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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re E.O. III., a Person Coming Under the
Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

SARAH L.,

Defendant and Appellant;

E.O., JR.,

Defendant and Respondent.

G045485

(Super. Ct. No. DP021368)

OPINION

Appeal from an order of the Superior Court of Orange County, Jane L. Shade, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Robert McLaughlin, under appointment by the Court of Appeal, for
Defendant and Appellant.

Nicholas S. Chrisos, County Counsel, and Karen L. Christensen, Deputy County Counsel, for Plaintiff and Respondent.

Donna P. Chirco, under appointment by the Court of Appeal, for Defendant and Respondent.

* * *

Sarah L. (mother) appeals from the juvenile court's order granting a three-year no-contact restraining order under Welfare and Institutions Code section 213.5 (all further statutory references are to this code unless noted). Mother argues the juvenile court violated her due process rights by denying her an opportunity to present evidence opposing issuance of the order. Finding no basis to overturn the order, we affirm.

I

FACTUAL AND PROCEDURAL BACKGROUND

In June 2011, social workers with the Orange County Social Services Agency (SSA) took E.O. III ("E.O.," born September 2008) into protective custody. SSA alleged he was at risk "due to mother's emotional instability and her chronic use of alcohol and the father's failure to protect the child from [her] erratic behavior" and the parents' "history of domestic violence." The agency filed a petition under section 300, subdivision (b), alleging E.O. had suffered or there was a substantial risk he would suffer serious physical harm or illness resulting from the failure or inability of his parents to supervise and protect him.

SSA's 2011 verified petition and the social worker's reports reflected that in March 2008, mother's former husband called police after he observed mother yelling at their children, E.O.'s older half siblings A. and J. Mother had alcohol on her breath. She told daughter A. to "get out" and "took a handful" of the girl's hair, pulled her toward the front door, and pushed her onto the grass. Mother struck her former husband several times on the face and neck, causing deep scratch marks. Mother was arrested for

domestic violence and subsequently pleaded guilty. Later in March, A. and J. reported they were riding in a car with their father when mother rammed them from behind.

In December 2010, mother, intoxicated, told A. she wished A. was dead, and threatened to stab and kill her. Mother attempted to strike A. and threw a bag of coal at her.

On March 8, 2011, police officers took E.O. and his half siblings into protective custody after detaining mother under section 5150 (“person, [who] as a result of mental disorder, is a danger to others, or to himself or herself, or gravely disabled”) after she threatened to commit suicide. Mother admitted drinking alcohol to help cope with the deaths of her father and a friend. She yelled and cursed until she lost her voice. Neighbors reported she kicked and punched walls, screamed and broke bottles in the hallway. The family’s apartment was “cluttered with junk and broken items,” food splattered on the walls, and clothes scattered everywhere. Mother became irate while talking to a police officer and “went through several mood swings ranging from calmness to extreme anger.” She claimed her anti-depressant medication was not working.

Police officers took the children to Orangewood Children’s Home, and SSA subsequently released the children to their fathers. The family court prohibited mother from visiting E.O., and father agreed to seek a restraining order against mother. But father stipulated to remove the restrictions on visitation, did not follow-through on the restraining order, and returned to the residence he shared with mother. E.O. was alone with mother during the day while father worked.

In May 2011, police officers arrested mother for making criminal threats (Pen. Code, § 422) against neighbors. E.O. was released to father’s custody. During an interview with a social worker on May 24, mother refused to sit down, became hostile, and denied the need for SSA’s involvement. She also claimed she had been raped in the hospital emergency room when detained under section 5150, and intended to sue the hospital and the police. She refused to disclose the name of her therapist. Mother

subsequently left the social worker hostile voicemail messages accusing the worker of “bugging the shit out of everyone and fucking making them cry.” She also accused SSA of kidnapping, stating “maybe you should fucking investigate the facts before you come out.”

In early June 2011, father told a social worker mother had stopped drinking, was taking medication, and seeing a counselor. Father stated “they are committed as a family and will do anything to keep their family together.” Father assured the social worker he would protect E.O. He and mother were working with the county’s regional center to address E.O.’s developmental delays and behavioral issues.

Mother also reported she had stopped drinking since her arrest and would continue in counseling. Asked about threatening A. in December 2010, mother cried and stated she did not remember the incident, nor did she recall leaving the social worker hostile voicemail messages. Mother would do “anything to be a better mother.” She described herself as the “daughter of an alcoholic,” whose father was imprisoned most of her life. She often had no food and was left to fend for herself. Mother’s therapist reported mother appeared to have “serious mental health issues” beyond the therapist’s expertise and recommended referring her to the county mental health agency. Mother agreed with the social worker to seek mental health and substance abuse counseling through the county.

On June 14, father called the social worker while driving with mother and E.O. The worker heard mother in the background screaming and swearing at father, who reported mother had spit on him. The social worker instructed father to hang up, report “this escalating incident of domestic violence” to the police, and meet her at a store parking lot. When the social worker arrived, she found father and E.O. alone. Mother had fled in the car with E.O.’s car seat.

The investigating officer instructed father to obtain a restraining order against mother and father signed a safety plan agreeing to do so. But at a team decision

meeting the following day, father came with mother and E.O., stated he had not obtained a restraining order, and he did not believe one was necessary because E.O. was not at risk in mother's care.

At the June 20 detention hearing, the juvenile court released E.O. to father over SSA's and minor's counsel's objections. It also issued a temporary restraining order on its own motion directing mother to have no contact with father. The court granted mother twice weekly monitored visitation with E.O.. Mother responded she was "not going to do that [monitored visitation]" and that she did not "care anymore." On July 5, the court extended the no-contact restraining order for three years.

II

DISCUSSION

Mother challenges the sufficiency of the evidence to support the July 5, 2011 restraining order. She argues the order was "based entirely upon multiple layers of unsubstantiated hearsay, set forth in the dependency petition" and social services reports, and the court denied her the opportunity to present evidence or cross-examine the social worker or hearsay declarants. She concludes that "[u]nder these circumstances, the . . . Agency reports were insufficient to support the court's restraining order after hearing."

Mother's argument intermingles two distinct concepts: Whether procedurally she received her due process rights to present evidence and cross-examine witnesses, and whether substantively the record supports the court's restraining order. Considering each argument separately, we conclude neither merits reversal of the order.

A. *The Juvenile Court Did Not Violate Mother's Rights*

Section 213.5, subdivision (a), provides that after a dependency petition has been filed, the juvenile court may issue a temporary restraining order protecting the child

and the child's caretakers.¹ If the court grants a temporary restraining order without notice, it must set an order to show cause why the court should not grant the order restraining the party from contacting, threatening, or attacking the protected parties.²

"The juvenile court may issue, upon notice and a hearing [an order enjoining any person from contacting a parent]. Any restraining order granted pursuant to this subdivision shall remain in effect, in the discretion of the court, no more than three years, unless otherwise terminated by the court, extended by mutual consent of all parties to the restraining order, or extended by further order of the court on the motion of any party to the restraining order." (§ 213.5, subd. (d).)

When the juvenile court issued its restraining order, California Rules of Court, rule 5.630 provided application for a restraining order "may be made on the

¹ Section 213.5, subdivision (a), provided at the time of the order in relevant part: "After a petition has been filed pursuant to Section 311 to declare a child a dependent child of the juvenile court, and until the time that the petition is dismissed or dependency is terminated, upon application in the manner provided by Section 527 of the Code of Civil Procedure, the juvenile court . . . may . . . 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, regardless of whether the child resides with that parent, legal guardian, or current caretaker"

² Subdivision (c) of section 213.5 provided at the time of the order: "If a temporary restraining order is granted without notice, the matter shall be made returnable on an order requiring cause to be shown why the order should not be granted, on the earliest day that the business of the court will permit, but not later than 15 days or, if good cause appears to the court, 20 days from the date the temporary restraining order is granted. The court may, on the motion of the person seeking the restraining order, or on its own motion, shorten the time for service of the order to show cause on the person to be restrained. The court may, upon its own motion or the filing of an affidavit by the person seeking the restraining order, find that the person to be restrained could not be served within the time required by law and reissue an order previously issued and dissolved by the court for failure to serve the person to be restrained. The reissued order shall state on its face the date of expiration of the order. Any hearing pursuant to this section may be held simultaneously with any regularly scheduled hearings held in proceedings to declare a child a dependent child"

court's own motion.” (Cal. Rules of Court, former rule 5.630(b).) “Proof may be by the application and any attachments, additional declarations or documentary evidence, *the contents of the juvenile court file*, testimony, or any combination of these.” (Former rule 5.630(h)(2), italics added.)

Mother notes the juvenile court expressly based “the order [on] the contents of the dependency petition” and assumes “the court also relied upon [SSA’s] June 15, 2011, application for a protective custody warrant and its June 17, 2011, detention report” She agrees these are part of “the contents of the juvenile court file” (Former rule 5.630(h)(2).) But she contends these materials were insufficient to support the order after hearing because she was “denied any opportunity to present evidence and cross-examine either [SSA’s] workers who prepared the petition/reports or the various hearsay declarants identified therein.”

At the June 20, 2011, detention hearing, the court stated it issued on its own motion a temporary restraining order “based on reviewing the entire court file.” The court recited the substantive terms of the order to mother in open court. Page three of the written order filed June 20, 2011, advised mother that “[a] court hearing has been set [for July 5, 2011]. You may attend this hearing, with or without an attorney, to provide any legal reason that the orders above should not be extended. If you do not appear at this hearing, the court may extend or modify the orders for up to three years without further notice to you.” The court orally informed mother “[t]he court will set further hearing on this matter [the restraining order] for the date of July 5, 2011”

On July 5, the court stated it had supplied the parties with a proposed restraining order and asked “if any party wishes to be heard.” Mother’s counsel expressed several concerns. She stated we “don’t know what to defend against. We don’t know what the allegations are that justify the issuance of the restraining order. The court did not clarify on the record, nor is it clarified in the temporary restraining order, what, if any, information by way of social services reports was even looked at or relied

upon. And we would never had [sic] submitted that the court could have used those social services reports as evidence without the opportunity to cross-examine any of the social workers or other persons whose information was contained within that report.”

The court responded, “All the court has before it is the same evidence that previously existed in this case which is the petition which was before the court originally, so the court does issue the order after hearing. And at this time the orders remain the same as the orders previously issued.” After the court recited its order on the record, mother’s counsel complained the allegations of the petition were “wholly at dispute, [w]e have not stipulated or agreed . . . the information contained in the detention report is admissible . . . to substantiate the” allegations, and the court had “not provided the opportunity to present evidence.”

Section 213.5 provides the juvenile court may issue a temporary restraining order on its own motion ex parte without notice or hearing. Here, the court advised mother at the detention hearing it was issuing on its own motion a temporary restraining order “based on reviewing the entire court file.” The court file, including the verified petition and social services reports, contained a factual predicate sufficient to advise mother of “what to defend against.” (See *In re Rodger H.* (1991) 228 Cal.App.3d 1174, 1184 [party received fair notice of facts and circumstances concerning dispositional issues from receipt of social study].) The court recited the substantive terms of the temporary order to mother in open court. The court’s written order filed the same day and available to mother and her appointed lawyer advised a hearing had been set for July 5, and mother could attend this hearing with or without an attorney “*to provide any legal reason that the orders above should not be extended. If you do not appear at this hearing, the court may extend or modify the orders for up to three years without further notice to you.*” (Italics added.) The court also orally informed mother the court set a July 5th hearing on the restraining order.

The temporary restraining order and the court's comments at the June 20 detention hearing informed mother that the court would decide whether to extend the order based on the entire juvenile court file. Mother failed to offer affidavits or declarations in opposition to an extension of the restraining order. At the hearing on July 5, the court stated at the outset it had provided the parties with a proposed restraining order and asked "if any party wishes to be heard." Mother's counsel expressed concerns about notice and the temporary restraining order, but had nothing further to add. Mother's lawyer did not ask to cross-examine witnesses or present any affirmative evidence, or ask for a continuance to do so. Only after the court recited its order did counsel complain the court had not provided the opportunity to present evidence. Mother argues the court's invitation was ambiguous, but nothing in the record suggests the court would have denied mother the right to cross-examine or present evidence to oppose the restraining order. Mother's counsel concedes "[i]t could be argued the court — when it issued the order — reasonably believed mother did not want to present evidence or cross-examine any witnesses." We construe any ambiguity here in favor of the court's order. (See Evid. Code, § 664.)

B. *Substantial Evidence Supports the Restraining Order*

We review a challenge to the sufficiency of the evidence to support a restraining order in juvenile dependency hearings for substantial evidence. If substantial evidence supports the order, we do not disturb it. (*In re Cassandra B.* (2004) 125 Cal.App.4th 199, 210–211.)

The juvenile court file, notably the verified petition and detention hearing report, provided sufficient grounds to issue the order. (See *In re M.B.* (2011) 201 Cal.App.4th 1057 [hearsay in social worker's declaration admissible with other evidence supporting anti-harassment injunction]; *In re Cassandra B., supra*, 125 Cal.App.4th at pp. 210–211 [appellate court reviews order for substantial evidence,

viewing evidence in a light most favorable to the order, and indulging all legitimate and reasonable inferences to uphold the juvenile court's determination].) The facts alleged in the verified petition and contained in the social worker's report demonstrated mother had serious and unresolved problems concerning alcoholism, mental health, and emotional stability. Mother's courtroom conduct buttressed these concerns. A restraining order, which father failed to obtain, would separate the parents and mitigate the risks mother posed to E.O., and allowed the juvenile court to return the child to a parent at the detention hearing. Finally, because mother did not preserve any right to cross-examine or present evidence in opposition to issuance of the restraining order, we need not address father's claim mother had no statutory or due process right to do so. (Cf. *In re Vincent G.* (2008) 162 Cal.App.4th 238, 243 [admissibility of social welfare report at disposition hearing not contingent on availability of social worker for cross-examination].)

III

DISPOSITION

The July 5, 2011 restraining order is affirmed.

ARONSON, J.

WE CONCUR:

O'LEARY, P.J.

IKOLA, J.