

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re NATHAN V.,
a Person Coming Under the Juvenile Court Law.

B239786
(Los Angeles County
Super. Ct. No. CK90071)

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

A. C.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County,
Timothy R. Saito, Judge. Affirmed.

Nancy Rabin Brucker, under appointment by the Court of Appeal, for
Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County
Counsel, and William D. Thetford, Principal Deputy County Counsel, for Plaintiff
and Respondent.

A. C. (Mother) appeals from an order of the juvenile court granting the request of Neil V. (Father) for a restraining order against her to protect himself, their child Nathan V., and Father's fiancée Maria P. We find substantial evidence supports the court's order and so affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Nathan (born in 2004) came to the attention of the Los Angeles County Department of Children and Family Services (DCFS) on August 25, 2011, when DCFS received a report of domestic violence between Mother and her husband, Alfred A. (Stepfather). Stepfather was arrested after he tried to choke Mother. Mother left to stay with family members, but she returned to the home with Nathan a few days later. Mother indicated to the caseworker that she did not want to maintain an emergency protective order against Stepfather. Instead, she and Stepfather planned to seek counseling through their church.

On September 2, 2011, Father called the caseworker to express his concern for Nathan's safety, explaining that Mother had been violent during their marriage and that he left her in 2010 after she threw an object at him, cutting his face and giving him a black eye.

On September 8, 2011, the caseworker interviewed Mother and Stepfather in their home. Mother stated that she had been diagnosed with bipolar disorder, but she had been unable to take her medication because she was pregnant. The caseworker discussed the most recent incident and a previous incident of domestic violence and suggested to Stepfather that alcohol played a role in both incidents.

The caseworker expressed concern for Nathan, but Stepfather and Mother explained that they had never been abusive toward Nathan. The caseworker interviewed Nathan, who was well cared for and did not have any signs of abuse or

neglect. Nathan denied that Mother or Stepfather had ever tried to harm him, but he said that it made him sad when he saw the violence between Mother and Stepfather and that he did not want Stepfather to hurt Mother again. When the caseworker returned to the living room, Mother was crying and said her husband had left. The caseworker told Mother that Stepfather could not return to the home until he had successfully enrolled in court-ordered programs.

On September 12, 2011, the caseworker received a voicemail from Stepfather, who said that Mother was a liar and that Nathan should be with Father, not with Mother. He stated that this was not her first incident of domestic violence against him or Father, and that Mother's 17-year-old daughter, Deanna L. (born in 1993), had left because of Mother, whom he described as "incapable of taking care of her kids." The caseworker asked Mother about these statements, and she said that Stepfather wanted Nathan to live with Father so that Mother and Stepfather could have their own family. The following day, Stepfather left another message for the caseworker, apologizing for his first message and explaining that he had been angry and drunk at the time.

Deanna told the caseworker that she was going to live with Mother for two months before leaving for college and denied that she was in any danger at Mother's home. Deanna felt that Father was trying to create problems for Mother in order to gain custody of Nathan. She said Mother and Stepfather argued, but she denied that they hit each other.

Nathan was detained from Mother and released to Father at a September 26, 2011 detention hearing. Mother was granted monitored visits, but Father was not to be the monitor. A pretrial resolution conference was scheduled for October 24, 2011.

On October 24, 2011, Father filed an application for a restraining order against Mother, seeking protection for himself, his fiancée, and Nathan. The application relied on an October 20, 2011 jurisdiction/disposition report for a description of Mother's conduct. The court issued a temporary restraining order.

The jurisdiction/disposition report detailed three DCFS referrals. First, a child abuse referral on November 23, 2009 alleged that Mother abused Deanna. Deanna told the reporting party that she was afraid to go home because she was having academic problems and was afraid Mother would assault her. Mother admitted hitting Deanna on the shoulder when Deanna lied about not being in class. Deanna said Mother had hit her in the past, but Father (who was Deanna's stepfather) said that Deanna lied a lot. The allegations were found to be inconclusive, and the referral was closed.

Another referral was made on December 9, 2009, alleging that Deanna was sexually abused by a teacher.

On April 5, 2010, a child abuse report alleged emotional abuse, physical abuse, and severe neglect by Mother of Nathan. Mother had chased Father in her car for approximately 10 miles while Nathan was in the car. Mother admitted throwing an object at Father and causing a black eye. She stated that she was recently diagnosed with bipolar disease and was being treated. At the time of the report, Father stated that he felt Nathan was safe with Mother, despite the car chase. The allegations of emotional abuse and severe neglect were found to be inconclusive, and the allegations of physical abuse were determined to be unfounded, so the referral was closed.

The jurisdiction/disposition report further alleged at least three violent altercations between Mother and Stepfather, on July 18, August 24, and September 8 of 2011. Mother asserted that there were errors in the report

regarding these incidents. She stated that Stepfather had hit her on only one occasion and speculated that Stepfather had become violent because he was frustrated about not being able to find a job and about Mother's problems with Father.

Mother also stated that the July 2011 incident described in the report did not involve domestic violence. According to Mother, in that incident, Stepfather had become upset during an argument about money and his lack of a job, so they went for a walk. When they returned home, Stepfather began cutting up clothes she had bought for him and throwing them in the toilet. When she tried to remove them from the toilet, Stepfather slipped and broke a mirrored door in the bathroom. Mother called the police, but she said it was because she wanted him out of the house, not because he had hit her. She denied a statement on the police report that she was an aggressor in the incident. Mother also asserted that her mental health concerns did not contribute to the arguments she had with Stepfather, stating that, contrary to the caseworker's earlier report, she was taking a reduced dosage of her medication during her pregnancy.

The report also indicated that Stepfather had called Father in July 2011 to express concern for Nathan because Mother "was crazy." Mother called Father in August 2011 to say that Stepfather had hit her. Nathan told Father that Stepfather had choked Mother and threatened to kill her. Father expressed the opinion that Mother had started the fights with Stepfather, stating that she was aggressive toward him during their marriage.

In October 2010, Father called the police to report that Mother had smashed Father's jack-o-lantern on his car when she came to pick up Nathan. He did not see her do it, but he assumed it was her.

According to Deanna, Father and Mother argued a lot during their marriage, and Father broke things and made holes in the walls. She said that during their last argument before they separated, Father made holes in the bathroom door while Mother was in the bathroom, and Mother threw something at his face, resulting in swelling under his eye.

The jurisdiction/disposition report recommended family reunification services be provided to Mother to address domestic violence, parenting, and mental health issues. The report also recommended family maintenance services be provided to Father to address parenting issues and communication skills to better co-parent with Mother.

At the November 7, 2011 adjudication hearing, Mother pled no contest to the allegations in an amended petition. The court sustained the allegations of failure to protect, based on the violent altercations between Mother and both Stepfather and Father, as well as Stepfather's alcohol use, and found Nathan to be a person described by Welfare and Institutions Code section 300.¹ Mother stipulated to an extension of the temporary restraining order.

Following numerous continuances, a hearing was held on February 14, 2012, regarding Father's application for a permanent restraining order. Father testified that his request for the restraining order was based on 2010 emails, Mother's vandalism of his car in late 2010, and two telephone calls from her that violated the restraining order granted in this case.

In support of his application, Father submitted two email exchanges between him and Mother from May and July 2010. The emails indicate plenty of acrimony

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

between Mother and Father, but they do not indicate any threatening or harassing behavior by either party.

At the February 2012 hearing, Father testified that Mother called him twice in December 2011, in violation of the temporary restraining order. In the first call, Mother called him to say that Stepfather was threatening her, her family, and Father. Mother told Father to let his job know and have the police department get involved.² In the second call, Mother asked Father to keep Nathan out of school in order to keep him safe because Stepfather was threatening to hurt both Nathan and Father. Father further testified that he was afraid because Mother's "husband is a felon. They are currently having issues, and I believe that she is telling him things to make him angry, that's going to hurt me and my son."

When asked if Mother had ever assaulted him, Father recounted the incident in 2009 or 2010 when Mother threw a "hard, plastic elephant and struck [him] in the face, cutting [his] lower eye." There had been no other incidents, and there were no incidents of assault or threats against his fiancée.

Father conceded that Mother's 2010 emails did not contain any threats against him. He also conceded that he did not see Mother throw the pumpkin at his car in the 2010 vandalism incident. Father had unsuccessfully sought a restraining order in 2010, based on Mother throwing the plastic elephant at his face, the car chase, and her emails.

Counsel for Mother and counsel for Nathan opposed the restraining order, arguing that there was no threat and that the incidents Father recounted were too remote to support a finding of imminent danger. The recent voicemails from Mother appeared to be intended to warn Father of a possible threat from Stepfather and did not themselves indicate that Mother was threatening him.

² The record indicates that Father worked in law enforcement.

The court granted a one-year restraining order, citing in particular the possible threat that Stepfather posed to Father. The court allowed the possibility for Mother to have monitored visits with Nathan and ordered no contact between Father and Stepfather. Mother filed a notice of appeal.

DISCUSSION

Mother contends there was insufficient evidence to support the issuance of the restraining order. We conclude that the juvenile court's finding was supported by sufficient evidence and so affirm.

“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, sexually assaulting, stalking, or battering the child or any other child in the household; (2) excluding any person from the dwelling of the person who has care, custody, and control of the child; and (3) enjoining any person from behavior, including contacting, threatening, or disturbing the peace of the child, that the court determines is necessary to effectuate orders under paragraph (1) or (2). A court . . . may simultaneously issue an ex parte order enjoining any person from contacting, threatening, molesting, attacking, striking, sexually assaulting, stalking, battering, or disturbing the peace of any parent, legal guardian, or current caretaker’ of the child.” (*In re Cassandra B.* (2004) 125 Cal.App.4th 199, 211 (*Cassandra B.*))

“[W]e 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. [Citation.]’ [Citation.]”
(*In re B.S.* (2009) 172 Cal.App.4th 183, 193 (*B.S.*).

In *Cassandra B.*, the minor’s attorney sought and was granted a temporary restraining order against the mother, who had left numerous voice messages for the caretaker, gone to the minor’s school, and tried to enter the caretaker’s apartment building. On appeal, the mother argued that the juvenile court did not have authority to issue the restraining order because violent behavior or the threat of violence was a prerequisite to the imposition of a restraining order under section 213.5. However, the court held that violence was not required for the imposition of a restraining order, pointing out that the statute included “‘molesting’ or ‘stalking’ in the conduct the juvenile court may enjoin, neither of which necessarily involves violent behavior or the threat of violence.” (*Cassandra B.*, *supra*, 125 Cal.App.4th at p. 211.)

Cassandra B. further reasoned that the term “‘molest’” had been defined to mean “‘to disturb, irritate, offend, injure, or at least tend to injure, another person. [Citations.]’” (*Cassandra B.*, *supra*, 125 Cal.App.4th at p. 212.) The court found “‘ample evidence’” to support the juvenile court’s issuance of the restraining order, citing the mother’s “‘conduct in attempting to gain entry to the home of Cassandra’s caregivers without their knowledge, appearing at Cassandra’s school and then following behind the caregiver’s car after Cassandra was picked up from school, together with her threats to remove Cassandra from her caregivers’ home” (*Ibid.*)

Pursuant to *Cassandra B.*, the restraining order in this case was justified even if Mother did not engage in violent behavior or threaten violence against Father. While the emails cited by Father did not support the grant of the restraining order because there was no evidence in the emails of harassing or

stalking conduct, the car chase and vandalism of Father's car do constitute evidence of "conduct designed to disturb, irritate, offend, injure, or at least tend to injure, another person. [Citations.]" (*Cassandra B.*, *supra*, 125 Cal.App.4th at p. 212.) More importantly, as the juvenile court reasoned, Mother's relationship with Stepfather was cause for concern. Mother earlier had relayed to Father threats against him and Nathan made by Stepfather, and last minute information filed with the court indicated another violent altercation between Mother and Stepfather in February 2012. Because of the prior threats made by Stepfather, it is reasonable to infer that Mother's continued violent relationship with Stepfather posed a threat to Father, his fiancée, and Nathan.

Viewing, as we must, the evidence in the light most favorable to the respondent and "indulg[ing] all legitimate and reasonable inferences to uphold the juvenile court's determination" (*B.S.*, *supra*, 172 Cal.App.4th at p. 193), we find that the evidence is sufficient to support the court's issuance of the restraining order.

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

WILLHITE, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.