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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

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

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

S.M.,

Defendant and Appellant.

D069170

(Super. Ct. No. J518881A-C)

APPEAL from orders of the Superior Court of San Diego County, Sharon L. Kalemkiarian, Judge. Affirmed.

Neil R. Trop, under appointment by the Court of Appeal, for Defendant and Appellant.

Thomas E. Montgomery, County Counsel, John E. Philips, Chief Deputy County Counsel, and Lisa M. Maldonado, Deputy County Counsel, for Plaintiff and Respondent.

S.M. appeals the juvenile court's orders issuing a restraining order against her and suspending her right to make educational decisions on behalf of her minor children, J.M.

and L.M., arguing the court issued both orders upon insufficient evidence. We disagree and affirm the orders.

### FACTUAL AND PROCEDURAL BACKGROUND

Appellant is the mother of J.M., L.M. and A.P.; A.M. is the biological father of J.M. and L.M; and M.P. is the biological father of A.P.

In October 2013 San Diego County Health and Human Services Agency (the Agency) received reports appellant appeared paranoid and either on drugs or having a mental breakdown, all three children witnessed appellant hitting M.P., and appellant dropped J.M. and L.M. off with A.M. without prior notice while he was at work. Appellant admitted using methamphetamines within the previous week and M.P. admitted he had a drinking problem. As a result, in November 2013 appellant and M.P. agreed to participate in voluntary services, including general counseling and outpatient drug treatment, and signed a case plan with the Agency. Within a couple months, appellant and M.P were involved in another incident in which they were drinking alcohol and M.P. punched appellant in the face several times while the children were at home. M.P. was arrested as a result of the incident and, upon the social worker's insistence, appellant moved to a domestic violence shelter and obtained a restraining order protecting herself and the children from M.P.

Based on the foregoing, the Agency filed petitions alleging J.M., L.M. and A.P. were at risk. The juvenile court found the Agency had made a prima facie showing that the children were persons described in section 300, subdivision (b), of the Welfare and

Institutions Code<sup>1</sup> and detained them. A few days later, the court placed the children with appellant on the conditions she: (1) remain in the domestic violence shelter or agency-provided housing, (2) participate in treatment programs, (3) continue to test clean for substance abuse, and (4) refrain from contact with M.P. The court also issued a restraining order against M.P.

In July 2014 the Agency received a report that M.P. had beaten appellant in front of the children, appellant subsequently left the children with him for a period of time, despite the restraining order, and appellant appeared to be using drugs. The children admitted appellant let M.P. see them while under appellant's care despite appellant coaching them to lie about it. The domestic violence shelter also evicted appellant for noncompliance and rules violations, including not attending classes, leaving L.M. and A.P. alone without childcare, and having a male visitor overnight.

As a result, the Agency filed section 387 supplemental petitions on the children's behalf, and the court placed the children with A.M.'s mother. In its detention report, the Agency expressed concern the mother was a possible flight risk as she had allowed J.M. to travel to Tijuana, Mexico with a family member without court authorization. Although the court granted appellant supervised visitation twice a week, the Family Visitation Center canceled her visitation after she failed to attend or arrived late on numerous occasions. Appellant also continued to have contact with M.P. despite the restraining

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<sup>1</sup> Unless otherwise noted, all further statutory references are to the Welfare and Institutions Code.

order and, in December 2014<sup>2</sup>, the police arrested M.P. for domestic violence against appellant after an incident in which M.P. hit appellant and appellant jabbed M.P. in the head with a cuticle clipper. Following this incident, appellant told the social worker she had filed for divorce from M.P.

In June 2015 the social worker noted appellant was speaking rapidly and acting strangely during a meeting. The following month, appellant failed to keep in contact with the Agency or to show up for scheduled visitations and, in July 2015, she absconded with the children from the caretaker's home. A neighbor who pursued appellant indicated appellant was driving erratically and the children were not in car seats or wearing seat belts.

Several weeks later, the police apprehended appellant and the children after responding to a report indicating two of the children were hiding inside the trunk of a vehicle as they entered a drive-in theater. The officers believed appellant and the children were living in the car; appellant admitted they were homeless, but said they had been moving between hotels. The children reported they had been staying with an individual named "Sergio" and had witnessed domestic violence. Appellant admitted having a relationship with "Sergio," but denied the children stayed with him or witnessed domestic violence. Appellant originally agreed to submit to a drug test but later said she could not do so because she did not have identification.

A week after police apprehended appellant, the children requested a temporary restraining order protecting them from her. Appellant was present at the hearing. The

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<sup>2</sup> The February 18, 2015, status review report mistakenly refers to this incident as occurring in December 2015.

court reviewed the Agency's section 387 supplemental petitions and detention report and observed that whomever was caring for the children would need the ability to call the police if appellant were to attempt to abduct them again. The court issued a restraining order precluding appellant from contacting the children in any way with the exception of approved, supervised visitation or obtaining the whereabouts of the children and requiring appellant to remain at least 100 yards away from the children, their home, and their schools or child care facilities. The court later renewed the restraining order pending the next scheduled hearing in September. Appellant scheduled a supervised visitation in August but again failed to attend or reschedule.

Appellant was not personally present at the September 2015 hearing, wherein the court considered whether to make the restraining order permanent along with several other matters, including the contested combined six- and 12-month review. The court entered numerous Agency reports prepared between February and August 2015 into evidence noting it had read and reviewed them and, after hearing argument from counsel, made the restraining order permanent for the statutory period of three years. The court explained "Since the first detention of the children, there have been way too many changes and disruptions and volatile engagements in this family. So there needs to be some very firm boundaries set, and this will be one of them."

The court also found good cause to restrict appellant's rights to make educational decisions as to J.M. and L.M. based on her limited contact with them, but authorized her to have access to school records and to communicate directly with the children's teachers

via telephone. A.M. and M.P. were appointed to make educational decisions for their respective children pending further order of the court.

## DISCUSSION

### *I. Restraining Order*

Section 213.5 gives the juvenile court jurisdiction to issue a restraining order with respect to dependent children. Proof for a restraining order issued by the juvenile court under section 213.5 may include the application and any attachments, additional declarations or documentary evidence, the contents of the juvenile court file, testimony, or any combination thereof. (Cal. Rules of Court, rule 5.630(f)(1).) Issuance of a restraining order is appropriate where the juvenile court can reasonably find a failure to issue the restraining order would jeopardize the safety of the individual or individuals seeking the order. (*In re B.S.* (2009) 172 Cal.App.4th 183, 194.)

We review the decision to grant or deny a restraining order for an abuse of discretion. (*Salazar v. Eastin* (1995) 9 Cal.4th 836, 850.) The appropriate test is whether the trial court's decision exceeded the bounds of reason. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.) We examine the record in a light most favorable to support the judgment and draw all reasonable inferences in support of the challenged order. (*In Re B.S., supra*, 172 Cal.App.4th at p. 193.) So long as substantial evidence supports the juvenile court's factual findings, we will not find its decision to issue a restraining order to be an abuse of discretion. (*In re Brittany K.* (2005) 127 Cal.App.4th 1497, 1512].)

Appellant incorrectly argues the court entered certain reports into evidence only for the purpose of the section 387 and review hearings and thus could not consider them

as evidence supporting the restraining order. The reports at issue, as well as other relevant documents such as the police report and an ex parte application detailing appellant's abduction of the children, were part of the juvenile court file and thus were properly considered as proof of the need for a restraining order. (Cal. Rules of Court, rules 5.552(a) [defining "juvenile case file" to include all documents filed in a juvenile court case as well as reports to the court by probation officers, social workers of child welfare services programs] & 5.630(f)(1).) Further, appellant's counsel presented arguments regarding the facts surrounding the abduction and, in doing so, referenced the Agency's reports, thereby forfeiting any argument that the evidence was not properly before the court. As the court could properly consider the juvenile court file, appellant's assertion that only reports on or after June 22, 2015 are relevant, for which she cites no authority, is meritless. Regardless, appellant never disputed she abducted the children and there was ample evidence in the record of the abduction even without looking before June 22, 2015.

The abduction jeopardized the safety of the children and provided sufficient support for the issuance of the restraining order. The court appropriately inferred, based on appellant's prior actions, that appellant might attempt to abduct the children again. The abduction was willful, unquestionably interfered with attempts to stabilize the relationship between the children and their caretaker, and was certainly troubling, disturbing, vexing and unwarrantably meddlesome to the children. (See *In re Brittany K.*, *supra* 127 Cal.App.4th at p. 1512.) Beyond the abduction itself, appellant also exposed the children to domestic violence. As the court explained, the restraining order was

therefore necessary to allow whomever was caring for the children to involve the police if appellant attempted to contact them outside of the authorized, supervised visits.

Appellant's assertion the facts of the present case differ from those at issue in *In re B.S.*, *supra*, 172 Cal.App.4th 183, is without consequence. The finding that the facts in *In re B.S.* supported the issuance of a restraining order does not indicate actions of a similar type or magnitude are necessary to support the issuance of a restraining order under a different factual scenario. (*Ibid.*; *In re Brittany K.*, *supra*, 127 Cal.App.4th at p. 1512 [obtaining unauthorized access and determining confidential location of foster home sufficient to support the issuance of a restraining order].) As explained above, substantial evidence supports the juvenile court's finding that a restraining order was necessary in this particular circumstance.

Appellant's argument the juvenile court's orders regarding supervised visitation were sufficient to protect the children is also without merit. As the juvenile court explained, the restraining order was necessary to protect the children in the event appellant violated the court's orders regarding visitation as she had done when she took the children without authorization in July 2015. (See *In re N.L.* (2015) 236 Cal.App.4th 1460, 1466 [noting monitored visitation of a child is not incompatible with a restraining order].)

Substantial evidence supports the juvenile court's findings and the court did not abuse its discretion in issuing the restraining order.

## *II. Limitation of Rights to Make Educational Decisions*

The juvenile court may limit the right of a parent to make educational decisions on behalf of a child where necessary to protect the child so long as any such limitations do not exceed those necessary to protect the child. (§ 361, subds. (a)(1); *In re R.W.* (2009) 172 Cal.App.4th 1268.) The court must base all educational decisions on the best interests of the child. (*In re Samuel G.* (2009) 174 Cal.App.4th 502, 510.) If the court so limits the right of the parent, it must appoint another responsible adult to make educational decisions for the child and must appoint a relative, or other adult known to the child, if one is willing to serve as the educational representative before appointing a surrogate that is not known to the child. (§ 361, subds. (a)(1) & (a)(3).) In reviewing the juvenile court's decision to suspend a parent's education decision-making rights, we apply an abuse of discretion standard, keeping in mind the focus of dependency proceedings is on the child rather than the parent. (*In re R.W.*, *supra*, at p. 1277.)

Here, the juvenile court based its decision to suspend appellant's educational decision-making rights on appellant's limited contact with J.M. and L.M. and its finding her presence at the children's school would place the children in danger. As discussed above, substantial evidence supports the juvenile court's finding a restraining order restricting appellant's contact with the children was necessary. The record also indicates appellant had an established history of attending visitation only sporadically, failing to comply with her case plan, and defying various court orders, including the visitation orders and the restraining order pertaining to M.P. The court's order was temporary and gave appellant full access to educational records and permission to communicate with the

children's teachers over the phone. Contrary to appellant's assertions, the order does not preclude appellant from providing pertinent information or input to the children's schools. Thus, the court's order was not more restrictive than necessary to protect the children and the limitations on appellant's rights to make educational decisions did not exceed those necessary to protect the children. (*In re R.W.*, *supra*, 172 Cal.App.4th at p. 1276, citing § 361, subd. (a).)

Appellant also argues she is more capable than A.M., and at least as capable as M.P., to make educational decisions for the children. A.M. and M.P. are both presumed fathers of J.M. and L.M., both were receiving services, neither attempted to abduct the children, and neither had their contact with the children limited in the same manner as appellant. While there was a restraining order in effect against M.P. with respect to the children as a result of his altercations with appellant, the restraining order permitted him to have unsupervised visitation with the children at the Agency's discretion, the Agency was permitting such unsupervised visits, and the visits were going well. Regardless, the appropriate inquiry is not whether appellant is more or less capable of making educational decisions for the children than the two presumed fathers, but rather whether the juvenile court abused its discretion in suspending appellant's educational decision-making rights.<sup>3</sup> We find that it did not.

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<sup>3</sup> Appellant discusses A.M. and M.P.'s shortfalls as parents at length but does not assert the juvenile court erred in appointing the presumed fathers to make educational decisions. (See *Jones v. Superior Court* (1994) 26 Cal.App.4th 92, 99 ["[i]ssues do not have a life of their own: if they are not raised or supported by argument or citation to authority, we consider the issues waived".])

DISPOSITION

The orders are affirmed.

O'ROURKE, J.

WE CONCUR:

BENKE, Acting P. J.

PRAGER, J.\*

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\* Judge of the San Diego Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.