

NOT TO BE PUBLISHED IN OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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
SIXTH APPELLATE DISTRICT

In re J.C., a Person Coming Under the
Juvenile Court Law.

H040303
(Santa Clara County
Super. Ct. No. JD22070)

SANTA CLARA COUNTY
DEPARTMENT OF FAMILY AND
CHILDREN'S SERVICES,

Plaintiff and Respondent,

v.

J.S.,

Defendant and Appellant.

J.S. (Mother) appeals from the juvenile court's denial of her request for a peaceful contact restraining order against her teenage daughter, dependent J.C. (Child). Finding no error, we will affirm the juvenile court's order denying Mother's request.

I. JUVENILE COURT PROCEEDINGS

On September 4, 2013, Santa Clara County Department of Family and Children's Services (the Department) filed a juvenile dependency petition on behalf of 16-year-old Child under section 300 of the Welfare and Institutions Code. Child had been taken into protective custody in late June 2013 because Mother was unwilling to care for her. Although Mother had agreed to voluntary family reunification services at that time, the

Department filed the September 4 petition after Mother decided she was no longer interested in reunification. A detention hearing was held on September 9, and Child's protective custody placement continued.

A second amended petition was filed September 25, 2013 under Welfare and Institutions Code section 300 subdivision (b) (failure to support) and subdivision (g) (no support provisions). The petition alleged Mother refused to take custody of Child on June 24, 2013, when Child, who had physically assaulted and injured Mother on June 8, 2013, was being released from the Bill Wilson Center. Mother felt that she could not control Child's behavior, and that Child, who had absconded twice from the Bill Wilson Center, would place her and her three younger children at risk were Child to return home. The Department placed Child in protective custody, and Mother initially agreed to but later rejected voluntary family reunification services. At her current placement at Unity Care Group Home, Child absconded several times, shoplifted from a clothing store, and possessed alcohol. On September 2, 2013, Child was brought to the emergency room after passing out due to alcohol intoxication. Child had admitted using marijuana, and there was a concern she may be involved in prostitution.

On September 30 the court held a hearing on jurisdiction. Child was not present at that hearing because she had been placed in an out-of-county dual diagnosis treatment facility three days earlier. The Department's jurisdiction/disposition report was entered into evidence. The Department recommended that Child remain in a community care facility, and that family reunification services be provided, including Mother's completion of a counseling or psychotherapy program, and Mother's and Child's participation in family counseling sessions when appropriate. The juvenile court found true the allegations in the second amended petition. The court continued disposition to October 21 to ensure compliance with Indian Child Welfare Act notice requirements.¹

¹ Child's biological father, who lived in Las Vegas, had informed the Department of a possible tribal affiliation.

The court also addressed Mother's request for a peaceful contact restraining order at the September 30 hearing. That request, filed September 12, was based on the June 8 fight in which Child slapped Mother across the face, punched Mother in the arm, and knocked Mother down causing a torn knee ligament and bone fractures. According to Mother, Child had to be restrained by her step father. Child also called Mother offensive names, and told Mother if she had a gun she would put it in Mother's mouth and kill her. Child opposed the request, arguing that the incident was isolated, there was a more recent Mother-Child visit that did not present safety concerns, and there currently was no visitation between Mother and Child, who was residing out of county. The Department also did not believe Child presented a safety risk to Mother.

The court denied Mother's restraining order request under both Welfare and Institutions Code section 213.5, subdivision (a)² and Family Code section 6220, finding

² Section 213.5, subdivision (a) provides: "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 or in the manner provided by Section 6300 of the Family Code, if related to domestic violence, the juvenile court has exclusive jurisdiction to issue ex parte orders (1) enjoining any person from molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning . . . , destroying the personal property, contacting . . . , coming within a specified distance of, or disturbing the peace of the child or any other child in the household; and (2) excluding any person from the dwelling of the person who has care, custody, and control of the child. A court may also issue an ex parte order enjoining any person from molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning . . . , destroying the personal property, contacting . . . , coming within a specified distance of, 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, upon application in the manner provided by Section 527 of the Code of Civil Procedure or, if related to domestic violence, in the manner provided by Section 6300 of the Family Code. A court may also issue an ex parte order enjoining any person from molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning . . . , destroying the personal property, contacting . . . , coming within a specified distance of, or disturbing the peace of the child's current or former social worker or court appointed special

in its September 30 written order that one incident three months earlier did not justify the restraining order. In its oral pronouncement, the court ruled that Welfare and Institutions Code section 213.5, subdivision (a) did not authorize the granting of a restraining order against a dependent. The court also denied Mother's request under the Domestic Violence Prevention Act (DVPA) (Family Code, §§ 6200, et seq.), noting that the DVPA's purpose was "to prevent the recurrence of acts of violence and sexual abuse and to provide for a separation of the persons involved in the domestic violence for a period sufficient to enable these persons to seek a resolution of the causes of the violence." (Fam. Code, § 6220.) The court explained that the dependency action itself can assist the family with the same goals: "[B]y the very removal of the child from the home, it will prevent the recurrence of the acts of violence and also provide for the separation." The court observed that although the June 8 altercation resulted in a serious injury, there had been no recurrence, and the incident appeared to be an aberration. The court also noted that a natural separation existed because at the time of the hearing neither Mother nor Child wanted to see the other.

Mother filed a notice of appeal from the September 30, 2013 order, and an amended notice of appeal naming both the September 30 order and the October 21, 2013 disposition order.

II. DISCUSSION

A. THE SEPTEMBER 30 ORDER

The DVPA authorizes the trial court to issue a restraining order after considering "whether failure to make [the] order[] may jeopardize the safety of" the applicant. (Fam. Code, § 6340, subd. (a).) That standard has been extended to issuance of restraining orders in dependency actions under Welfare and Institutions Code section 213.5,

advocate, upon application in the manner provided by Section 527 of the Code of Civil Procedure."

subdivision (a). (*In re B.S.* (2009) 172 Cal.App.4th 183, 187.) We review the denial of the restraining order under the DVPA for an abuse of discretion. (*Gonzalez v. Munoz* (2007) 156 Cal.App.4th 413, 420.) The trial court abuses its discretion when its ruling exceeds the bounds of reason. (*Ibid.*) We will uphold the trial court as long as there exists a reasonable or even fairly debatable justification under the law for its action. (*Gonzales v. Nork* (1978) 20 Cal.3d 500, 507.)³

The juvenile court's decision was within the bounds of reason, particularly in light of Mother's and Child's post June 8 contact, which was not violent. The Department's jurisdiction/disposition report noted improvement in the Mother-Child relationship in August, with Child having overnight visits in the home. At the September 9 detention hearing, the court recognized that Mother did not want visitation but it ordered supervised visitation if both Mother and Child were agreeable. That supervised visitation order was incorporated into the September 30 jurisdiction order. In addition, by that time Child was residing in an out-of-county treatment facility. These factors support the juvenile court's conclusion that the June 8 incident did not necessitate a restraining order.

In its jurisdiction/disposition report, the Department expressed the opinion that Child's behavior while she was detained and living in group housing, at least in part, was

³ We recognize that *In re Cassandra B.* (2004) 125 Cal.App.4th 199, 210–211, cited by both parties, applied a substantial evidence standard of review to an order granting a restraining order under Welfare and Institutions Code section 213.5, subdivision (a). *In re Cassandra B.* cited *In re Misako R.* (1991) 2 Cal.App.4th 538, 545, as authority for applying that standard of review. But *In re Misako R.* involved appellate review of a reunification plan in a dependency action, not a restraining order. In light of both the general rule that a grant or denial of injunctive relief is reviewed for abuse of discretion (*Gonzalez v. Munoz, supra*, 156 Cal.App.4th at p. 420) and the use of the abuse of discretion standard of review in other dependency matters requiring the weighing of evidence (see *In re Stephanie M.* (1994) 7 Cal.4th 295, 317–318), we question whether *In re Cassandra B.*'s application of the substantial evidence standard of review is correct. Nevertheless, even under that standard, we would still affirm the juvenile court's order. (See *In re I.W.* (2009) 180 Cal.App.4th 1517, 1528 [where issue on appeal involves a failure of proof at trial, substantial evidence review requires a showing that the evidence “compels a finding in favor of the appellant as a matter of law.”].)

a reaction to Mother's vacillation between wanting to reunify and not wanting further contact with Child. The social worker felt Mother's mixed messages had created uncertainty and anxiety in Child's life. The social worker opined that Child's escalating behavior after dependency proceedings were initiated on September 4 may have been a response to a sense of extreme rejection and loss. The juvenile court's concern for Child's protection and the goal of reunification were appropriate considerations here. The Department was hopeful that, with sufficient motivation, support, and time, the family could successfully move forward. We agree with Child that issuance of a restraining order would have only increased Child's feelings of rejection and would not have promoted family reunification.⁴ We conclude that the trial court did not abuse its discretion when it denied Mother's request for a restraining order.

B. THE OCTOBER 21 ORDER

Although Mother filed a notice of appeal from the juvenile court's October 21 disposition order, her briefs present no argument and seek no relief from this court regarding that order. We construe Mother's briefing as an abandonment of her appeal from the October 21 order. (Cal. Rules of Court, rule 8.204(a).) So construed, we will dismiss this appeal as to the October 21 order. (*People v. Nelms* (2008) 165 Cal.App.4th 1465, 1470 ["once the record has been filed in the reviewing court, dismissal of the appeal is within the reviewing court's discretion."].)

⁴ The juvenile court denied the application under Welfare and Institutions Code section 213.5, subdivision (a) because, in its view, that section did not authorize a restraining order against the child named in a dependency action. Because we would uphold the juvenile court's order on the merits under Family Code section 6340 or under Welfare and Institutions Code section 213.5, subdivision (a) (*In re B.S.*, *supra*, 172 Cal.App.4th at p. 187), we need not decide whether the juvenile court's interpretation of section 213.5, subdivision (a) is correct.

III. DISPOSITION

The juvenile court's September 30 order is affirmed. The appeal of the juvenile court's October 21 order is dismissed.

Grover, J.

WE CONCUR:

Bamattre-Manoukian, Acting P.J.

Mihara, J.