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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re C.T., a Person Coming Under the
Juvenile Court Law.

HUMBOLDT COUNTY DEPARTMENT
OF HEALTH & HUMAN SERVICES,

Plaintiff and Respondent,

v.

C.T.,

Defendant and Appellant.

A135757

(Humboldt County
Super. Ct. No. JV0900712)

C.T. (referred to as Father) appeals an order made at a post-permanency plan hearing for his son, C.T., contending substantial evidence does not support the juvenile court’s visitation order. We conclude the juvenile court’s visitation order was proper.

I. BACKGROUND

We are familiar with the background of this case through our review of three earlier appeals in this and a related case. (*In re Tamara T.* (July 19, 2012, A132508), *In re C.T.* (Oct. 10, 2012, A134153) (*C.T. I*), and *In re T.T.* (Oct. 10, 2012, A134923) (*T.T.*)). We will not recite the facts found in the “Background” portions of those opinions, but rather incorporate them by reference. We have taken judicial notice of the records of those appeals.

As we explained in our earlier opinions, C.T. and his sister T.T. are the two oldest of the six children of A.B. (Mother). Father is the father of C.T. and T.T., but not of Mother's four younger children. The juvenile court took jurisdiction of T.T. on June 14, 2010, and of C.T. on August 25, 2010. T.T. was eventually placed in foster care.

On November 29, 2011, at Mother's request, and over Father's objection, the juvenile court ordered a guardianship for C.T., with his maternal grandmother (Grandmother) as guardian, pursuant to Welfare and Institutions Code¹ section 360, and made other dispositional findings and orders. In *C.T. I*, we concluded the juvenile court erred in ordering the guardianship under section 360 because Father had not waived reunification services. Accordingly, we reversed the November 29, 2011 order to the extent it established a guardianship for C.T. (*C.T. I*, A134153, *supra*, slip op. at pp. 7-13, 16.)

On January 25, 2012, the juvenile court granted the request of the Humboldt County Department of Health and Human Services (the Department) that Father's visitation with C.T. and T.T. be supervised. Father was granted supervised visitation with C.T. twice a week, so long as he was sober, and the visits could become unsupervised at the discretion of the social worker after consultation with C.T.'s counsel. In *T.T.*, we affirmed this order. (*T.T.*, A134923, *supra*, slip op. at pp. 4-5, 6; CT 3:753.)

The Department filed a status review report for a post-permanency planning review scheduled for May 29, 2012. (§ 366.3.) According to the report, Grandmother was providing a "structured and consistent environment." However, C.T. had recently had emotional outbursts, particularly at school, and had been physically aggressive. Father had had no contact with the Department during the reporting period, and only limited telephone contact with C.T. He had not participated in supervised visitation with C.T. The Department recommended that visitation occur as stated in the case plan, which indicated Father would visit with C.T. a minimum of two hours a week and that

¹ All statutory references are to the Welfare and Institutions Code.

unsupervised visitation could take place at the social worker's discretion with the approval of C.T.'s attorney.

Father was not present at the May 29, 2012 hearing. His counsel asked for a continuance to allow her to review the report with Father. C.T.'s attorney said she wished to submit a request for a restraining order as to Father, and Father's attorney objected to a temporary order being entered without notice to Father. The juvenile court told C.T.'s counsel she could submit the request ex parte.

C.T.'s counsel submitted the request for a restraining order the next day, alleging that Father had made numerous phone calls to T.T. and C.T. "threatening to hunt down, kill or have killed friends of [T.T.'s] and that if either [T.T. or C.T.] tells anyone then he will have them killed too." According to the petition, the calls had taken place between May 21, 2012 and May 28, 2012. On May 31, 2012, the juvenile court issued a temporary order restraining Father from contact with C.T., T.T., and Grandmother. A hearing on the restraining order was set for June 14, 2012, and the temporary order would expire on midnight of that date. The court ordered service of the notice of hearing at least five days before the hearing. The court also found visitation between Father and the children would be detrimental and suspended visitation pending further order of the court.

The post-permanency review hearing took place on June 5, 2012, that is, after the temporary order had been issued but before the hearing on the restraining order was to take place. Father appeared through counsel. C.T.'s counsel noted that the court had issued the temporary order suspending visitation between Father and C.T., and in order to avoid conflicting orders, asked the court to order visitation pursuant to the temporary restraining order. She also asked to have the paragraph allowing unsupervised visitation at the social worker's discretion deleted. Father's counsel objected on the ground that Father had not been notified of the restraining order or its grounds. The juvenile court deleted the paragraph about unsupervised visitation and ordered visitation as provided in the case plan "except as provided by restraining order issued by a court." Consistent with

its November 29, 2011 order, the court ordered a permanent plan of guardianship with Grandmother. Father appealed this order.

II. DISCUSSION

Father's only substantive challenge on appeal is that the evidence does not support the visitation order. However, we must first consider the threshold issue, raised by Father, of whether our reversal of the juvenile court's order establishing a guardianship as a permanent plan requires us to reverse the order made at the post-permanency hearing. Father argues that this result is required under *Hampton v. Superior Court* (1952) 38 Cal.2d 652, 655, which holds that where there has been an unqualified reversal, "the order or judgment appealed from is vacated," and *People v. Murphy* (1963) 59 Cal.2d 818, 833, which holds that "[a]n unqualified reversal remands the cause for new trial and places the parties in the trial court in the same position as if the cause had never been tried." In *C.T. I*, we reversed the November 29, 2011 order *to the extent it established a guardianship* for C.T., and otherwise affirmed the order. (*C.T. I*, A134153, *supra*, slip op. at pp. 7-13, 16, 21.) As a result, to the extent the order currently under review continues to order guardianship as a permanent plan, it too must be reversed. Father cites no authority, however, suggesting that our reversal in *C.T. I* requires us to vacate subsequent *visitation* orders not in conflict with our earlier decision. Accordingly, we will consider Father's appeal.

Father's argument on the merits is as follows: The juvenile court stated in its June 5, 2012 findings and orders that visitation would take place as set out in the case plan, except as provided by a restraining order issued by the court. No restraining order had been admitted into evidence, nor any evidence that visitation of two hours a week was inappropriate. Therefore, there was no substantial evidence to support the juvenile court's order, and the court abused its discretion and violated his right to due process in making it. He also argues that the juvenile court did not follow the proper notice procedures in issuing the temporary restraining order that was in effect on June 5, 2012.

In support of his position, Father draws our attention to cases stating that "[a]bsent a showing of detriment caused by visitation, ordinarily it is improper to suspend or halt

visits even after the end of the reunification period. [Citations.]” (*In re Luke L.* (1996) 44 Cal.App.4th 670, 679; see also *In re Nicholas B.* (2001) 88 Cal.App.4th 1126, 1138; *In re Mark L.* (2001) 94 Cal.App.4th 573, 580-581 & fn. 5 [appellate court reviews order denying visitation for substantial evidence].)

This is not a case, however, in which the order challenged on appeal denied visitation. Rather, it ordered visitation as provided in the case plan *except as provided in any restraining order*. Courts are clearly authorized to issue restraining orders in dependency cases. “[O]nce 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[,]” and may issue *ex parte* orders protecting the child. (*In re Cassandra B.* (2004) 125 Cal.App.4th 199, 211, citing § 213.5. subd. (a)); see also (Cal. Rules of Court, rules 5.620(b) & 5.630.) In making the order Father challenges, the juvenile court was not called on to make factual findings as to whether visitation would be detrimental; it simply stated explicitly what was already implicit in the statutory scheme—that visitation would be subject to any restraining order the court might issue.² We see no impropriety in this ruling.

² The record indicates that at the June 14, 2012 hearing on the restraining order, the children’s counsel said Father had not been served, and the court reissued the temporary order and set another hearing for July 3, 2012. The record does not reveal the outcome of the July 3, 2012 hearing. Father has not appealed any restraining order issued by the juvenile court. (See *In re Cassandra B.*, *supra*, 125 Cal.App.4th at pp. 207-209 [restraining order in dependency proceeding is directly appealable].)

III. DISPOSITION

To the extent the order appealed from establishes a guardianship for C.T., it is reversed. In all other respects, the order is affirmed. Father's request that we order further proceedings to be heard before a different judge is denied.

RIVERA, J.

We concur:

RUVOLO, P. J.

REARDON, J.