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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re G.B., a Person Coming Under
the Juvenile Court Law.

B279792

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

(Los Angeles County
Super. Ct. No. DK16441)

Plaintiff and Respondent,

v.

C.B.,

Defendant and Appellant;

A.I.,

Defendant and Respondent.

APPEAL from an order of the Superior Court of Los Angeles County, Robert S. Draper, Judge. Reversed.

Rich Pfeiffer, under appointment by the Court of Appeal, for Defendant and Appellant, C.B.

Roni Keller, under appointment by the Court of Appeal, for Defendant and Respondent, A.I.

No appearance for Plaintiff and Respondent Los Angeles County Department of Children and Family Services.

C.B. (Father) appeals from a dependency court pre-disposition permanent restraining order that enjoined him from certain conduct with respect to A.I. (Mother), Father's 10-year-old son, G.B., and Mother's husband. Father claims that he was not provided sufficient notice or an opportunity to defend against the conduct order. As we shall explain, we agree and reverse.

FACTUAL AND PROCEDURAL HISTORY

The parents had been involved in an on-going custody dispute over G.B. On April 11, 2016, the Department of Children and Family Services filed a Welfare and Institution Code section 300 dependency petition pursuant to subdivision (b) alleging that Father endangered G.B. by not placing him in safety restraints, resulting in the minor suffering a concussion in an automobile accident, and that Father failed to obtain timely medical treatment for his son. Under subdivision (c), the petition further alleged that Father and Mother emotionally abused G.B. by "enmeshing" the child in their conflicts; that Father engaged in emotional abuse by attempting to have G.B. accuse Mother and her husband of child abuse; and by Father calling the minor derogatory and demeaning names.

At the detention hearing, the court ordered the minor detained and released to Mother. The court also issued a mutual "stay away" order requiring the parents to stay 100 yards away from each other except while in court.

On July 11, 2016, Mother filed a request for a temporary restraining order (TRO) against Father for additional relief. Mother alleged that Father harassed and stalked G.B. and Mother and caused them to fear physical and emotional harm. She also alleged that Father drove by her house multiple times and distributed cards and fliers throughout the neighborhood that

implied Mother and her husband were child molesters and directed readers to a website containing information that suggested Mother was a child molester. Mother attached copies of the cards and printouts from the website to the request. The court granted the TRO that prohibited Father from direct or indirect contact with Mother and the minor and that required Father to stay 100 yards away from Mother and the minor, except for scheduled visitation. The court set the hearing for the permanent restraining order for August 16, 2016.

At the August 16, 2016 hearing, Mother's counsel requested a personal conduct restraining order regarding conduct that had not been prohibited by the TRO nor had been asked for in the original request. Specifically, Mother sought an order prohibiting Father from distributing the cards and fliers that disparaged Mother and her husband, accusing them of child abuse and directing readers to a website containing those allegations. Mother also asked for an order that required Father to "take down or cause to be taken down any websites" disseminating the disparaging information. Father's counsel objected that he did not receive notice of the additional request, and thus had no opportunity to prepare a defense. Father also denied responsibility for the website and argued that he therefore had no ability to take any website down. The court stated that when looking at the website and cards "it seems to me that there is credible evidence that [Father] is doing it." The court found that if Father was not responsible for the conduct, then, if the conduct continued, Father would not be in violation of the restraining order and thus, he was not prejudiced by the lack of notice. The court then issued a three-year restraining order against Father which included a prohibition against the newly alleged conduct, and directed Father to take down any disparaging website that he had created.

Father filed a timely notice of appeal.

DISCUSSION

Father challenges the personal conduct order in the permanent restraining order enjoining him from distributing fliers and cards disparaging Mother and her husband and accusing them of child abuse and requiring Father to take down a website that alleged Mother was abusive towards G.B.¹ Father claims that he was not provided with notice that the restraining order would include an order related to this conduct. And thus, he claims he was denied an opportunity to defend against it. Mother asks this court to decline to reach the merits of Father's due process challenge based on the disentitlement doctrine. In the alternative, she asserts that the request for a restraining order and its attachments provided Father with sufficient notice of the allegations regarding this conduct, and in any event, she maintains that if Father did not engage in the conduct at issue then he suffered no prejudice from the order.

A. The Disentitlement Doctrine Does Not Bar Father's Appeal

Mother seeks to have us dismiss Father's appeal, asserting that the disentitlement doctrine bars him from contesting the permanent restraining order prohibiting him from distributing disparaging cards and fliers and requiring Father to take down the website accusing her of child abuse because Father failed to stay at least 100 yards away from her in violation of the "stay away" order imposed at the detention hearing.

¹ Father does not contest the orders which restrained him from direct and indirect contact with Mother and G.B., or from harassing, threatening, stalking, or attacking them. Nor does he assail the restraining order preventing him from coming within 100 yards of Mother or G.B.

In dependency cases, the disentitlement doctrine has been sparingly applied and only in situations where, at minimum, it is clear that the appellant has willfully violated a court order that she is capable of complying with. (See, e.g., *In re C.C.* (2003) 111 Cal.App.4th 76, 84 [holding that because the mother refused to comply with a court-ordered psychological evaluation she was disentitled to appeal the reunification order]; see also, *In re Kamelia S.* (2000) 82 Cal.App.4th 1224, 1229 [father absconded with minor].)

Here the disentitlement doctrine cannot be applied for at least one reason. As we discuss below, Father did not get an opportunity to refute Mother's claim that he committed the disentitling acts. Accordingly, we do not apply the disentitlement doctrine.

B. Father Was Denied Notice of the Conduct to be Restrained

Restraining orders in juvenile dependency proceedings are governed by Welfare and Institutions Code section 213.5. Section 213.5 provides that the juvenile court may issue restraining orders after notice and a hearing, for a period not to exceed three years. (Welf. & Inst. Code, § 213.5, subd. (d).) Restraining orders under section 213.5 are to be issued "upon application in the manner provided by Section 527 of the Code of Civil Procedure." (Welf. & Inst. Code, § 213.5, subd. (a).)

Code of Civil Procedure section 527 governs temporary restraining orders and preliminary injunctions generally. Section 527 provides that where a temporary restraining order has issued ex parte, an applicant for a preliminary injunction shall, "within five days from the date the temporary restraining order is issued or two days prior to the hearing, whichever is earlier, serve on the opposing party . . . any affidavits to be used in the

application, and a copy of the points and authorities in support of the application.” (Code Civ. Proc., § 527, subd. (d)(2).) Further, the opposing party “is entitled to one continuance for a reasonable period of not less than 15 days or any shorter period requested by the opposing party, to enable the opposing party to meet the application for a preliminary injunction.” (Code Civ. Proc., § 527, subd. (d)(4).)

Here, in the request for a restraining order, Mother alleged that Father had engaged in certain conduct—disseminating disparaging fliers and cards about Mother and her husband and directing people to a website containing accusations about them—which she claimed violated the court’s prior stay away order. The request did not, however, include a request for an order that prohibited Father from disseminating fliers and cards about Mother and her husband or that directed Father to take down any disparaging website he had created—these requested orders were raised for the first time at the permanent restraining order hearing. And thus, Father was not given adequate notice or a reasonable opportunity to contest the application on these matters. Consequently the requirements in Welfare and Institutions Code section 213.5 and Code of Civil Procedure section 527 were not met in this case.

Furthermore, at the hearing on the permanent restraining order, Father denied he was responsible for the website and the other actions; he informed the court that he wanted to defend himself and had not been afforded an opportunity to prepare a defense to the additional allegations and requested orders. The court, nonetheless, granted the restraining order and stated that the “credible evidence” indicated that Father had probably engaged in the alleged conduct, and even assuming he was not responsible for the conduct, the court concluded that Father would not suffer prejudice from being enjoined from something he did not do.

We disagree with the court's assessment of prejudice. The court's statements at the hearing and the court's issuance of the restraining order reflect the court's implicit findings that Father had in fact engaged in the alleged conduct. And such findings, which Father did not have a reasonable opportunity to refute, not only cause reputational injury to Father, they also could have severe and unfair consequences for him in future proceedings. Consequently, Father suffered prejudice as a result of the lack of sufficient notice and the reasonable opportunity to be heard on the permanent restraining order.

DISPOSITION

The provisions of the August 16, 2016 permanent restraining order that: (1) enjoins Father from distributing fliers and cards disparaging Mother and her husband; and (2) directs Father to take down any disparaging website created in whole or in part by Father, is reversed. The court is directed to modify the restraining order by removing the orders related to this conduct and the directive regarding the website. This disposition is without prejudice to Mother filing a request, upon proper notice, for a restraining order as to this conduct. In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

LUI, J.