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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

In re GIOVANNI L., a Person Coming  
Under the Juvenile Court Law.

SAN FRANCISCO HUMAN SERVICES  
AGENCY,

Plaintiff and Respondent,

v.

L.M. et al.,

Defendants;

GIOVANNI L.,

Appellant.

A146035

(San Francisco City and County  
Super. Ct. No. JD11-3324A)

Giovanni L. is a dependent minor whose placement was changed to permit therapy with new mental health care providers after he engaged in sexually inappropriate behavior with another dependent minor. Giovanni and his parents (Mother and Father) objected to disclosure of his mental health and psychiatric assessments from the new provider to the San Francisco Human Services Agency (Agency). The Agency asked the juvenile court to sign releases permitting the disclosures. A hearing was scheduled on shortened notice, pursuant to local rules, at a time when Giovanni's counsel was unavailable. Mother filed a brief in opposition and her counsel specially appeared for Giovanni, but requested a continuance to permit Giovanni's counsel to further brief the matter and personally appear. The court denied the continuance and signed the releases.

Giovanni appeals, arguing the court abused its discretion and violated his due process rights by denying the continuance and deciding the issue on shortened time.<sup>1</sup> We agree in part and reverse to permit Giovanni to be heard.

### I. STATUTORY BACKGROUND

Welfare and Institutions Code section 369 provides: “(c) Whenever a dependent child of the juvenile court is placed by order of the court within the care and custody or under the supervision of a social worker of the county where the dependent child resides and it appears to the court that there is no parent, guardian, or person standing in loco parentis capable of authorizing or willing to authorize medical, surgical, dental, or other remedial care or treatment for the dependent child, the court may, after due notice to the parent, guardian, or person standing in loco parentis, if any, order that the social worker may authorize the medical, surgical, dental, or other remedial care for the dependent child, by licensed practitioners, as necessary. [¶] . . . [¶] (e) In any case in which the court orders the performance of any medical, surgical, dental, or other remedial care pursuant to this section, *the court may also make an order authorizing the release of information concerning that care to social workers, parole officers, or any other qualified individuals or agencies caring for or acting in the interest and welfare of the child under order, commitment, or approval of the court.*” (Italics added.)

“The Confidentiality of Medical Information Act [(Act)] (Civ. Code, § 56 et seq.)<sup>[2]</sup> prohibits health care providers and related entities from disclosing medical information regarding a patient without authorization except in certain specified instances.” (*Regents of University of California v. Superior Court* (2013) 220 Cal.App.4th 549, 553.) “In general, this legislation, enacted in 1981, is intended to protect the confidentiality of individually identifiable medical information obtained from a patient by a health care provider, while at the same time setting forth limited circumstances in which the release of such information to specified entities or individuals

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<sup>1</sup> Neither Mother nor Father have appeared in this appeal.

<sup>2</sup> Undesignated statutory references are to the Civil Code.

is permissible.” (*Loder v. City of Glendale* (1997) 14 Cal.4th 846, 859.) The Act provides, “A provider of health care may disclose medical information to a county social worker . . . who is legally authorized to have custody or care of a minor for the purpose of coordinating health care services and medical treatment provided to the minor.”<sup>3</sup> (§ 56.103, subd. (a); see *id.*, subd. (g) [“minor” includes juvenile dependents].) The Act also specifically addresses release of mental health treatment information: “Notwithstanding Section 56.104 [which restricts disclosure of information relating to outpatient treatment with a psychotherapist], if a provider of health care determines that the disclosure of medical information concerning the diagnosis and treatment of a mental health condition of a minor is reasonably necessary for the purpose of assisting in coordinating the treatment and care of the minor, that information may be disclosed to a county social worker . . . who is legally authorized to have custody or care of the minor. The information shall not be further disclosed by the recipient unless the disclosure is for the purpose of coordinating mental health services and treatment of the minor and the disclosure is authorized by law.” (§ 56.103, subd. (e)(1); see § 56.104; see also § 56.103, subd. (e)(2) [psychotherapy notes excluded].)

The San Francisco Superior Court has adopted a local rule providing a streamlined process for court approval of “ordinary” medical treatment and related releases of medical information when a parent is unavailable, unable or unwilling to provide the approval. (Super. Ct. San Francisco City & County, Local Rules, rule 12.53; hereafter Rule 12.53.) The rule expressly covers “[m]ental health assessment[s] required for mental health services” (Rule 12.53(A)(8)), and requires the Agency seeking court approval of such treatment and releases to provide 24 hours’ notice to all counsel and to inform the court of any objections (Rule 12.53(B)(3)(b)). If there is an objection and the need for medical treatment is not an emergency, the court conducts a hearing “on the

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<sup>3</sup> As of January 1, 2016, section 56.103, subdivision (a) expressly provides that the covered medical information “include[es], but [is] not limited to, the sharing of information related to screenings, assessments, and laboratory tests necessary to monitor the administration of psychotropic medications.” (Stats. 2015, ch. 535, § 1.)

following JV-220 calendar if the objection cannot be addressed on another calendar.”  
(Rule 12.53(B)(3)(c).)

## II. FACTUAL BACKGROUND

Then eight-year-old Giovanni and his sister were declared dependents of the juvenile court and removed from Father’s custody in late 2011. Father’s girlfriend served as the children’s guardian until late 2013. The children were then placed with maternal relatives who were caring for the children’s younger half sibling. In February 2015, Giovanni disclosed that several years prior he had been sexually abused by his paternal stepgrandfather. By June 2015, Giovanni had engaged in sexually inappropriate behavior with his half sibling. The Agency filed a Welfare and Institutions Code section 388 petition seeking to change Giovanni’s placement to San Diego, where he would live with an extended family member and receive specific treatment for his behavioral issues.

At a July 27, 2015 hearing, all parties agreed to the new placement, but they were unable to agree on the extent to which the new mental health providers should be authorized to release Giovanni’s medical information to the Agency.<sup>4</sup> The parties had proposed releasing the information to Giovanni’s counsel (who was also his guardian ad litem) instead of the Agency, but the court concluded it did not have the authority to do so. Following discussion off the record, the parties agreed that release forms would be submitted to the court for signature, and that the court would “review and sign what is necessary.” Giovanni’s counsel recited, without objection from the Agency, an agreement that the release forms would be circulated to the parties prior to submission to the court for signature. A further hearing was set for August 12, 2015.

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<sup>4</sup> One articulated concern was that the district attorney might gain access to medical information shared with the Agency and use it to prosecute Giovanni. That concern appears to have been misplaced. Subdivision (d) of section 56.103 places a duty of confidentiality on the social worker or caretaker who receives such information and provides that medical information disclosed pursuant to the statute “shall not be further disclosed by the recipient unless the disclosure is for the purpose of coordinating health care services and medical treatment of the minor and the disclosure is authorized by law. [It] may not be admitted into evidence in any criminal or delinquency proceeding against the minor.” (Italics added.)

When the release forms were circulated, Mother and Giovanni agreed to all but one which gave the Agency unrestricted access to all information, including results of mental health evaluations or psychiatric assessments. On August 3, 2015, the Agency nevertheless submitted an unrevised Agency release form for the court's signature. Giovanni, Mother, and Father objected, and the Agency agreed to temporarily submit a revised release until the dispute could be resolved so that Giovanni's treatment would not be delayed. On August 7 (a Friday), the Agency noticed an August 10 (Monday) hearing on its request that the court sign the unmodified form of release. Giovanni's counsel previously indicated she would be unavailable due to a vacation beginning July 31.

Mother filed a brief raising procedural objections to the Agency's request. She argued the Agency had engaged in an improper ex parte communication with the court when it submitted the releases for signature despite objections; the parties had been denied due process because the hearing was scheduled on shortened time; and Rule 12.53 did not permit the court to sign the releases without adequate notice to the other parties and a hearing.

At the August 10 hearing, Mother's counsel was present but counsel for Giovanni and Father were not. Mother's counsel informed the court that she was specially appearing for Giovanni and Father, and requested a brief continuance so that Giovanni's counsel could personally attend the hearing and be heard on the matter: "She's returning tomorrow [Tuesday]. We're all due back in court on Wednesday. I think at a minimum she should have the opportunity to argue personally to this Court, even though I can try to do so this morning and I believe I have done so in the papers filed with this Court." She argued that a two-day continuance would have no appreciable impact on Giovanni's treatment: "We have obviously no problem whatsoever with the Court signing the five releases to which there is no objection. . . . As to the sixth, the release of information to the Agency, which includes . . . psychiatric assessments and mental health evaluations, . . . there aren't any [assessments] yet. There's . . . no prejudice that the Agency will suffer by allowing this case to wait until [Giovanni's counsel] returns." Mother's counsel

noted that she had filed a brief, but also requested additional time “until [Giovanni’s counsel] returns and [we can] fully brief this issue.”

The court expressed its view that the Agency required all of the information in order to coordinate treatment and care for Giovani. The court denied the continuance request stating, “I’m signing the releases,” and explained, “[T]here’s no case that’s been cited to the Court that would justify . . . not allowing the Agency to have access to the information.”

Giovanni appealed the court’s August 10, 2015 order.

### III. DISCUSSION

Giovanni revives Mother’s due process argument and further argues the juvenile court abused its discretion under Welfare and Institutions Code section 352 by denying the requested continuance.<sup>5</sup> We consider only the limited question of whether the juvenile court was required to allow Giovanni’s counsel a reasonable opportunity to appear and argue in opposition to the Agency’s request.<sup>6</sup>

“In juvenile dependency litigation, due process focuses on the right to notice and the right to be heard.” (*In re Matthew P.* (1999) 71 Cal.App.4th 841, 851; see *In re Jesusa V.* (2004) 32 Cal.4th 588, 601, quoting *Boddie v. Connecticut* (1971) 401 U.S.

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<sup>5</sup> Giovanni also argues the court failed to inquire whether he, as an 11-year-old at the time of the August 10, 2015 hearing, was properly notified of his right to attend the hearing and given an opportunity to attend as required by Welfare and Institutions Code section 349, subdivision (d). This argument is forfeited because it was raised for the first time in Giovanni’s reply brief. (See *REO Broadcasting Consultants v. Martin* (1999) 69 Cal.App.4th 489, 500.)

<sup>6</sup> Since we do not reach the merits of the court’s order, we need not address Giovanni’s suggestion that release of his medical information could only be authorized by his “legal representative” pursuant to section 56.11 and that the Agency was not his legal representative. Nor do we need to address his further suggestion that mental health and psychiatric assessments should not have been released to the Agency because such assessments were not truly necessary “for the purpose of coordinating health care services and medical treatment provided to the minor” as required by section 56.103. (See § 56.103, subd. (a); cf. § 56.103, subd. (e)(1) [expressly authorizing release of medical information to a “social worker . . . who is *legally authorized* to have custody or care of a minor” under the juvenile dependency system” (italics added)].)

371, 377 [“absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard”].) In some circumstances, deprivation of the right to adequate notice and a meaningful opportunity to be heard may result in a proceeding lacking “elementary fairness so as to preclude an enforceable order.” (*In re Brendan P.* (1986) 184 Cal.App.3d 910, 920.)

Here, dramatically shortened notice was given at a time when Giovanni’s counsel was known to be unavailable, and she consequently had no opportunity to appear on Giovanni’s behalf—denying Giovanni the right to be heard on the scope of the proposed releases. The People repeatedly suggest that Giovanni’s arguments were adequately presented by Mother. While Mother’s position may have been aligned with Giovanni’s position, Mother’s counsel did not, and could not, represent Giovanni. (See Welfare & Inst. Code, § 317; *In re Marriage of Seaman & Menjou* (1991) 1 Cal.App.4th 1489, 1498 [“[t]he child is a party to a dependency proceeding and is entitled to representation by counsel”].) Moreover, it was Giovanni’s privacy interests that were at stake, not Mother’s.

The juvenile court was understandably concerned that delay in execution of the release forms would delay Giovanni’s treatment. The court also voiced apparent frustration with similar objections and the need for hearings in other matters, and “just the same statements in every one of these cases. . . . [¶] . . . [¶] So if all these cases need to be noticed, then these children will not be getting care in a timely manner.” Nevertheless, Rule 12.53 expressly contemplates objections to release of a minor’s confidential medical information,<sup>7</sup> and for an expedited hearing on such objections. Moreover, the exigencies that the court seemed to assume in issuing an immediate order appear not to have been present. Counsel verified with treatment providers that the

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<sup>7</sup> As note *ante*, the rule includes disclosures of “[m]ental health assessment[s] required for mental health services.” (Rule 12.53(A)(8).)

releases were not, and could not be, a precondition to treatment.<sup>8</sup> Mother’s counsel advised the court that she had “shared with all counsel proof from the [San Diego] program that the consents to release information were not required to begin treatment.” Further, the objections presented were not blanket objections to release of information “reasonably necessary for the purpose of assisting in coordinating the treatment and care of the minor” (§ 56.103, subd. (e)(1)), but specific objections questioning the necessity for the breadth of one proposed release. “The commendable goal of efficiently proceeding in dependency cases . . . cannot be accomplished by sacrificing a [party’s] due process and statutory rights to meaningful notice.” (*In re Wilford J.* (2005) 131 Cal.App.4th 742, 753.)

The Agency argues that even if Giovanni was improperly denied a hearing on his objections, he still fails to establish prejudice. But procedural due process errors in juvenile dependency cases require reversal unless harmless beyond a reasonable doubt. (*In re Dolly D.* (1995) 41 Cal.App.4th 440, 446.) While the juvenile court very clearly expressed its view that the releases were appropriate and necessary, the court had no opportunity to consider the views of the only advocate in this proceeding charged with protection of Giovanni’s best interest. Allowing the brief continuance might have allowed Giovanni to present evidence that release of the assessments was not necessary. Although the juvenile court may well have entered the same order after hearing from Giovanni’s counsel, we cannot say beyond a reasonable doubt that it would have done so. Reversal is therefore required.

We also find that denial of the brief continuance requested here (two days to a previously scheduled calendar date) was an abuse of discretion and arbitrary under these

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<sup>8</sup> The court stated that the declaration of Mother’s counsel was hearsay and would not be considered, even though the Agency conceded earlier in the hearing that Mother’s counsel was correct: “[T]he information that the Agency was receiving from the director of the [San Diego] program . . . [was] that they would not start treatment until the releases were done. [Mother’s counsel] has been in touch with their HIPAA compliance person . . . [a]nd I think as of Friday, she did get an e-mail specifically saying that that’s not the case. But again, the information that the Agency was receiving was . . . different. We have that now squared away, I believe.”

circumstances. Although continuances are discouraged in dependency cases (*In re Giovanni F.* (2010) 184 Cal.App.4th 594, 604), the juvenile court has discretion to grant a continuance upon a showing of good cause if it is not contrary to the best interest of the child (Welf. & Inst. Code, § 352, subd. (a); *Giovanni F.*, at p. 605). Good cause was shown by counsel's previously noticed absence. Additionally, Giovanni's counsel was already scheduled to be present before the court in a matter of only two days and she was urging that Giovanni's best interest required the court to at least consider an alternative order. Prejudicial denial of continuance requires reversal. (*In re C. P.* (1985) 165 Cal.App.3d 270, 274 & fn. 1.)

#### IV. DISPOSITION

The August 10, 2015 order is reversed and remanded to the juvenile court for further hearing in accordance with the views expressed in this opinion.

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BRUINIERS, J.

WE CONCUR:

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JONES, P. J.

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NEEDHAM, J.