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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

YESICA ISABEL GONZALEZ, et al., Plaintiffs and Respondents, v. EDWIN NAYAM GONZALEZ, Defendant and Appellant.	B253352 (Los Angeles County Super. Ct. Nos. MQ009941, MQ009942)

APPEAL from orders of the Superior Court of Los Angeles Country, Steff R. Padilla, Temporary Judge. (Pursuant to Cal. Const., art VI, § 21.) Reversed and remanded.

Edwin Nayam Gonzalez, in pro per., for Defendant and Appellant.

No appearance for Plaintiffs and Respondents.

This appeal arises out of restraining orders obtained by respondents Yesica Isabel Gonzalez and C. against appellant Edwin Nayam Gonzalez. Because the hearing was conducted in violation of appellant's due process rights, we reverse and remand to the trial court for further proceedings.

FACTUAL AND PROCEDURAL SUMMARY

Appellant and his ex-wife, Yesica, share custody of their daughter, C.[1] In August 2013, appellant, incarcerated at the time, discovered that 16-year-old C. had moved to Nevada to reside with her fiancé, who is four to five years older. Appellant demanded C.'s return to California and threatened to report Yesica for child endangerment because she had allowed their minor daughter to engage in a sexual relationship with her older fiancé. C. eventually returned to California. Appellant filed a request with the district attorney to investigate C.'s fiancé for unlawful sexual intercourse with a minor.

On September 6, 2013, respondents each filed a request for a domestic violence restraining order against appellant. The trial court granted temporary restraining orders, and hearings were set for September 27. Appellant was served with notices of hearing and respondents' requests on September 25. As the notices were required to be served at least five days before the hearing, respondents served appellant with notices of a new hearing, rescheduled to October 21. Meanwhile, appellant filed a response in opposition to each of respondents' requests using Judicial Council Form No. DV-120 (DV-120). He also submitted a written request for an extension of time (as he was then unaware that the hearings had been rescheduled) and permission to appear telephonically due to his incarceration. The trial court received these documents on October 2. On October 10, appellant filed an ex parte application requesting, among other things, permission to make a telephonic appearance at the October 21 hearing. The trial court received the application on October 17.

At the hearings, the trial court noted that there was no appearance by appellant

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[1] Because respondents share the same last name, we refer to them by their first names; no disrespect is intended.

despite a proof of service filed by respondents notifying him of the hearing date. The hearings proceeded "uncontested." The court did not acknowledge appellant's filed responses nor his two written requests for a telephonic appearance. Finding that each respondent had met her burden of proof, the trial court issued restraining orders against appellant, effective until 2018.

This timely appeal followed.

DISCUSSION

"'The primary purpose of procedural due process is to provide affected parties with the right to be heard at a meaningful time and in a meaningful manner.'" (*Edward W. v. Lamkins* (2002) 99 Cal.App.4th 516, 532.) "An indigent prisoner who is a defendant in a bona fide civil action threatening his or her personal or property interests has a federal and state constitutional right, as a matter of due process and equal protection, of meaningful access to the courts in order to present a defense." (*Wantuch v. Davis* (1995) 32 Cal.App.4th 786, 792; see Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group 2014) ¶ 5:370, p. 140 ["As a matter of due process, [responding party] must be afforded a reasonable opportunity to be heard in opposition to a motion or OSC."].) To respond in writing to a domestic violence restraining order, a responding party must use form DV-120, "Response to Request for Domestic Violence Restraining Order." (Hogoboom & King, *supra*, at ¶ 5:371.2, p. 141.) The court must consider a properly filed DV-120. (DV-120 ["The judge will consider your Response at the hearing."].) However, the responding party retains the right to be heard in opposition even without filing a written response. (*Ross v. Figueroa* (2006) 139 Cal.App.4th 856, 865.)

Appellant, despite having been given proper notice, was deprived of an opportunity to be heard by the trial court. Upon receiving respondents' requests for a domestic violence restraining order, appellant immediately filed responses in opposition, using the proper form, and submitted a written request to allow him to appear at the hearing telephonically. The trial court received these documents on October 2, well before the scheduled October 21 hearing date, but took no action. Appellant also filed an

ex parte application, received by the trial court on October 17, asking that he be allowed to appear telephonically due to his incarceration. (See *Wantuch v. Davis*, *supra*, 32 Cal.App.4th at pp. 792–793 [prisoner litigants retain a right of access to the courts, although the trial court has discretion to fashion the appropriate remedy given the circumstances of the case].) Despite appellant's efforts, the trial court proceeded to hold the hearings without considering, or even acknowledging, appellant's written oppositions or fashioning a remedy to provide him with an opportunity to be heard. The minute orders of the court simply state that there is "no appearance this date by [appellant], and proof of service having been filed by [respondent], the hearing proceeds uncontested." It found respondents met their burden of proof and issued five-year restraining orders against appellant. The trial court infringed upon appellant's due process rights when it failed to consider his written oppositions and failed to provide him with an opportunity to be heard.

"Constitutional error as a general rule does not automatically require reversal." (*In re Angela C.* (2002) 99 Cal.App.4th 389, 394.) However, the instant infringement on appellant's constitutional due process rights is reversible per se without regard to the strength of evidence or other circumstances. "[C]ourts have consistently applied the rule of automatic reversal where a party is prevented from having his or her full day in court." (*In re Marriage of Carlsson* (2008) 163 Cal.App.4th 281, 293.) In this case, appellant was denied an opportunity to be heard in court and his written responses were not considered in the trial court's ruling. Performing a harmless error review in this instance would be improper. (*Ibid.* ["The failure to accord a party litigant his constitutional right to due process is reversible per se, and not subject to the harmless error doctrine."].)

Because our determination of the due process challenge resolves the appeal in appellant's favor, we do not reach his arguments regarding the validity of the restraining orders.

DISPOSITION

The orders are reversed and the cause remanded to the trial court with instructions to hold new hearings consistent with this opinion.

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EPSTEIN, P. J.

We concur:

MANELLA, J.

COLLINS, J.