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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re G.G. et al., Persons Coming Under the  
Juvenile Court Law.

MENDOCINO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

J.S.,

Defendant and Appellant.

A141977

(Mendocino County  
Super. Ct. Nos. SCUKJVSQ 10-16062,  
SCUKJVSQ 10-16063, SCUKJVSQ  
10-16744)

J.S. (Father), father of seven-year-old K.G., five-year-old J.G., and three-year-old G.G., appeals from the juvenile court's issuance of a restraining order against him, protecting the children. He contends the juvenile court abused its discretion in issuing the restraining order because there was insufficient evidence that he engaged in conduct warranting its issuance. We reject the contention and affirm the order.

## FACTUAL AND PROCEDURAL BACKGROUND<sup>1</sup>

On or about August 22, 2010, the Mendocino County Health and Human Services Agency (Agency) filed a dependency petition alleging that then-two-year-old K.G. and then-twelve-month-old J.G. were at substantial risk of harm because they had been left with an inappropriate caretaker, the parents abused alcohol, and Father was overwhelmed caring for the children when Mother left the home for days at a time. Father was given family reunification services and the children were returned to Mother under a family maintenance plan.

In March 2011, the Agency filed a supplemental petition under Welfare and Institutions Code section 387<sup>2</sup> (a 387 supplemental petition) seeking a more restrictive placement for the children. In April 2011, the sustained petition delineated Mother's substance abuse, including her marijuana and methamphetamine use and failure to participate in court-ordered services. The juvenile court ordered reunification services for both parents. A few months later, the court ordered Mother to attend Family Dependency Drug Court (FDDC).

At an October 19, 2011 six-month review, the juvenile court ordered additional reunification services for both parents. On March 13, 2012, the court returned K.G. and J.G. to the parents under a family maintenance plan. When Mother tested positive for methamphetamine in June 2012, she was given a strict warning regarding her drug use and an admonishment about the statutory timelines.

The children continued to live with the parents under a family maintenance plan until March 28, 2013, when the juvenile court detained K.G. and J.G. from Father's care

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<sup>1</sup>Detailed factual and procedural background summaries are included in our prior opinions in *N.G. v. Superior Court of Mendocino* (September 30, 2013, A139037) [nonpub. opn.] and *In re G.G.* (June 30, 2014, A139125) [nonpub. opn.]. To obtain context, maintain consistency and economize judicial resources, we hereby take judicial notice of the record from those cases and of our prior opinions. (Evid. Code, § 451, subd. (a); see *In re Luke L.* (1996) 44 Cal.App.4th 670, 674, fn. 3.)

<sup>2</sup>All further statutory references are to the Welfare and Institutions Code unless otherwise stated.

after he abused alcohol while caring for the children. In April 2013, the Agency removed K.G., J.G. and their then-six-month-old sibling G.G. from Mother's care and filed a second 387 supplemental petition as to K.G. and J.G. and an original petition as to G.G., alleging the parents were abusing alcohol and that on March 29, 2013, Mother got into a domestic altercation with Father, then fought with police as they tried to arrest her.

The detention report described the March 29, 2013 incident in which Mother was arrested following a domestic altercation with Father. Mother resisted arrest, kicked a police officer, and refused to get back into the patrol car. Although the children were not there during the domestic altercation, they were present or nearby for Mother's subsequent arrest. Mother had a blood alcohol content of 0.127 percent at the time of the arrest and was charged with domestic battery and resisting arrest.

Several witnesses including Mother and a social worker testified at the jurisdictional hearing. The juvenile court sustained the petitions, stating: "It's like these parents haven't figured out, despite all the services and help they have been offered, how to keep their kids safe from the very issues that brought them to the attention of the Court in August 2010, [i.e.,] substance use and getting violent with each other and people around them with their using. And their kids are too young to protect themselves from this kind of conduct."

In the disposition report, the Agency recommended bypassing services for the parents as to K.G. and J.G. on the ground that the parents had already received 12 and 18 months of reunification services, respectively. The juvenile court adopted the recommendation and scheduled a permanency hearing under section 366.26 (366.26 hearing) as to K.G. and J.G. Mother sought writ review of the court's orders relating to K.G. and J.G., and we denied the writ on the merits on September 30, 2013. (*N.G. v. Superior Court of Mendocino, supra*, A139037.) As to G.G., the Agency recommended offering services to Mother because she was progressing at FDDC and had not received services in relation to him.

At the dispositional hearing in June 2013, Mother's counsel submitted on the reports, noting that Mother was "very appreciative of being offered services" as to G.G.

The juvenile court found clear and convincing evidence that there was a substantial risk of harm to G.G. if he was returned to Mother's care. The court expressed concern about Mother's alcohol use, the "minimal" progress she had made, and the "serious incident of acting out while drinking . . . with the children around." The court nevertheless adopted the Agency's recommendation and ordered reunification services for Mother. The court bypassed services to Father. Mother appealed from the jurisdictional and dispositional orders, and we affirmed the orders on June 30, 2014. (*In re G.G.*, *supra*, A139125.)

At an October 10, 2013, 366.26 hearing for K.G. and J.G., the Agency recommended that the juvenile court terminate parental rights and order adoption as the permanent plan. K.G. and J.G. were placed with caretakers who wanted to adopt them. Both parents filed petitions for modification under section 388 (388 petition), asking the court to order reunification services for them. In the alternative, Mother asked the court to return K.G. and J.G. to her with family maintenance services. The court granted the parents a hearing on their 388 petitions.

At a combined 388/366.26 hearing, several witnesses testified including Mother's service providers, an Agency social worker, and the parents. The juvenile court denied Father's 388 petition and granted Mother's 388 petition, finding Mother's circumstances had changed and it was in the children's best interest to offer her additional reunification services due to her progress on her case plan in G.G.'s case and the strong bond K.G. and J.G. had with G.G.

At a case plan review on October 30, 2013, the juvenile court adopted a reunification plan for Mother. On November 14, 2013, at the Agency's request, the court authorized a trial visit for G.G. with Mother. In the six-month review report, the Agency reported that Mother successfully participated in and completed FDCC on October 9, 2013. Mother had clean drug tests, obtained housing, participated in the Alternatives to Violence program, and attended therapy. On September 12, 2013, she participated in a psychological evaluation and was diagnosed with marijuana and methamphetamine abuse and antisocial characteristics. On November 21, 2013, the court adopted the Agency's

recommendation and returned G.G. to Mother with family maintenance services. The court ordered a minimum of one-hour, monthly supervised visits for Father.

On January 24, 2014, Mother filed a request for overnight visits with K.G. and J.G. The Agency opposed the recommendation after discovering that Mother was allowing the children to have unauthorized visits with Father and that Mother had told K.G. to keep this contact a secret. The Agency expressed further concerns when K.G. revealed that Mother had “made [her] lie” to the social worker that her foster parent spanked her and other children in their home. K.G. confirmed her foster parent did not spank her. The Agency was concerned that K.G. “might be coerced into making false statements which can result in a child learning to not trust her own reality, a form of emotional abuse.” Mother withdrew her 388 petition requesting overnight visits.

In an April 10, 2014 addendum report, the Agency reported that Mother was still allowing Father to see the children. She was “opening her door . . . and still sharing [her car, a] Tahoe SUV with [Father], which provides an opportunity for the children to see their father unsupervised against the Court’s previous ruling.” The Agency also reported that on March 30, 2014, Father and Mother’s boyfriend, J.L. got into a fight at Mother’s apartment complex. K.G. and J.G. witnessed the physical altercation, as Mother allowed the children to watch the fight until it was over. K.G. told her therapist that Father and the other man were shouting and physically fighting, and that the other man “pushed my dad to the ground.” K.G. said that the police came and that she was scared. K.G.’s therapist stated: “I am aware that [Father] is only permitted to have supervised contact with his children. K.G. has hinted, and or slipped several times, that she has had contact with her dad throughout their time in custody. I am concerned about the safety of the children.”

On April 4, 2014, Mother’s counsel indicated that Mother would be requesting “a temporary restraining order on behalf of the children against [Father]” at the scheduled six-month review hearing. On April 10, 2014, the juvenile court granted a temporary restraining order to protect the children from Father. Father requested a *Marsden* hearing (*People v. Marsden* (1970) 2 Cal.3d 118) and, after confidential proceedings with Father

and his counsel, the court denied his motion. The court continued the hearing to coincide with G.G.'s six-month review/family maintenance hearing on May 8, 2014.

On May 8, 2014, the Agency recommended continuing family maintenance services for Mother as to G.G. so that she could “complete Alternatives to Violence, continue working on her recovery, increase positive parenting through bonding therapy, utilize a rehab specialist in the home to assist with parenting skills, and expand her network of social supports.” The Agency also provided updated information as to K.G., noting that Mother attended family therapy with K.G.

On May 8, 2014, the juvenile court held the review and restraining order hearings. Minors' counsel had no objection to the family maintenance recommendation for G.G. but opposed returning K.G. and J.G. to Mother, expressing concerns about safety. She also argued that reasonable services were not provided, since Mother and K.G. did not have the ordered bonding therapy. The court ordered continued family maintenance services for Mother as to G.G. and monthly, one-hour supervised visits for Father and G.G. The court found that reasonable services were not offered to Mother in relation to K.G. and J.G. The court did not return K.G. and J.G. to Mother's care but ordered continued reunification services for her and monthly, one-hour supervised visits for Father and K.G. and J.G.

The juvenile court then considered Mother's request for a restraining order to protect the children from Father. Father testified that he did not get into a fight with a man on March 30, 2014, and stated, “That is a lie. I was surprised when I heard that.” He testified that he was in Merced from March 27, 2014, until approximately 11 p.m. on March 30, 2014, and did not even go to Mother's apartment that day. When asked why he was in Merced, he explained that his aunt was “having problems” with his older children.<sup>3</sup> He said he stayed in Merced the whole weekend because a brother he had not seen for 17 years was visiting from Mexico and he wanted to spend time with him.

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<sup>3</sup>Father has two older daughters, V.G. and E.G. His parental rights to V.G. and E.G. were previously terminated, and they are not parties to this action.

Father testified that he knows J.L. and said, “I haven’t had problems with him, I know his daughters.”

Minors’ counsel supported Mother’s request for a restraining order, stating, “Your Honor, as I indicated before, you do have to take victims as you find them. This is a child who has witnessed lots of domestic violence between the parties, violence between the mother and the police and now violence between her father and the unknown man who ‘pushed my dad to the ground’ and ‘they were physically fighting.’ [¶] And she knew why her father was there[;] it was regarding the Tahoe, the truck. So I do find K.G.’s statements very credible. And I think that the father is causing emotional harm. There’s an order that he’s only to visit at the Family Center. He’s not able to follow that order. He comes around the mother’s home while the child is there and they both witnessed him physically being violent between him and the mother’s ex-boyfriend, current boyfriend at the time. I don’t know what the status was, however he felt strongly enough that he had to fight this man. It’s clearly causing damage to my client, she talks about it, she’s concerned about it, she’s worried about it, there’s emotional damage caused to my client.”

The juvenile court issued the restraining order, stating, “A reasonable inference can be drawn . . . that [F]ather for jealousy or other reasons got into a physical altercation at the . . . residence where the children were staying with [Mother].” The court stated it was troubled by both of the parents’ behavior on March 30, 2014, particularly because the children have a history of being exposed to—and being traumatized by—violence. The court found that “under all the circumstances of this case,” a restraining order against Father protecting the children was appropriate. The court issued the order “until the time that we terminate jurisdiction over these children. For now I’ll say three years but it’s subject to earlier termination if appropriate.” In the order, the court restrained Father from contacting the children, except for a minimum of monthly, one-hour supervised visits.

## DISCUSSION

Father contends the juvenile court abused its discretion in issuing the restraining order because there was insufficient evidence that he engaged in conduct warranting its issuance. We disagree.

Section 213.5, subdivision (a), permits a juvenile court to issue an order “enjoining any person from molesting, attacking, striking, stalking, threatening, . . . 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 . . . .” Issuance of a restraining order under section 213.5 does not require “ ‘evidence that the restrained person has previously molested, attacked, struck, sexually assaulted, stalked, or battered the child.’ ” (*In re C.Q.* (2013) 219 Cal.App.4th 355, 363.) “Nor does it require evidence of a reasonable apprehension of future abuse.” (*Ibid.*) Section 213.5 is analogous to Family Code section 6340, which permits the issuance of a protective order under the Domestic Violence Prevention Act if “ ‘failure to make [the order] may jeopardize the safety’ ” of the person it protects. (*Id.* at pp. 363–364, quoting *In re B.S.* (2009) 172 Cal.App.4th 183, 194.)

In reviewing the restraining order, “we view the evidence in a light most favorable to the respondent, and indulge all legitimate and reasonable inferences to uphold the juvenile court’s determination. If there is substantial evidence supporting the order, the court’s issuance of the restraining order may not be disturbed.” (*In re Cassandra B.* (2004) 125 Cal.App.4th 199, 210–211; *In re B.S.*, *supra*, 172 Cal.App.4th at p. 193.) Some courts have applied the abuse of discretion standard in reviewing the issuance of a restraining order. (*In re Brittany K.* (2005) 127 Cal.App.4th 1497, 1512.) The practical differences between these two standards are not significant. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351.)

Here, under either standard of review, the juvenile court did not err. Father was authorized to have only one-hour, monthly, supervised contact with the children. Despite this, he repeatedly violated the order by going to Mother’s home while the children were

there. K.G. knew Father was not supposed to be having contact and would say to her therapist, “Shh (holding her finger to her mouth), I know he isn’t supposed to be there.” In January 2014, K.G. whispered to her foster mother, “I have secrets that my mommy told me not to talk about, but I feel safe in telling you. My dad lives in Ukiah and my mom takes us to go see him at his trailer at all our visits.”

Because of Father’s inability to follow the court order, K.G. and J.G. witnessed a violent altercation between Father and J.L. in which the two shouted at each other and physically fought, and J.L. pushed Father to the ground before police arrived. K.G. told her therapist that she was scared, and the therapist expressed concern about the children’s safety due to the continued unauthorized contact. Father did not show any remorse for his actions, and in fact, wholly denied he was involved in a fight, or that he had even gone to Mother’s apartment on March 30, 2014.

Father asserts he did not place the children at risk of physical injury because the violence was not directed at the children, and the fight took place outside. As noted, however, issuance of a restraining order under section 213.5 does not require evidence that the restrained person has harmed the child, or that there is a reasonable risk of future harm. (*In re C.Q.*, *supra*, 219 Cal.App.4th at p. 363.) Further, as the juvenile court pointed out, “in a way [Father’s act of fighting J.L.] was [directed at the children] because of where the fight was and why the fight occurred.”

Father also points out that Mother was responsible because she allowed the children to watch the fight, and that she is the one who has a prior arrest record for domestic violence. The fact that Mother was also at fault, however, does not excuse Father’s conduct. It was Father’s responsibility to follow the court ordered visitation schedule, and to refrain from exposing his children to further violence and emotional harm. He failed to do so. Under these circumstances, the juvenile court could reasonably determine that a restraining order was necessary to ensure the children’s safety and well-being.

#### **DISPOSITION**

The order is affirmed.

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McGuiness, P.J.

We concur:

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Pollak, J.

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Jenkins, J.