

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

?

The People,
Respondent,
v.
E.F.,
Petitioner,

Case No. S260839

2d Dist. No. B295755

LASC No. PJ53161

Answer to Petition for Review

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**ANSWER TO PETITION
FOR REVIEW**

INTRODUCTION

E.F. (hereafter Petitioner) petitions this Court for review of the decision of Division Two of the Second District Court of the Appeal, filed February 13, 2020, which affirmed the judgment below in full. In a published opinion, the appellate court held that advance notice of a prosecutor’s intent to seek a temporary restraining order (hereafter TRO) under Welfare and Institutions Code¹ section 213.5 is not required and disagreed with a recently published opinion in *In re L.W.* (2020) 44 Cal.App.5th 44 (hereafter *L.W.*) which held that advance notice is required. The

1. Unless otherwise indicated, all statutory references are to the Welfare and Institutions Code.

Petition for Review of *L.W.*, Supreme Court case number S260690, was denied on April 15, 2020. (Slip Opinion, p. 2.)²

The appellate court exercised its discretion to review Petitioner’s procedural challenge that the juvenile court erred in issuing the TRO without advance notice despite the mootness of Petitioner’s challenge.³ (*O’Kane v. Irvine* (1996) 47 Cal.App.4th 207, 210, fn. 4 [an “appeal from [a] TRO, following [a] trial court’s grant of [a longer] restraining order, is moot”]; See Slip Opinion, p. 4.)

Petitioner contends that the requirements of section 213.5, subdivision (b) and the Code of Civil Procedure (hereafter CCP) section 527, subdivision (c) were not met as Petitioner did not have advance notice of the prosecutor’s intent to seek a TRO and the prosecutor did not submit a sworn affidavit or verified complaint articulating concern of great or irreparable injury that

2. Slip Opinion references are to the published opinion accompanying Petitioner’s Petition for Review attached as Appendix A. Additional facts raised herein cite the Clerk’s Transcript and Reporter’s Transcript, which are part of the record on appeal.

3. Petitioner concedes that her claims as to the TRO are no longer of any direct concern to the Appellant, but contends that the questions raised therein are of broad public interest and likely to recur and requests that the Court exercise its discretion to resolve this issue. (Petition for Review, p. 9, fn. 1.)

could result without the imposition of the restraining order.
(Petition for Review, pp. 19-21.)

On the merits, there is no reason for review because the appellate court's opinion was correct. Advance notice for a TRO is not expressly required in section 213.5 and CCP section 527. In addition, the applicable Rule of Court provides in pertinent part that where a petition has been filed pursuant to section 602, "the court may issue restraining orders as provided in section 213.5" and that a TRO application "may be submitted without notice." (Cal. Rules of Court, rule 5.630(a) and (d).)

The court in *In re Jonathan V.* (2018) 19 Cal.App.5th 236, 241-22, (hereafter *Jonathan V.*) expressly distinguished between TROs and protective orders and held that advance notice was only required for restraining orders and not TROs. The court stated, "When a party seeks a temporary restraining order, subdivision (c) of section 213.5 permits the juvenile court to issue a temporary restraining order without notice or a hearing. (See also Cal. Rules of Court, rule 5.630(b) and (d) (rule 5.630).)" (*Jonathan V.*, *supra*, 19 Cal.App.5th at p. 241.)

L.W. was wrongly decided because same-day notice is sufficient notice for TROs. Despite the clear language in *Jonathan V.* distinguishing restraining orders from TROs, the court in *L.W.* improperly extended *Jonathan V.*'s holding and held that same-day notice was not sufficient notice for TROs.

This improper extension of *Jonathan V.*'s holding contravenes the plain language of section 213.5 which expressly provides for two types of restraining orders: (1) temporary orders that may be issued without notice and a hearing, and which may remain in effect for a maximum of 25 days (§ 213.5, subd. (c)); and (2) restraining orders that may be issued after notice and a hearing and which can remain in effect for a period of up to three years (*Id.*, subd. (d)).

There appears to be a conflict between this case and *L.W.* Courts need guidance in the future as to which rule to apply. This Court should resolve such conflict. For this reason, it appears that it may be appropriate for this Court to grant review on this issue.

ISSUE PRESENTED

Does section 213.5 and the CCP section 527, subdivision (c) require a minor to be provided with some form of notice prior to the request for, and imposition of a pre-adjudication TRO? ⁴

4. The answer to petition for review will only address the first issue presented in the petition for review as directed by the Court in a letter dated May 12, 2020. The second issue presented in Petitioner's Petition for Review is whether section 213.5, subdivision (b) permits the imposition of a pre-adjudication protective order, whether a TRO or a protective order imposed after a noticed hearing, absent some factual finding additional to the allegations supporting the underlying petition, and

STATEMENT OF THE CASE AND FACTS²

On January 28, 2019, a section 602 petition was filed in the Los Angeles County Juvenile court alleging that on or about December 7, 2018, Petitioner was in violation of Penal Code section 347, subdivision (a), commonly called poisoning, a felony. (Clerk's Transcript with a Notice of Appeal dated April 17, 2019 (hereafter CT), pp. 1-3.)

On February 11, 2019, Petitioner denied the allegation. (CT, p. 8.) The People requested a TRO. (Reporter's Transcript of Proceedings on February 11, 2019 (hereafter RT 2/11/2019), pp. 3:21-22, 5:20-27.) The defense counsel objected to the TRO. (*Id.* at pp. 3:23-5:5, 6:1-3.) The defense counsel argued that the People had failed to comply with the CCP section 527 because she was not given notice of the request for a TRO. Since she did not have notice, the defense counsel argued that the People violated CCP 527 by not submitting an affidavit or verified complaint that provided the court information that great or irreparable injury will result to the applicant. (*Id.* at pp. 7:4-8:18.)

The juvenile court, the People and the defense counsel engaged in the following colloquy in pertinent part:

(Continued....)

accordingly, whether the two protection orders imposed on Petitioner in the present case were adequately supported.

THE PEOPLE: YOUR HONOR, TO RESPOND TO MS. CHOI'S COMMENTS, I DIDN'T KNOW WHO WAS EVEN ASSIGNED TO THIS CASE UNTIL MS. CHOI SAT DOWN JUST BEFORE THE CASE WAS CALLED AND SAID THAT WE ARE CALLING THIS CASE.

SO, YOU KNOW, I GUESS, ANY ALLEGATION THAT I DIDN'T INFORM HER IN TIME IS PARTIALLY DUE TO THE FACT THAT SHE NEVER CHECKED IN WITH ME UNTIL 11:00 SOMETHING A.M. RIGHT WHEN THE CASE WAS CALLED.

ADDITIONALLY, THE VICTIM IN THIS CASE SPOKE WITH LAW ENFORCEMENT AND, IN FACT, WROTE A STATEMENT TO LAW ENFORCEMENT ABOUT WHAT HAPPENED.

FOR THE COURT'S INFORMATION, THE MINOR HEATED UP A CUP OF NOODLES IN A MICROWAVE WITH BLEACH IN IT AND HANDED IT TO THE MINOR FOR THE MINOR TO CONSUME - - QUOTING WHAT THE MINOR SAID ABOUT KNOWING THE VICTIM WOULD GET SICK RATHER [SIC].

WE DON'T HAVE INFORMATION AS TO WHY THE MINOR DID THAT AT THIS TIME, AND IT CONCERNS THE PEOPLE. IT CONCERNS THE PEOPLE THAT THE VICTIM IN THIS CASE WHO IS ALSO UNDER THE AGE OF 18 IS POTENTIALLY IN HARM'S WAY WITH THE MINOR BEING OUT OF CUSTODY. SO THAT IS WHY THE PEOPLE ARE REQUESTING THE TEMPORARY RESTRAINING ORDER. . .

DEFENSE COUNSEL: . . . SO THE ALLEGATIONS ARE THE ALLEGATIONS. THERE IS NOTHING INDICATING, FOR EXAMPLE, MY CLIENT REACHED OUT TO THE COMPLAINING WITNESS AND THREATENED TO HURT THAT PERSON PRIOR TO THE DATE OF THE RESTRAINING ORDER HEARING.

AND ALSO, I WOULD THINK THAT PEOPLE WOULD HAVE TO TESTIFY UNDER OATH BECAUSE THAT'S WHAT

THE EQUIVALENT IS FOR THE AFFIDAVIT OR VERIFIED COMPLAINT, AND THE INFORMATION THE PEOPLE PROVIDED TO THE COURT WAS NOT UNDER OATH.

SO, AGAIN, IT STILL DOES NOT MEET THE REQUIREMENTS FOR TRO UNDER CCP 527(C).

THE JUVENILE COURT: . . . WE NOTE THAT THE PEOPLE PROVIDED TO THE COURT A COPY OF THE ARREST REPORT WHICH INCLUDES A SUMMARY OF THE ACTIVITY AND ALLEGED STATEMENT MADE BY THE SO-CALLED VICTIM BY THE MINOR.

THE COURT FINDS SUBSTANTIAL COMPLIANCE AND WILL TODAY SIGN THE TEMPORARY RESTRAINING ORDER KNOWING WE WILL HAVE A FURTHER HEARING MARCH 5.

(RT 2/11/2019, pp. 8:20-10:28.)

The juvenile court imposed a TRO on Petitioner protecting victim, L.S., using Form JV-250 and set a noticed protective order hearing for March 5, 2019. (CT, pp. 9-12.) Petitioner filed a timely Notice of Appeal on February 14, 2019. (*Id.* at pp. 13-14.) On March 5, 2019, the hearing was continued to April 2, 2019 and the juvenile court ordered that the TRO remain in full force and effect until the next court date. (*Id.* at p. 27.)

L.S. testified that on December 7, 2018, L.S. and Petitioner were at Verdugo Hills High School in an art class. (Reporter's Transcript of Proceedings on April 2, 2019 (hereafter RT 4/2/2019), p. 4:8-25.) Petitioner had a Cup of Noodles and offered to make one for L.S. (*Id.* at p. 5:1-2.) Petitioner microwaved it and gave it to L.S. (*Id.* at p. 5:3-6.) L.S. was about to drink the broth,

but didn't because it smelled like bleach. (*Id.* at p. 5:6-8, 5:18-22.) L.S. asked Petitioner, "What's in it?" (*Id.* at p. 5:8-9.) Petitioner wasn't paying attention to L.S. and didn't answer the question. L.S. threw away the Cup of Noodles. (*Id.* at p. 5:10-12.)

After the hearing, the juvenile court imposed a protective order on Petitioner protecting victim, L.S., using Form JV-255. (CT, pp. 53-56.) Petitioner filed a timely Notice of Appeal on April 17, 2019. (*Id.* at pp. 58-59.) The two appeals were consolidated on May 13, 2019.

ARGUMENT

STANDARD OF REVIEW

On appeal from the issuance of a restraining order by the juvenile court pursuant to section 213.5, appellate courts apply the substantial evidence standard to determine whether sufficient facts supported the factual findings in support of a restraining order and the abuse of discretion standard to determine whether the court properly issued the order. (*In re Carlos H.* (2016) 5 Cal.App.5th 861, 866.) However, the de novo standard of review applies to issues of statutory interpretation. (*In re Cassandra B.* (2004) 125 Cal.App.4th 199, 210; *Jonathan V., supra*, 19 Cal.App.5th at p. 241.) Petitioner's contention turns on statutory interpretation and the court should apply the de novo standard of review.

¶¶ PETITIONER WAS PROVIDED SUFFICIENT NOTICE OF THE INTENTION TO SEEK THE TRO¶

¶¶ Same-day notice is sufficient notice for TROs¶

Section 213.5 empowers the juvenile court to issue a wide range of restraining orders in connection to petitions brought pursuant to section 602 and provides for two types of restraining orders: (1) temporary orders that may be issued without notice and a hearing, and which may remain in effect for a maximum of 25 days (§ 213.5, subd. (c)); and (2) restraining orders that may be issued after notice and a hearing and which can remain in effect for a period of up to three years (*Id.*, subd. (d)).

Subdivision (b) of section 213.5 authorizes both types of restraining orders and requires an “application in the manner provided by Section 527 of the Code of Civil Procedure.” (§ 213.5, subd. (b).) CCP section 527 provides that “[n]o temporary restraining order shall be granted without notice to the opposing party” unless (a) an “affidavit” or “verified complaint” “show[]” “that great or irreparable injury will result to the applicant before the matter can be heard on notice,” and (b) the applicant “certifies . . . under oath” to his or her efforts to give notice (Code Civ. Proc., § 527, subd. (c)).

The applicable Rule of Court provides in pertinent part that where a petition has been filed pursuant to section 602, “the court may issue restraining orders as provided in section 213.5”

and that a TRO application “may be submitted without notice.” (Cal. Rules of Court, rule 5.630(a) and (d).)

The plain language of the statutes and Rule of Court authorize the juvenile court to issue TRO “without notice” in cases where the prosecutor does not give advance notice of his or her intent to do so. (*People v. Maultsby* (2012) 53 Cal.4th 296, 299 [“The statute’s plain language controls unless its words are ambiguous.”].) Advance notice for a TRO is not expressly required in section 213.5, CCP section 527 and Rules of Court, rule 5.630(a) and (d). Same-day notice is sufficient to satisfy the notice requirement for TROs under CCP 527.

Not requiring advance notice in TROs accords with due process because TROs issued at arraignments are not literally “without notice”, they are issued without notice in advance of the hearing. When a question of statutory interpretation implicates constitutional issues, we are guided by the precept that “ [i]f a statute is susceptible of two constructions, one of which will render it constitutional and the other unconstitutional in whole or in part, or raise serious and doubtful constitutional questions, the court will adopt the construction which, without doing violence to the reasonable meaning of the language used, will render it valid in its entirety, or free from doubt as to its constitutionality, even though the other construction is equally reasonable.’ ” (*People v. Gutierrez* (2014) 58 Cal. 4th 1354, 1373.)

The minor appearing at arraignment with counsel is still notified in court of the People’s request for a TRO and has an opportunity to oppose its issuance. There is no due process violation because the minor has notice and the opportunity to be heard. (*Today’s Fresh Start, Inc. v. Los Angeles County Office of Education* (2013) 57 Cal.4th 197, 212.)

In the present case, Petitioner was notified in court of the People’s request for a TRO and her counsel argued against its issuance. The TRO was not issued “without notice.” Thus, the People are not required to submit a sworn affidavit or verified complaint articulating concern of great or irreparable injury that could result without the imposition of the restraining order pursuant to CCP section 527. The juvenile court imposed a TRO on Petitioner protecting victim, L.S., using the proper form, Form JV-250, and set a noticed protective order hearing for March 5, 2019. For the reasons set forth, the appellate court did not err in affirming the juvenile court’s issuance of the TRO.

¶¶¶ L.W.’s improper extension of Jonathan V.’s holding contravenes the plain language of section 213.5

Petitioner cites *L.W.* and contends that prior to the issuance of a TRO, some notice of the intent to seek the order must be provided. (Petition for Review, p. 14.) Despite the clear language in *Jonathan V.* distinguishing restraining orders from TROs, the court in *L.W.* improperly extended *Jonathan V.’s*

holding requiring advance notice prior to the issuance of a restraining order and held that same-day courtroom notice was not sufficient notice for TROs. The court in *L.W.* stated:

“While the specific amount of time necessary to satisfy the ‘notice’ requirement is not delineated in section 213.5, more than courtroom notice is required. [Citation.]” (*Jonathan V., supra*, 19 Cal.App.5th at p. 245, 228 Cal.Rptr.3d 161.) Because the People presented no evidence of an emergency or other urgency and made no attempt to give appellant prior notice of their intent to seek the temporary restraining orders, the court erred in issuing those orders without notice.

(*L.W., supra*, 44 Cal.App.5th at p. 51.)

The court in *Jonathan V.* expressly distinguished between TROs and protective orders and held that advance notice was only required for restraining orders and not TROs. The court stated in pertinent part:

When a party seeks a temporary restraining order, subdivision (c) of section 213.5 permits the juvenile court to issue a temporary restraining order without notice or a hearing. (See also Cal. Rules of Court, rule 5.630(b) and (d) (rule 5.630).)

(*Jonathan V., supra*, 19 Cal.App.5th at p. 241.)

The restraining order in this case is not a temporary restraining order. It was not issued on form JV-250, the form designated for temporary restraining orders, but rather on form JV-255, the form used to issue restraining orders. And the order is effective for a period of two years, from February 10, 2016 through

February 10, 2018, well beyond the 21 or 25 days permitted for a temporary restraining order. Before the court can issue such an order, however, subdivision (d) of section 213.5 requires notice and a hearing. Jonathan received neither.

(*Id.* at p. 242.)

While the specific amount of time necessary to satisfy the “notice” requirement is not delineated in section 213.5, more than courtroom notice is required. (See *Babalola, supra*, 192 Cal.App.4th at p. 965, 121 Cal.Rptr.3d 740.) The issuance of a two-year restraining order has substantial consequences. A violation of such a restraining order could subject Jonathan to a new delinquency or criminal proceeding.

(*Id.* at p. 245.)

L.W. was wrongly decided because same-day notice is sufficient notice for TROs. *L.W.*'s extension of *Jonathan V.*'s holding contravenes the plain language of section 213.5 which expressly authorizes two types of restraining orders: (1) temporary orders that may be issued without notice and a hearing, and which may remain in effect for a maximum of 25 days (§ 213.5, subd. (c)); and (2) restraining orders that may be issued after notice and a hearing and which can remain in effect for a period of up to three years. (*Id.*, subd. (d).) Statutes must be read as a whole so that all parts are harmonized and given effect and avoid interpretations that render any part of a statute superfluous. (*Ste. Marie v. Riverside County Regional Park &*

Open-Space Dist. (2009) 46 Cal.4th 282, 289; *People v. Villatoro* (2012) 54 Cal.4th 1152, 1173.)

Requiring more than same-day notice for TROs makes the language of section 213.5, subdivision (c)(1) that TROs may be issued “without notice” superfluous. TROs are distinguished from restraining orders because TROs are temporary by their nature and are subject to a noticed formal hearing for the restraining order. TROs are meant to be used in more emergency situations for the protection of the public for a limited time

The appellate court in the present case noted that none of the cases that Petitioner cited in support of her argument that advance notice is required involve TROs. (Slip Opinion, p. 7.) The appellate court stated that *Jonathan V.* was careful to point out that “[t]he restraining order in this case is not a temporary restraining order.” (*Id.* at p. 7.) The appellate court properly limited *Jonathan V.*’s holding to restraining orders and refused to extend the advance notice requirement to TROs because that would contravene the plain language of section 213.5.

CONCLUSION

For the reasons set forth, the appellate court did not err in affirming the juvenile courts issuance of the TRO. *L.W.* was wrongly decided because same-day notice is sufficient notice for TROs. There appears to be a conflict between this case and *L.W.* Courts need guidance in the future as to which rule to apply. For

this reason, the Court should grant review on the first issue presented in the petition for review to secure uniformity of decision.

Respectfully submitted,

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STATE OF CALIFORNIA
Supreme Court of California

Case Name: **IN RE E.F.**

Case Number: **S260839**

Lower Court Case Number: **B295755**

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/s/Monica Tsai-Chen

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Shin, Grace (193524)

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