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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re J.H., a Person Coming Under the Juvenile Court Law.	
CONTRA COSTA COUNTY CHILREN & FAMILY SERVICES BUREAU, Plaintiff and Respondent, v. J.H., Defendant and Appellant.	A142284 (Contra Costa County Super. Ct. No. JUVMSJ14-00306)

MEMORANDUM OPINION[1]

J.H., then 14 years old, was the subject of a dependency petition, filed March 26, 2014, alleging she was at serious risk of physical harm in the care of her parents, appellant J.H. (Father) and L.H. (Mother). (Welf. & Inst. Code,[2] § 300, subd. (b).) The petition alleged Father had been sexually molesting J.H. for the past two years and Mother failed to prevent the molestation. The detention/jurisdiction report provided evidence to suggest Father had molested not only J.H. but also her two older sisters, N.H.

[1] We resolve this case by a memorandum opinion pursuant to California Standards of Judicial Administration, section 8.1(1), (3).

[2] All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

and H.H. At the time the petition was filed, H.H. was an adult, and N.H. was to become an adult in less than a week.

A contested jurisdictional hearing was scheduled for April 28, 2014. Although the juvenile court continued the jurisdictional hearing that day, it held argument on the issuance of a temporary restraining order (TRO) against Father. Father's counsel opposed the requested TRO, which would have precluded contact by Father with all of his children, arguing, among other things, a criminal protective order had been entered that took precedence over any juvenile court order and the court lacked statutory authority to issue a TRO with respect to N.H. and H.H. The juvenile court nonetheless entered a TRO requiring Father to stay at least 100 yards from Mother, J.H., and J.H.'s two adult sisters.

Father has appealed the April 28 order, contending the juvenile court was not statutorily authorized to restrain him from contact with N.H. and H.H. The county did not file a brief in opposition to the appeal.

We agree with Father. Section 213.5, subdivision (a), the statutory authority for the juvenile court's TRO, allows the juvenile court to issue an order to protect "the child or any other child in the household" and exclude "any person from the dwelling of the person who has care, custody, and control of the child." The subdivision also permits the inclusion of a parent or caretaker of the child in the order of protection. (See *In re C.Q.* (2013) 219 Cal.App.4th 355, 363.) Section 101 states that, "As used in this chapter," the term " 'Child or minor' " means "a person under 18 years of age." Section 101 therefore unambiguously defines "child" to mean a person under the age of 18, and the statute authorizes the entry of a TRO only against "the child or any other child in the household." This interpretation is consistent with the purpose of the dependency statutes, which is to protect dependent children, who are necessarily minors. (§ 300.2; *In re I.J.* (2013) 56 Cal.4th 766, 773.)

Under the rules of statutory construction, " 'If there is no ambiguity in the language, we presume the Legislature meant what it said and the plain meaning of the statute governs.' " (*Pineda v. Bank of America, N.A.* (2010) 50 Cal.4th 1389, 1394.)

Because N.H. and H.H. were no longer "children" for purposes of section 213.5 at the time the TRO was entered, the juvenile court was without authority to include them within the terms of the TRO.

The juvenile court rejected the foregoing argument, reasoning the phrase "any other child in the household" referred to any siblings of the dependent child, regardless of age. While the interpretation would be plausible in the absence of section 101, that statute is controlling in defining "child."

In making this holding, we will not be leaving N.H. and H.H without the possibility of protection. The sisters would appear to be entitled to seek a restraining order under the Domestic Violence Prevention Act, Family Code section 6200 et seq. (See Fam. Code, §§ 6211, subds. (e), (f), 6203, 6320.) In fact, N.H. and H.H. likely are already protected by such an order, since Penal Code section 136.2, subdivision (A) permits the criminal court to enter "An order issued pursuant to Section 6320 of the Family Code." (See *In re B.S.* (2009) 172 Cal.App.4th 183, 192–193 [entry of order under Pen. Code, § 136.2 does not preclude entry of a similar order under Welf. & Inst. Code, § 213.5].)

The juvenile court's TRO, entered April 28, 2014, is reversed to the extent it purports to apply to N.H. and H.H. The provisions of the TRO relating to J.H. and Mother are affirmed. The matter is remanded to the juvenile court for further proceedings consistent with this memorandum opinion.

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Margulies, Acting P.J.

We concur:

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Dondero, J.

_____
Banke, J.