides that once a juvenile dependency petition has been filed, the juvenile court may issue a temporary restraining order protecting the dependent child and any caregivers of the child. The juvenile court may issue orders "(1) enjoining any person from molesting, attacking, striking, stalking, *threatening*, sexually assaulting, battering, harassing, telephoning, . . . destroying the personal property, contacting, either directly or indirectly, by mail or otherwise, coming within a specified

distance of, or disturbing the peace *of the child or any other child in the household*; and (2) *excluding any person from the dwelling of the person who has care, custody, and control of the child.*” (Italics added.) Where a juvenile court issues a permanent restraining order after notice and a hearing, “Proof may be by the application and any attachments, additional declarations or documentary evidence, the contents of the juvenile court file, testimony, or any combination of these.” (Cal. Rules of Court, rule 5.630(f)(1).) An order issuing a restraining order is reviewed under the substantial evidence test, pursuant to which the evidence is viewed in the light most favorable to the order and all legitimate and reasonable inferences are indulged to uphold the order. (*In re Cassandra B.* (2004) 125 Cal.App.4th 199, 210–211.)

Defendant asserts the record did not contain any evidence from which it could be inferred that she had either threatened G.M. or attempted to cause her harm. In particular, she characterizes G.M.’s maternal grandmother’s reported allegation that she had threatened to burn down the house with the family inside, as “unsubstantiated hearsay.” She also claims the juvenile court failed to make specific findings that she had threatened to harm G.M. and observes nothing in the record indicates that the child was fearful of her.

As to whether the evidence of defendant’s threat was based on “unsubstantiated hearsay,” we note she did not make any hearsay objection during the proceedings. (See Evid. Code, § 353, subd. (a) [failure to object waives the issue].) “It is well settled that hearsay or other incompetent evidence . . . if received without proper objection or motion to strike is to be regarded as competent evidence in support of an order or judgment.” (*Flood v. Simpson* (1975) 45 Cal.App.3d 644, 649.) Therefore, her evidentiary objection was not preserved for appeal. Accordingly, her evidentiary arguments challenge only the credibility and weight of the evidence, both of which were matters for the juvenile court. (*In re Anthony G.* (2011) 194 Cal.App.4th 1060, 1065.)

We note defendant was present at the hearing when the temporary restraining order was issued, yet did not contest the factual basis underlying that order. Specifically, she did not deny that she had threatened to burn her parent’s house down with the family

inside. These same facts were used to support the issuance of the permanent restraining order. Further, the social worker's reports stated that a restraining order was already in place as to G.M.'s father's grandmother. The allegations leading up to the issuance of that order were similar to the allegations raised by G.M.'s maternal grandmother. Manifestly, the threat to kill the grandmother and burn down the family home with the family inside constituted a threat to G.M.'s well-being and to the well-being of the child's two older brothers. The threat could be deemed credible in light of the circumstances surrounding the issuance of the restraining order as to G.M.'s father's grandmother.

With respect to the lack of evidence as to G.M.'s fear of defendant, we note the child was only four months old when the restraining order was issued. Thus, the child would not have been able to articulate whether she felt any fear or not. In sum, we find substantial evidence supports the issuance of the permanent restraining order.

#### **DISPOSITION**

The order of the juvenile court is affirmed.

Dondero, J.

We concur:

Marchiano, P. J.

Margulies, J.