Filed 3/28/17 In re R.G. CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re R.G., a Person Coming Under the Juvenile Court Law.	B271250 (Los Angeles County Super. Ct. No. PJ51952)
THE PEOPLE, Plaintiff and Respondent, v. R.G., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County. Fred J. Fujioka, Judge. Affirmed.

Courtney M. Selan, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris and Xavier Becerra, Attorneys General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Shawn McGahey Webb, Supervising Deputy Attorney General, and David W. Williams, Deputy Attorney General, for Plaintiff and Respondent.

R.G. appeals from the imposition of a pre-adjudication restraining order entered at the detention hearing in a juvenile court proceeding pursuant to Welfare and Institutions Code[1] section 602. The two-count petition filed against appellant, a 17-year-old minor, alleged a criminal threat in violation of Penal Code section 422, subdivision (a), and a battery on school, park, or hospital property in violation of Penal Code section 243.2, subdivision (a). Appellant contends he did not receive adequate notice prior to the detention hearing of the People's intent to pursue a formal restraining order. He further asserts that the restraining order, which prohibits him from having any contact with his victim, is unsupported by substantial evidence. We disagree and affirm.

FACTUAL BACKGROUND

On March 2, 2016, appellant became involved in a physical altercation with a classmate at the special needs high school they both attended. Later that day, appellant called the classmate and left a voicemail in which he threatened "to bring a gun to school and shoot the victim until [s]he surrendered."[2] The classmate believed appellant had access to a gun and reported she was in fear for her safety.

Appellant's mother stated that appellant has autism for which he takes daily medication. The mother averred that appellant is not violent and typically does well at home and at

---

[1] Undesignated statutory references are to the Welfare and Institutions Code.

[2] The detention report described a male victim, but subsequent filings identified the victim as female.

school. Neither she nor appellant's mental health counselor believed appellant posed any threat to the community. Although appellant was 17 years old when the incident occurred, according to his mother and his mental health counselor, he functioned at the level of a 10- to 12-year-old.

Appellant's mother owns two legally acquired and registered firearms, which she kept in locked containers in her car. Appellant had no access to the weapons. She voluntarily turned the guns over to police when appellant was arrested in this case.

DISCUSSION

1. *Relevant proceedings*

At the March 7, 2016 detention hearing, the deputy district attorney sought a temporary restraining order prohibiting all contact with the victim and requested that appellant remain in community detention. Appellant's counsel argued against continuation of the community detention program based on the difficulties appellant would have complying with the terms of the program given his developmental disabilities. Appellant also opposed the imposition of a restraining order on the ground that it was unnecessary in light of the fact that he and the victim would no longer be attending the same school. Appellant maintained that the district attorney's office lacked standing to seek a restraining order "without further evidence provided to the court at an evidentiary hearing."

In lieu of imposing a community detention program, the juvenile court released appellant to his mother and issued the restraining order. The court found community detention to be an ineffective tool for appellant due to his disabilities, but emphasized that "if he violates the no contact order, . . . he's going

to go into custody." The court further ordered appellant not to attend the same school as the victim while the case is still pending.

2. *Appellant has forfeited his claim of inadequate notice*

Appellant contends he did not receive sufficient notice of the People's intention to seek a restraining order at the detention hearing. Appellant's failure to object on this ground or otherwise raise the issue of inadequate notice in the proceedings below forfeits the claim on appeal.

"[A] reviewing court ordinarily will not consider a challenge to a ruling if an objection could have been but was not made in the trial court. [Citation.] The purpose of this rule is to encourage parties to bring errors to the attention of the trial court, so that they may be corrected." (*In re S.B.* (2004) 32 Cal.4th 1287, 1293, fn. omitted.) Neither dependency matters nor proceedings in juvenile court are exempt from this rule. (See, e.g., *In re S.B.*, at p. 1293, and cases cited therein; *In re Curtis S.* (2013) 215 Cal.App.4th 758, 761 [minor's First Amendment challenge to juvenile court's finding forfeited on appeal].) Indeed, "[a]s the United States Supreme Court recognized in *United States v. Olano* [(1993)] 507 U.S. [725,] 731, ' "[n]o procedural principle is more familiar to this Court than that a constitutional right," or a right of any other sort, "may be forfeited in criminal as well as civil cases by the failure to make timely assertion of the right before a tribunal having jurisdiction to determine it." ' " (*In re Sheena K.* (2007) 40 Cal.4th 875, 880–881.) Although the rule is subject to some exceptions, "the appellate court's discretion to excuse forfeiture should be exercised rarely and only in cases presenting an important legal issue." (*In re S.B.*, *supra*, 32 Cal.4th at p. 1293; see also *In re Sheena K.*, *supra*, 40 Cal.4th at pp. 881–882 & fns. 2, 3.)

Appellant never mentioned the issue of inadequate notice in the proceedings below, and no reason appears in the record for his failure to raise the matter. While defective notice may be a "most serious issue, potentially jeopardizing the integrity of the entire judicial process" (*In re Wilford J.* (2005) 131 Cal.App.4th 742, 754), neither appellant's rights nor his opportunity to be heard were ever at risk. Rather, appellant appeared prepared to take on the prosecutor's request and vigorously opposed the imposition of a restraining order. Where, as here, the affected party had the opportunity to bring the issue to the court's attention but said nothing, he "deprived the juvenile court of the opportunity to correct the mistake," and thereby forfeited the issue on appeal. (*Ibid.*; *In re B. G.* (1974) 11 Cal.3d 679, 689.)

Appellant also fails to demonstrate that this case presents an "important legal issue" (*In re S.B.*, *supra*, 32 Cal.4th at p. 1293), or a pure question of law amenable to resolution without reference to questions of fact. (See *In re Sheena K.*, *supra*, 40 Cal.4th at p. 887.) To the contrary, appellant's claim requires a fact-based analysis to determine whether appellant received timely notice of the People's request for a restraining order. Courts of appeal are ill-suited for resolving such fact-driven inquiries and "routinely refuse to exercise their limited discretion to consider" such matters on appeal. (*In re Wilford J.*, *supra*, 131 Cal.App.4th at p. 754.)

3. *The juvenile court did not abuse its discretion in imposing a restraining order, which is supported by substantial evidence*

Appellant contends that the factual allegations in the petition "are too sparse" to provide substantial evidence to support the imposition of a restraining order in this case. We disagree.

In our review of the juvenile court's imposition of a restraining order pursuant to section 213.5, we apply the substantial evidence standard to assess the court's factual findings. (*In re C.Q.* (2013) 219 Cal.App.4th 355, 364.) That is, "we view the evidence in a light most favorable to the respondent, and indulge all legitimate and reasonable inferences to uphold the juvenile court's determination. If there is substantial evidence supporting the order, the court's issuance of the restraining order may not be disturbed." (*In re Cassandra B.* (2004) 125 Cal.App.4th 199, 210–211; *In re B.S.* (2009) 172 Cal.App.4th 183, 193.)

We review the juvenile court's decision to grant or deny the restraining order for abuse of discretion. (*In re Carlos H.* (2016) 5 Cal.App.5th 861, 866 (*Carlos H.*).) " ' "To show abuse of discretion, the appellant must demonstrate the juvenile court exercised its discretion in an arbitrary, capricious or patently absurd manner that resulted in a miscarriage of justice." [Citation.] Throughout our analysis, we will not lightly substitute our decision for that rendered by the juvenile court. Rather, we must indulge all reasonable inferences to support the decision of the juvenile court and will not disturb its findings where there is substantial evidence to support them.' " (*Ibid.*)

Applying these standards here, we conclude that the uncontested facts alleged in the petition constitute substantial evidence supporting issuance of the restraining order, and the juvenile court did not abuse its discretion in doing so.

Under the juvenile delinquency statutory scheme of which section 213.5 is a part, "the juvenile court is expressly authorized to make '*any and all reasonable orders* for the care, supervision, custody, *conduct*, maintenance, and support of the child.' (§ 362, subd. (a), italics added.)" (*Carlos H.*, *supra*, 5 Cal.App.5th at

p. 868.) Specifically, section 213.5, subdivision (b) authorizes "the juvenile court to issue a wide range of restraining orders," including orders enjoining " 'the child from contacting, threatening, stalking, or disturbing the peace of any person the court finds to be at risk from the conduct of the child.' " (*Id*. at p. 867.)

The statute does not require any showing that prospective harm is likely to occur. (*In re B.S.*, *supra*, 172 Cal.App.4th at p. 193; *In re C.Q.*, *supra*, 219 Cal.App.4th at p. 363.) Rather, "evidence that the restrained person has previously molested, attacked, struck, sexually assaulted, stalked, or battered the [protected person] is certainly sufficient." (*In re B.S.*, at p. 193, citing *In re Brittany K.* (2005) 127 Cal.App.4th 1497, 1512 [evidence of previous stalking]; *In re Cassandra B., supra*, 125 Cal.App.4th at pp. 210–213 [evidence of previous molestation].) Indeed, a court may issue a restraining order for the sole reason that "failure to make [the order] may jeopardize the safety of the [protected person]." (*In re B.S., supra*, at p. 194 [analogizing "to Family Code section 6340, which permits the issuance of a protective order under the Domestic Violence Prevention Act in the first instance"].)

In ruling on an application for a restraining order under section 213.5, the juvenile court may consider the application itself and the contents of the juvenile court file. (Cal. Rules of Court, rule 5.630(f)(1).) Here, the detention report contained in the juvenile court file described an incident in which appellant and a classmate were involved in a physical altercation and afterward appellant made a credible threat to "bring a gun to school and shoot the victim until [s]he surrendered."

On these undisputed facts, we conclude that the restraining order was part of a reasonable plan by the juvenile court to

respond appropriately to appellant's conduct and his particular needs and circumstances. As we found in *Carlos H.*, the restraining order in this case "was entirely consistent with the public policy objectives underlying the juvenile delinquency laws generally and section 213.5 specifically." (5 Cal.App.5th at p. 871.) The juvenile court's imposition of a restraining order was neither arbitrary, capricious nor patently absurd, and we therefore affirm the order.

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED.

LUI, J.

We concur:

CHANEY, Acting P. J.

JOHNSON, J.