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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re ANTHONY G. et al., Persons Coming Under the Juvenile Court Law. _____ LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. DANNY M., Defendant and Appellant.	B269642 (Los Angeles County Super. Ct. No. DK07540)
In re PRESLEY M., a Person Coming Under the Juvenile Court Law. _____ LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. DANNY M., Defendant and Appellant.	B269643 (Los Angeles County Super. Ct. No. DK07539

APPEAL from an order of the Superior Court of Los Angeles County, Stephen Marpet, Referee. Reversed.

Matthew I. Thue, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and William D. Thetford, Principal Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Appellant, Danny M., challenges a restraining order issued on behalf of three social workers in a pending juvenile dependency case. Appellant contends the dependency court prejudicially erred when it denied his request to cross-examine the social workers, whose declarations were admitted as evidence in support of the restraining order request. We conclude Appellant's procedural due process rights were violated, and remand the matter for a new hearing on the restraining order.

FACTS AND PROCEDURAL BACKGROUND

Consistent with our standard of review, we state the facts in the light most favorable to the dependency court's findings, drawing all reasonable inferences in favor of the court's order. (*In re Cassandra B.* (2004) 125 Cal.App.4th 199, 210-211 (*Cassandra B.*).) We note, however, that Appellant's due process challenge raises a legal question subject to our de novo review. (See *In re A.B.* (2014) 230 Cal.App.4th 1420, 1434.)

The appeal arises from two dependency cases involving five children: Anthony G. (age 10); Presley M. (age 9); Sienna G. (age 9); Daniel R. (age 5); and K.H. (age 2). Appellant and his wife are Presley's adoptive parents, and legal guardians to

Anthony, Sienna and Daniel. K.H. resided with Appellant pursuant to a power of attorney executed by the child's mother.

The sustained petition in Presley's dependency case found, among other things, that Appellant (1) physically abused the child by striking him with belts and his hand, and (2) exposed the child to a hazardous home environment that was filthy, unsanitary and infested with roaches and black widow spiders. The sustained petition in the other children's case found that Appellant (1) physically abused Anthony, Sienna and Daniel by striking them with belts and hangers; (2) exposed the children to hazardous living conditions; and (3) sexually abused Sienna by fondling and digitally penetrating the child's vagina. All of the children were removed from Appellant's physical custody.

On August 6, 2015, the Los Angeles County Department of Children and Family Services (the Department) filed a request for a restraining order against Appellant on behalf of three social workers: Ramaul Rush, Maria Messick, and Jose Machado.[1] The request sought an order restraining Appellant from (1) harassing, molesting, attacking, striking, threatening, or disturbing the peace of the social workers; (2) coming within 100 yards of the social workers, their residences, vehicles, or workplaces; (3) taking action to obtain the addresses or locations of the social

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[1] The request for restraining order also sought protection for the children's prior attorney and Appellant's adopted son, Presley. The children's attorney subsequently asked to be removed from the request and the dependency court struck the request with respect to Presley. The Department also filed a request for a restraining order on behalf of the other children, which the court granted. In his opening brief, Appellant notified this court that he had decided to abandon his challenge to the restraining order protecting the children.

workers or their family members; (4) contacting, telephoning or sending messages to the Department, except through Appellant's attorney; and (5) using any form of media to post pictures depicting the social workers, children or caretakers in the case.

The request alleged that Appellant had created several Facebook pages impersonating the social workers, the former bench officer Judge Akemi Arakaki, and the former attorneys assigned to Appellant's dependency cases. Those pages allegedly made "several slanderous postings about Dependency Court and the Department."

The Department supported the request with screen captures of the Facebook pages at issue. The pages included disparaging statements about the social workers and other professionals. For instance, one page contained a picture of Rush, captioned with his full name and the label "20 YEARS OF KIDNAPPING [¶] CHILD PREDATOR [¶] CHILDABUSER [*sic*] KIDNAPPER MOLESTS CHILDREN [¶] TAMPERS AND FABRICATES EVIDENCE TRAFFICKER." In one comment to the picture, posted from the account identified with Judge Arakaki, the poster wrote: "THIS IS THE KIDNAPPER THAT AKEMI HAS AIDED AND ABETTED. HE STOLE MY KIDS BY FORCE AND FRAUD PERJURY AND STINKS LIKE A HOMELESS MAN MAKING OVER 100 THOUSAND AND YEAR [*sic*]." In another comment from the same account, the poster stated: "This is the child molester that kidnaps children by force and fraud fabrication tampering with evidence and perjury [*sic*]. AKemi. Knew [*sic*] full well that this was a wrongful removal. . . . [T]here is so much perjury family child abuse torture kidnapping [*sic*] in this case it is off the charts. Ramaul Rush is a child molester he kidnaps children for adoption quotas."

The pages created for Judge Arakaki and Rush included their pictures. Machado's page included a picture of a different social worker who, according to a press article linked on the page, was suspected of sexually abusing a child. Machado's page also included a comment from a Facebook account bearing Appellant's name, stating: "The Oath of a Social Worker: To terrorize, commit fraud, and harass and disrupt the family. Lie in court, hide evidence, and simply falsify documents. All for a paycheck and at the expense of the American family."

In its supporting memorandum of points and authorities, the Department argued the restraining order was warranted because Appellant "continue[d] to appear volatile in dealing with [the Department], has implicitly threatened and/or harassed the social workers, by posting on social media sites their photographs and libelous statements in violation of the law and without consent, and the continued harassment of [the Department] utilizing electronic communications." The Department asserted "the social workers in this matter, support staff, other employees of [the Department], and the supervisors are afraid for their lives and feel threatened by these actions and harassing behavior[,] which serves no legitimate purpose." Although no declarations were offered to support the assertion, the Department indicated "further declarations and documentation [would] be provided to the court at the hearing."

On August 6, 2015, the dependency court issued a temporary restraining order to protect the social workers.

On August 26, 2015, Appellant personally filed an answer opposing the restraining order request.[2] In his supporting memorandum of points and authorities, Appellant argued, among other things, that there were no "damages on the 'Public Figures' I identified on the Internet with my Art and Free Expression under the 1st Amendment[,] while exposing the ***Judicial Corruption*** as done here today which proves my case and my point." He argued, "if the posting are [*sic*] bad, sue for slander in a Regular Court; NOT TO GO [*sic*] FORUM SHOPPING IN A CHILD'S COURT TO STOP POSTING OF ART CONNECTED TO CHILDREN SERVICES." With respect to the credibility of the Department's allegations, Appellant urged these were "outright lies that were coming from the opposing Party that they were so in fear for their own lives." He stressed there was no evidence that the social workers "file[d] a Police Report if they [thought] they were threaten[ed] in any way," nor was there "Verifiable Evidence" that they were "afraid" of him or that they had "ever call[ed] in sick at work" due to his alleged threats.

On November 4, 2015, the Department filed a six-month status review report in Presley's case. The report, prepared by Machado, stated that Appellant had not kept contact with the Department during the six-month period, but that Appellant

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[2] On the same date, Appellant's appointed attorney requested to be relieved as counsel. In a supporting declaration, the attorney stated he had become aware of a Facebook account created under his name with postings describing him as a " 'child molesting, kidnapping trafficker that work[ed] for [Child Protective Services] as a fake dependency lawyer.' " The dependency court granted the request, continued the hearing date on the permanent restraining order, and extended the temporary restraining order to the continued hearing date.

"acted aggressively and intimidating with Department staff in the past." With respect to that assertion, Machado wrote that Appellant had "obtained personal information on staff" and "posted derogatory information on-line regarding staff and court officials."

The same day, the Department filed a motion to limit the cross-examination of the social workers at the restraining order hearing. The motion averred that Appellant had "clearly indicated a propensity to denigrate the Department and to impugn the character of the Department and its social workers," and argued "the Court should act affirmatively to prevent such abusive conduct during trial." Based on Appellant's "conduct throughout this case," the Department said it "anticipated [Appellant's] counsel's advocacy in this matter will stray from zealous and thorough and into the realm of intrusive." The Department clarified that it did "not seek to interfere with counsel's ability to effectively cross-examine the social workers in this matter"; however, "to the extent counsel's questioning style and content may become harassing and abusive," the Department requested "an order directing counsel to treat all witnesses in this case in a professional and respectful manner."

On January 4, 2016, the Department filed a supplemental memorandum of points and authorities together with a declaration by Machado in support of the request for a permanent restraining order. The next day, the Department served additional declarations by Messick and Rush. The Department maintained Appellant's "libelous Facebook posts" were "still available to the public," and that his actions constituted "harassment and threats which can be enjoined." Responding to Appellant's answer, the Department argued the "posts are not art, can not be justified as such, and the only clear reason for the

postings can be inferred by any reasonable person to be harassment, libelous, and clearly unprotected speech that is meant to and can incite harm to the individuals."

Each of the social worker's declarations referenced the Facebook posts, and stated that, "[d]ue to [Appellant's] repeated veiled threats, and libelous postings, . . . I fear for my safety and request a restraining order be granted." Each declaration also stated the social worker "felt violated when I saw the [pictures and statements] that [Appellant] posted and it scared me that he could do something or access other information about me, or incite his followers to . . . harm me." Rush's declaration differed from those of the other social workers in that it said Appellant used "personal private pictures" of Rush, which led him to believe that Appellant "hacked into my personal Facebook page." Each declaration concluded with the statement, "I do fear for my safety and feel harassed by [Appellant's] posting about me on social media and request a restraining order be granted."

On January 6, 2016, the dependency court held a hearing on the permanent restraining order request. Appellant's attorney requested that Rush, Messick and Machado appear for cross-examination, stressing that their declarations had been filed only within the last two days and that Appellant had a constitutional right to "confront his accusers." The Department opposed the request, arguing the court was not required to allow cross-examination and that the Facebook pages demonstrated the social workers would simply be "harassed by being cross-examined." The court denied the request to cross-examine the social workers, ruling "there is no absolute right to have the witnesses present under the appropriate statutes in case law so we're ready to proceed today without additional witnesses."

Appellant's counsel stated his client's objection to the ruling, and the hearing proceeded to argument.

Appellant's counsel argued the Facebook pages were protected expression under the First Amendment and were alone insufficient to establish "harassment" under the applicable legal standard. The court countered that the supporting evidence also consisted of the "declarations of the social workers." Appellant's counsel urged that the declarations did not establish a "credible threat of violence" and, without that, an order restricting his client's right of movement was unconstitutional.

The dependency court concluded there was "ample evidence . . . indicating that the conduct is such that it puts these social workers at risk." The court granted the restraining order, on the terms requested, for a period of three years.

DISCUSSION

1. *Statutory Basis for the Restraining Order Protecting the Social Workers*

The dependency court in this case did not specify the particular statutory basis for the restraining order it issued. On appeal, the Department lists potential statutes that it argues provide authority for the restraining order issued by the court. It cites Welfare and Institutions Code section 340.5,[3] which authorizes the dependency court to issue a restraining order to protect social workers upon a showing of "good cause," defined as "at least one threat of physical harm to the social worker, or any member of the social worker's family, made by the [parent] who is to be the subject of the restraining order, with the apparent ability to carry out the threat." (§ 340.5, subds. (a) & (b).)

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[3] Subsequent references are to the Welfare and Institutions Code, unless otherwise specified.

Similarly, the Department cites Code of Civil Procedure section 527.8, which authorizes an employer to obtain a restraining order on behalf of an "employee [who] has suffered unlawful violence or a credible threat of violence from any individual, that can reasonably be construed to be carried out or to have been carried out at the workplace." (See *In re M.B.* (2011) 201 Cal.App.4th 1057, 1063-1064 [holding Code of Civil Procedure section 527.8 authorizes social services agency to obtain a restraining order on behalf of social workers in dependency proceeding].) However, because there is no substantial evidence that the social workers in this case suffered violence or a credible threat of violence from Appellant, we reject the Department's suggestion that section 340.5 or Code of Civil Procedure section 527.8 could have supplied a valid statutory basis for the challenged order. At most, the social workers' declarations and statements in the dependency files demonstrated they felt threatened by Appellant's conduct; however, none of these submissions evidenced an express or implied threat to harm the social workers.

Rather, given the evidence before the dependency court, section 213.5 appears to provide the only potentially viable statutory basis for the restraining order. That provision authorizes the dependency court to issue an order "enjoining any person from molesting, attacking, striking, stalking, threatening, . . . harassing, telephoning, . . . contacting, either directly or indirectly, by mail or otherwise, coming within a specified distance of, or disturbing the peace of the child's current or former social worker." (§ 213.5, subd. (a).) Most relevant here, the statute grants the dependency court discretion to enjoin a person from "disturbing the peace of" or "harassing" a social worker upon proof that such conduct has occurred. (§ 213.5,

subd. (a); see *In re B.S.* (2009) 172 Cal.App.4th 183, 193.) Section 213.5 does not require evidence of past violence or a credible threat of future violence to justify issuance of a restraining order protecting social workers from such harassment or disturbance of their peace. (See *Cassandra B., supra,* 125 Cal.App.4th at p. 211 ["section 213.5 includes 'molesting' or 'stalking' in the conduct the juvenile court may enjoin, neither of which necessarily involves violent behavior or the threat of violence"].)

Section 213.5 does not delineate what qualifies as "disturbing the peace" or "harassing" conduct, and those terms are not defined elsewhere in the Welfare and Institutions Code. We look to the Domestic Violence Prevention Act (DVPA), set forth at Family Code section 6200 et seq., for guidance in construing the reach of section 213.5. California Rules of Court, rule 5.630(c) states that "[t]he definition of abuse in Family Code section 6203 applies to restraining orders issued under Welfare and Institutions Code section 213.5." (Cal. Rules of Court, rule 5.630(c).) Family Code section 6203 defines " 'abuse' " to include "any behavior that has been or could be enjoined pursuant to [Family Code] [s]ection 6320." (Fam. Code, § 6203, subd. (a)(4).) Family Code section 6320 in turn provides in part that "[t]he court may issue an ex parte order enjoining a party from . . . *harassing*, . . . or *disturbing the peace* of the other party." (Fam. Code, § 6320, subd. (a), italics added.)

Like section 213.5, the Family Code does not define "disturbing the peace" or "harassing." To establish the contours of "disturbing the peace" under Family Code section 6320, courts have turned to the ordinary dictionary meaning of the phrase. In *In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1497 (*Nadkarni*), the court found that "[t]he ordinary meaning of 'disturb' is '[t]o agitate and destroy (quiet, peace, rest); to break

up the quiet, tranquility, or rest (of a person, a country, etc.); to stir up, trouble, disquiet.' (Oxford English Dictionary Online (2d ed. 1989) <http:// www.oed.com> [as of Apr. 24, 2009].) 'Peace,' as a condition of the individual, is ordinarily defined as 'freedom from anxiety, disturbance (emotional, mental or spiritual), or inner conflict; calm, tranquility.' (*Ibid.*)" (*Nadkarni*, at p. 1497.) The court thus concluded that, for purposes of a restraining order issued under Family Code section 6320, "disturbing the peace" should be construed to mean "conduct that destroys the mental or emotional calm of the other party." (*Ibid.* [finding sufficient evidence that former husband "disturbed the peace" of his ex-wife by accessing, reading and publicly disclosing the content of her confidential e-mails]; accord *Burquet v. Brumbaugh* (2014) 223 Cal.App.4th 1140, 1145; *Rodriguez v. Menjivar* (2015) 243 Cal.App.4th 816, 821.) We adopt the same definition for purposes of section 213.5. Thus, in order for a restraining order to issue for "disturbing the peace," the Department was required to prove that Appellant's internet postings and other conduct destroyed the social workers' mental or emotional calm.

In determining the meaning of "harassing" under section 213.5, we find guidance in Code of Civil Procedure section 527.6, which authorizes a civil restraining order "prohibiting harassment." (Code Civ. Proc., § 527.6, subd. (a); cf. *In re Brittany K.* (2005) 127 Cal.App.4th 1497, 1509, 1510 (*Brittany K.*) ["reasonable and practical construction of the statutory term 'stalking' can be found by reference to other statutory, legislative and judicial sources, as well as common usage," including Civil Code section 1708.7, which defines " 'the tort of stalking' "]; *Cassandra B., supra,* 125 Cal.App.4th at p. 212 [adopting definition of "molest" from cases interpreting Penal Code section

647.6].) Code of Civil Procedure section 527.6 defines the term "harassment" to include "a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose." (*Id.*, subd. (b)(3).) To constitute civil harassment, the "course of conduct must be that which would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner." (*Ibid.*) Although the conduct that may be enjoined under the DVPA is broader than under Code of Civil Procedure section 527.6 (*Nakamura v. Parker* (2007) 156 Cal.App.4th 327, 337), it is elemental that to be considered "harassing" under section 213.5, conduct must lead to emotional distress in the party to be protected (cf. *Brittany K.*, at p. 1511 [finding substantial evidence that restrained person engaged in "stalking" under section 213.5 where her conduct "result[ed] in emotional distress to the children and their caretakers"]; *Cassandra B.,* at p. 212 [finding substantial evidence to support restraining order under § 213.5 for "molesting" minor and her caregivers where restrained party's actions "were indeed troubling, disturbing, annoying, and vexatious" to them]).

Thus, whether Appellant's conduct is characterized as "disturbing the peace" or "harassing," the Department must prove he caused the social workers to suffer emotional distress. With that understanding, we turn to whether the dependency court erred by not permitting the social workers to be cross-examined at the restraining order hearing.

2. Appellant Had a Due Process Right to Cross-Examine the Social Workers

Courts have long recognized the importance of cross-examination and its crucial relationship to the ability to defend

against accusations, deeming it a due process right which is fundamental to a fair proceeding. (*Chambers v. Mississippi* (1973) 410 U.S. 284, 294-295; *Goldberg v. Kelly* (1970) 397 U.S. 254, 269-270.) Cross-examination may be employed to elicit any information that may tend to overcome, qualify or explain the testimony given by a witness, as well as to test the witness's accuracy, recollection, knowledge or credibility. (*People v. Golden* (1961) 55 Cal.2d 358, 368.) Although the "due process right to present evidence is limited to relevant evidence of significant probative value to the issue before the court" (*In re Jeanette V.* (1998) 68 Cal.App.4th 811, 817), where credibility is at stake, it necessarily includes the right of a litigant to "confront and cross-examine the witnesses against [him]." (*In re Vanessa M.* (2006) 138 Cal.App.4th 1121, 1130 (*Vanessa M.*); *In re Brenda M.* (2008) 160 Cal.App.4th 772, 777 (*Brenda M.*) ["The importance of cross-examination cannot be doubted: 'Cross-examination is the principal means by which the believability of a witness and the truth of his testimony are tested.' "].)

The Department correctly observes that a restraining order under section 213.5 may be granted after a hearing upon proof made by "the application and any attachments, additional *declarations* or documentary evidence, the contents of the juvenile court file, testimony, *or any combination of these*." (Cal. Rules of Court, rule 5.630(f)(1), italics added; § 213.5, subd. (d)(1).) However, the fact that the statute permits expedited procedures does not mean the parent's right to cross-examine adverse witnesses at the mandatory hearing is necessarily eliminated. On the contrary, because that hearing provides the principal forum for the accused parent to present his or her case, permitting the parent to cross-examine declarants on relevant matters is generally critical to ensuring due process is afforded.

(See, e.g., *Schraer v. Berkeley Property Owners' Assn.* (1989) 207 Cal.App.3d 719, 730-731 [observing with respect to a civil harassment restraining order under Code of Civil Procedure section 527.6, "although the procedures set forth in the harassment statute are expedited, they contain certain important due process safeguards. Most notably, a person charged with harassment is given a full opportunity to present his or her case, with the judge *required* to receive relevant testimony"]; *Nora v. Kaddo* (2004) 116 Cal.App.4th 1026, 1029 [because hearing prescribed by civil harassment statute " 'provides the only forum the defendant in a harassment proceeding will have to present his or her case[,] [t]o limit a defendant's right to present evidence and cross-examine . . . would run the real risk of denying such a defendant's due process rights' "].)

Appellant contends his Facebook posts were alone insufficient to authorize the challenged order, and the declarations by the social workers submitted within two days of the permanent restraining order hearing were the only evidence provided by the Department regarding emotional harm the workers suffered. Appellant thus maintains he had a procedural due process right to cross-examine the social workers regarding the contents of those declarations.[4]

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[4] Appellant does not renew his contention, raised in the dependency court, that the Facebook posts constituted protected speech under the First Amendment. Nor does he challenge the admissibility of the social workers' declarations or the sufficiency of the evidence to support the restraining order. Appellant contends only that he had a due process right to cross-examine the social workers on matters relevant to the testimony set forth in their declarations.

As Appellant emphasized in his answer to the restraining order request, although the Department made *assertions* in its initial request, it failed to offer *evidence* to prove the effect Appellant's Facebook posts had on the social workers' mental states. Moreover, Appellant specifically questioned the credibility of those assertions in his answer, stressing that his interactions with the social workers gave no indication that they actually feared him.[5] In response, the Department filed a motion to limit the cross-examination of the social workers at the restraining order hearing. But critically, the motion acknowledged Appellant's right to cross-examination—stating, the Department "does not seek to interfere with counsel's ability to cross-examine the social workers in this matter"—and asked only that the court direct Appellant's counsel to "treat all witnesses in this case in a professional and respectful manner." Then, within two days of the permanent restraining order hearing, the Department filed the social workers' declarations, which for the first time offered proof that the social workers actually suffered emotional distress. Cross-examination directed at the credibility of these assertions was plainly relevant and probative of this essential factual issue.[6] (See *Vanessa M., supra,* 138 Cal.App.4th at p. 1130.)

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[5] For his part, Machado authored a six-month status report, which characterized Appellant's online posts as harassing and threatening, but also noted that Appellant had not maintained contact with the Department during the relevant period.

[6] The Department argues Appellant forfeited his due process challenge by failing to request that the social workers appear prior to the hearing. The argument has no merit. The fact that Appellant stipulated to multiple continuances of the temporary restraining order without subpoenaing the social workers or

Further, concerns that cross-examination might veer into irrelevant or abusive matters did not justify a blanket denial of Appellant's right to cross-examination. "[T]he Evidence Code, among other statutory provisions, provides ample means for the courts to control contested proceedings in the dependency courts." (*In re James Q.* (2000) 81 Cal.App.4th 255, 266, citing Evid. Code, § 350.) Thus, if "a party's cross-examination appears to be irrelevant to the issues presented in the hearing, then the court properly may limit it, after inquiry." (*In re James Q.,* at pp. 266-267.) Although the right of cross-examination is "[s]ubject always to the broad discretion of a trial judge to preclude repetitive and unduly harassing interrogation" (*Davis v. Alaska* (1974) 415 U.S. 308, 316), a complete denial of the right of cross-examination is constitutional error. (*Id.* at p. 318.) That was the case here.

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requesting an order that they be present for the hearing is of no moment, because the Department submitted the social workers' declarations only one or two days before the permanent restraining order hearing. Nor is it compelling that Appellant did not oppose the Department's motion to *limit* cross-examination, as that motion expressly stipulated that the Department did "*not* seek to interfere with counsel's ability to effectively cross-examine the social workers in this matter." (Italics added.) In any event, because Appellant had a right to cross-examine the social workers, due process also demanded that the court grant his implicit request to continue the hearing to have the social workers present. (See, e.g., *In re Corey A.* (1991) 227 Cal.App.3d 339, 348 [recognizing "due process insures a parent the right to cross-examine any testifying witness," and, where social study report was admitted to support dispositional order, "[juvenile] court would be required to accommodate [mother's] reasonable request to delay its decision until the social study preparer was present for examination"].)

We conclude the dependency court erred by denying Appellant's request to cross-examine the social workers at the permanent restraining order hearing.

3. *Denial of Appellant's Right to Cross-Examination Was Not Harmless Beyond a Reasonable Doubt*

A denial of the due process right to cross-examination is not per se reversible error, but rather is subject to a harmless error analysis. (See *Delaware v. Van Arsdall* (1986) 475 U.S. 673, 683-684.) "Courts of Appeal have found that a constitutional due process violation in the dependency context requires application of the harmless beyond a reasonable doubt standard, since the error is of federal constitutional dimension." (*Vanessa M., supra,* 138 Cal.App.4th at p. 1132; *In re Dolly D.* (1995) 41 Cal.App.4th 440, 446 [deprivation of right to cross-examination]; *In re Stacy T.* (1997) 52 Cal.App.4th 1415, 1426 [multiple due process violations].)

The Department argues the error was harmless beyond a reasonable doubt because there was sufficient evidence, outside the social workers' declarations, to support the restraining order. It principally relies upon a series of incidents, recounted in the dependency case files, in which Appellant acted in arguably aberrant and disturbing ways. For instance, the Department notes that when police originally detained the children, Appellant talked loudly and refused to disclose the minors' whereabouts, prompting Appellant's arrest and ultimate conviction for obstruction of justice. Other reports recounted that Appellant was paranoid about having the children removed from his custody, recorded his interactions with social workers, and once " 'made a statement of a personal nature to [a visitation supervisor] that . . . made her very uncomfortable and worried about personal safety.' " The Department also cites a report that

Appellant was belittling and condescending toward medical staff during Sienna's forensic sex abuse examination. And the Department relies upon the Facebook pages, stressing these "contained derogatory comments aimed at the social workers who are protected by the restraining orders."

Notwithstanding the foregoing evidence, the Department was required to show that Appellant's conduct caused the social workers emotional distress. Here, that proof came exclusively from the social workers' declarations. Because cross-examination was the "principal means" by which Appellant could challenge the social workers' alleged subjective reaction to his conduct, the error in denying Appellant this due process right cannot be regarded as harmless. (*Brenda M., supra,* 160 Cal.App.4th at p. 777; *Vanessa M., supra,*138 Cal.App.4th at p. 1130.)

DISPOSITION

The restraining order protecting the social workers is reversed and the matter is remanded for a new hearing consistent with this opinion.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

STONE, J.*

We concur:

EDMON, P. J.

LAVIN, J.

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.