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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re W.H., a Person Coming Under the
Juvenile Court Law.

B260288
(Los Angeles County
Super. Ct. No. CK78666)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

PAULA H.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Teresa T. Sullivan, Judge. Affirmed.

Frank H. Free, under appointment by the Court of Appeal, for Defendant and Appellant.

Mark J. Saladino, County Counsel, Dawyn R. Harrison, Assistant County Counsel, and Kim Nemoy, Deputy County Counsel, for Plaintiff and Respondent.

Paula H. (mother) appeals from a restraining order issued by the juvenile court. (Welf. & Inst. Code, § 213.5.)¹ She contends that she was deprived of her due process right to adequate notice and her right to appear and be heard at the September 22, 2014, hearing at which the juvenile court issued the permanent restraining order. She also argues that the juvenile court failed to ensure that she received proper service of the permanent restraining order (§ 213.6).

We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Underlying Juvenile Dependency Matter

The underlying juvenile dependency matter began in September 2009 after mother was arrested for driving while under the influence of methamphetamine while her then-two-year-old son, W.H. (the minor), was in the car. On June 25, 2012, mother's parental rights were terminated (§ 366.26). (*In re W.H.* (Jan. 23, 2013, B242603) [nonpub. opn.].) In a lengthy, detailed opinion, her appeal was dismissed.² (*In re W.H.*, *supra*, B242603, at p. 23.)

Application for Restraining Order

The juvenile court has continued to hold periodic review hearings regarding the minor, who has remained with his foster family, now prospective adoptive family, where he has resided for nearly three years. The minor is doing well, despite his special needs and he identifies himself as a member of the prospective adoptive family.

In August 2014, the Department of Children and Family Services (DCFS) filed an application for a restraining order to protect the minor and his caretakers. In the application, DCFS documented that a prior restraining order had been issued, but was not renewed after parental rights were terminated. However, from July to December 2012,

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

² This appeal was one of five appeals filed by mother; all five were dismissed.

mother continued to call the caretakers demanding to see the minor. Though they changed their telephone number, mother obtained the new number and continued to call on at least a weekly basis. She stalked the home and the caregivers at their church and in the community.

In December 2012, mother went to the minor's school and several other schools in the neighborhood and demanded to see the minor. The school had to bring all the children inside the building as mother went on campus, unauthorized.

In February 2013, the foster family went out to their usual Thursday night dinner, a weekly tradition; mother seemed to be tracking the family's routine. She walked into the restaurant while the family was eating, approached the minor, and attempted to wrap her arms around him. The minor resisted and the foster father intervened. Mother refused to leave, reached around the foster father, and looked in the minor's direction, begging him to go with her.

In April 2013, mother continued to approach various elementary schools in the area, asking for the minor. And, in the ensuing months, the foster mother found notes and toys for him at the front of their home. The situation then subsided for a while. But, on Halloween 2013, the family noticed mother in a car with a man, parked across the street from their home. Mother's incessant telephone calls resumed in March 2014, and she began showing up unexpectedly at various locations in the community, attempting to grab the minor, trying to engage him in conversation, and asking the foster parents to allow her access to the child. By the time DCFS filed the application for a restraining order in August 2014, mother's behavior had not abated. And, mother began to follow the DCFS social worker in her community.

The juvenile court issued a temporary restraining order (TRO) on August 15, 2014, and continued the matter to September 4, 2014, for a hearing. Mother was present at the August 15, 2014, hearing, where she was told that she had a right to respond to the application and was ordered to return on September 4, 2014. Mother stated that she did not have an attorney, and the juvenile court replied that she had the opportunity to obtain one for the September 4, 2014, hearing, but the juvenile court would not appoint one.

Mother appeared at the September 4, 2014, hearing. The juvenile court, the minor's attorney, and county counsel for DCFS engaged in a dialogue about the propriety of the juvenile court issuing a restraining order against a parent whose parental rights had been terminated. County counsel and counsel for the minor asked the juvenile court to extend the TRO to give counsel a chance to brief the issue, which the juvenile court agreed to do. Mother then interjected. The juvenile court replied, "Right now I'm not hearing anything about your case." Ultimately, the juvenile court reissued the TRO, extending it, and ensured that mother was personally served with it.

In response to county counsel's query whether mother was being ordered back on September 22, 2014, the juvenile court replied: "No. I'm serving her with the notice. I'm not ordering her anywhere."

The juvenile court's order provides: "THE COURT ORDERS that the *Temporary Restraining Order—Juvenile* as shown in item 2 above and any orders listed are reissued unless this order changes them." The order also sets forth the continued hearing date (Sept. 22, 2014), the time of the hearing (8:30 a.m.), and its location (Dept. 427, Rm. 1251). Also on the form is a box, which is checked, that provides: "Person to be restrained present at the hearing. No further service needed."

The written order further provides that mother "was orally noticed by the [juvenile] court of the [September 22, 2014], hearing date and ordered to [remain] after the last hearing to be personally served. [She] disregarded the [juvenile] court's orders and left without being served."

Mother did not appear at the continued September 22, 2014, hearing. After a discussion with county counsel and the minor's attorney, the juvenile court stated: "I do see that today is the date that [mother] was noticed to appear for the hearing regarding [DCFS's] request for a permanent restraining order in this matter. [¶] I will note for the record that on September 4th [mother] was present." Given DCFS's application, the juvenile court's own observations of mother on September 4, 2014, the authorities cited by county counsel, and the minor's attorney's concerns, the juvenile court issued a permanent restraining order, which expires in September 2017.

The restraining order indicates that mother was present at the hearing and “[n]o further service is needed.”

The sheriff’s office personally served mother with the restraining order at her home address, listed as 13263 18th Street West in Lancaster, by the sheriff’s office on October 14, 2014.

Appeal

This timely appeal ensued. On the notice of appeal, mother lists her address as 43263 18th West in Lancaster.

DISCUSSION

Mother challenges the restraining order issued against her on two grounds. First, she contends that she was deprived of adequate notice of her right to appear and be heard at the September 22, 2014, hearing. We cannot agree.

Mother appeared at the August 15, 2014, hearing at which the juvenile court issued a TRO and continued the matter to September 4, 2014. The juvenile court told mother that she had a right to respond to DCFS’s application and that she could hire an attorney; the juvenile court then ordered her to return on September 4, 2014.

On September 4, 2014, mother again appeared. A dialogue ensued among the juvenile court, the minor’s attorney, and county counsel regarding whether the juvenile court had the authority to issue a permanent restraining order. The juvenile court then reissued the TRO—extending it—and continued the matter for briefing on the subject. Mother was personally served with the TRO, which gave her notice of the continued hearing date (Sept. 22, 2014).

Mother failed to appear on September 22, 2014, and the juvenile court issued the permanent restraining order.

There are no due process violations in the foregoing procedure. Mother was given notice and an opportunity to be heard. While she may be “an unsophisticated person” who may not “have comprehended” what occurred on September 4, 2014, that does not amount to a due process violation.

Second, mother argues that the juvenile court failed to ensure that she received proper service of the permanent restraining order. According to her opening brief, “there is no credible evidence in the record that [mother] was properly served a copy of the restraining order, and its issuance must be reversed.”

Again, we disagree. According to the proof of service mother was personally served with the permanent restraining order by the Sheriff’s Office on October 14, 2014. The proof of service indicates that she was personally served at her home on 13263 18th Street West. Mother complains that her home address is “43263,” not “13263.” It seems that there is a typographical error on the proof of service. Notably, mother does not contend that she was not actually served. And, she fails to explain how she was prejudiced by either the apparent typographical error or the lack of service by first-class mail, which is permitted (but not mandated) by section 213.6, subdivision (a). (See § 213.6, subd. (a) [“If a person named in a [TRO] is personally served with the order and notice of hearing with respect to a subsequent restraining order . . . based thereon, but the person does not appear at the hearing . . . the subsequent restraining order . . . *may* be served on the person by first-class mail,” (italics added)]; see also 10 Witkin, Summary of Cal. Law (10th ed. 2005) Parent and Child, § 453, pp. 566–567 [noting that the restraining order *may* be served by first-class mail].)³ Absent argument or evidence of prejudice, we find no error that compels reversal. (*In re James F.* (2008) 42 Cal.4th 901, 917–919.)

³ We acknowledge the apparent internal inconsistency in section 213.6: Subdivision (a) indicates that service by first-class mail is permissive, whereas subdivision (b) [“The judicial forms for [TRO’s] issued under this part shall contain a statement in substantially the following form: [¶] ‘If you have been personally served with a [TRO] and notice of hearing, but you do not appear at the hearing . . . and a restraining order . . . is issued at the hearing that does not differ from the prior [TRO] except with respect to the duration of the order, a copy of the order will be served upon you by mail at the following address’”] suggests that it is mandatory. We need not resolve this conflict when the notice requirements here were, at a minimum, exceeded by virtue of personal service.

DISPOSITION

The juvenile court's order is affirmed.

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_____, Acting P. J.
ASHMANN-GERST

We concur:

_____, J.
CHAVEZ

_____, J.
HOFFSTADT