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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re DOUGLAS G., JR., et al.,  
Persons Coming Under the  
Juvenile Court Law.

B277211

(Los Angeles County  
Super. Ct. No. DK16022)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent.

v.

DOUGLAS G., Sr.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Nichelle L. Blackwell, Juvenile Court Referee. Affirmed.

Jesse F. Rodriguez, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Brian Mahler, Deputy County Counsel for Plaintiff and Respondent.

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## **I. INTRODUCTION**

Douglas G., Sr. (father) appeals from a restraining order issued under Welfare and Institutions Code<sup>1</sup> section 213.5, subdivision (a). Father contends the dependency court erred by naming his two biological children as protected individuals. We affirm.

## **II. PROCEDURAL BACKGROUND**

Douglas G., Sr. (father) and mother are the parents of Douglas G., Jr. (born October 2014) and Marjorie G. (born October 2015). The mother also has a son named Matthew M. (born April 2011). His biological father is Juan M., mother's former boyfriend.

In December 2015, the Department of Children and Family Services (DCFS) received information that father injured and threatened to kill mother. The incident happened at the Santa Monica Pier and was preceded by the father's accusation that mother was having an intimate relationship with Juan. Words were exchanged and father became very upset. He then ran

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<sup>1</sup> Further statutory references are to the Welfare and Institutions Code.

under the pier and into the ocean and threatened to kill himself. Mother pleaded with him to come out of the water. He did so, but then he ran toward her, grabbed her and tried to drag her into the ocean. He told her that she was going to die with him. She was able to get away from him and ran a short distance before falling in the sand. He caught up to her and pulled her up by her hair. Mother saw a couple walking by and told father that she was going to ask for help. He then covered her mouth and told her to hug him and pretend like nothing was going on. When the couple walked past them she broke free again and ran to their vehicle. Father ran after her and demanded the car keys. He told her that he was going to drive home to torture and kill Matthew.<sup>2</sup> Fearing he would follow through with his threat, she refused to give him the keys. He put her in a headlock and squeezed her neck. He released her and walked away after bystanders yelled at him to let her go. Police arrived shortly thereafter and observed scratches and redness around mother's throat and the sides of her neck.

During followup interviews conducted by DCFS social workers a few days later, mother gave a different version of the above-described event and denied any history of domestic violence between her and father. Father admitted to a social worker that there was an incident at the Santa Monica Pier during which he accused mother of cheating on him. He also admitted to screaming and crying while entering the water with his clothes on; however, he denied physically harming her then or at any other time and denied ever threatening to harm her or her

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<sup>2</sup> Matthew M., Douglas G., Jr. and Marjorie G. lived at, and were present in, the home of the paternal grandmother at the time of the incident.

son Matthew. When asked about his mental health history, he first claimed that he had never had a problem but later acknowledged that he was hospitalized as a child because of self-inflicted cuts. Social workers also discovered that as a juvenile he had been arrested for robbery in 2009 and assault with a deadly weapon and dissuading a witness or victim in 2010.

In an interview on February 26, 2016, mother told DCFS social workers that all was well within the family and made other statements to suggest intervention was not necessary. DCFS, however, obtained an order for the removal of the three children. Pursuant to that order, DCFS personnel removed the children and placed them in a shelter on March 14, 2016.

On March 17, 2016, a petition was filed pursuant to Welfare and Institutions Code, section 300, subdivisions (a) and (b) (1) and (j) on behalf of the children. It alleged the father's violent behavior at the Santa Monica Pier in December 2015, the mother's unwillingness to protect children from father, and father's history of mental and emotional problems.

On April 19, 2016, mother appeared at a DCFS office seeking protection from father and retracted her December 2015 statements about what happened at the beach. She admitted that father had verbally and physically abused her for the last several months providing the following information. Father could not get over the fact that she had a previous relationship with another man and on several occasions, including when she was pregnant with Douglas Jr. and Marjorie G., he pushed and struck her.<sup>3</sup> After the birth of Douglas Jr., she threatened to

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<sup>3</sup> In an undated interview Matthew said that father hit mother with a closed fist when she was pregnant with Marjorie.

leave him. He responded by threatening to kill himself. He has prohibited her from having her own phone and from talking with anyone when he is not present.<sup>4</sup> After the criminal charges were dismissed, and a protective order issued by the criminal court had expired, father returned home in mid-December and blamed mother for what happened to him. During this time period she observed him use drugs and asked him about white powder on a table that he was putting in a paper. In response, he said it was drugs.<sup>5</sup> She also reported that without provocation he slapped her and held her down on her bed when she was waking up.

The March 17 petition was amended in April by the addition of an allegation under section 300, subdivision (b) (1) asserting that father had a history of drug use and was currently using methamphetamine, both of which interfered with his ability to provide appropriate care for the children.

As of May 26, 2016, mother was living at a domestic violence shelter and told DCFS that she planned to seek a divorce from father when she obtained sole custody of the children. On the same day, the department investigator verified father was enrolled in an anger management group and weekly parenting classes as required by a safety plan. Father continued to deny any domestic violence had ever occurred although he was willing to enroll in a domestic violence group to regain custody of the

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<sup>4</sup> Father admitted using methamphetamine on two occasions due to stress after his children were taken away from the home.

<sup>5</sup> The maternal grandmother reported that mother complained to her that father treated her (mother) “badly” and that mother “wanted to leave father but did not know how.”

children. Notwithstanding this information, and out of concern that the mother might return to father's family home, DCFS recommended removal of all three children from parental custody.

At a combined adjudication and disposition hearing on June 27, 2016, the court sustained the amended petition and then, among other orders, placed all the children with mother and removed Douglas Jr. and Marjorie G. from father. At the mother's request, the juvenile court issued a three-year permanent restraining order that required father to stay away from her, all three of her children and the maternal grandmother. It found that because of "the domestic violence history and the power and control that the mother has expressed and described as being exerted over her" there was a reasonable basis to issue the order. It permitted father to have monitored visits with his children, however.

### **III. DISCUSSION**

Father is not contesting the jurisdictional or dispositional orders or the issuance of the restraining order as it applies to mother, maternal grandmother and Matthew. He is only disputing the restraining order's application to Douglas Jr. and Marjorie and asserts there is insufficient evidence to support a finding that the safety of those two children would be jeopardized absent a court order.

Some courts have applied the substantial evidence standard in reviewing a restraining order issued under section 213.5. (*In re N.L.* (2015) 236 Cal.App.4th 1460, 1465-1466; *In re B.S.* (2009) 172 Cal.App.4th 183, 193; *In re Cassandra B.* (2004)

125 Cal.App.4th 199, 210-211.) Under this standard, “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.*, *supra*, 125 Cal.App.4th at pp. 210-211.) The court in *In re Brittany K.* (2005) 127 Cal.App.4th 1497, 1512, applied the substantial evidence to support the facts and the abuse of discretion standard to impose a restraining order. (*In re N.L.*, *supra*, 236 Cal.App.4th at p. 1466; *In re C.Q.* (2013) 219 Cal.App.4th 355, 364.) Here, under either standard of review, the dependency court did not err.

Section 213.5, subdivision (a) provides in pertinent part: “[T]he juvenile court has exclusive jurisdiction to issue ex parte orders . . . enjoining any person from molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, . . . destroying the personal property, contacting, either directly or indirectly, by mail or otherwise, coming within a specified distance of, or disturbing the peace of the child or any other child in the household.” The issuance of such an order “does not require ‘evidence that the restrained person has previously molested, attacked, struck, sexually assaulted, stalked, or battered the child.’ [Citation.] Nor does it require evidence of a reasonable apprehension of future abuse. [Citation.]” (*In re C.Q.*, *supra*, 219 Cal.App.4th at p. 363.) “Monitored visitation of a child is not incompatible with a restraining order.” (*In re N.L.*, *supra*, 236 Cal.App.4th at p. 1466.)

Father’s argument is that there is no evidence in the record that he harmed or threaten to harm either of his children and

that his interaction with them has always been favorable. He contends his case is similar to *In re C.Q.*, *supra*, 219 Cal.App.4th 355, where the appellate court reversed a lower court finding that a restraining order was appropriate. That case involved a father who was the subject of a restraining order protecting his three children, ages 11, 12 and 16, from him. The father had struck the mother with a closed fist on her arm. Their 12-year-old daughter moved between them and asked the father to not hit the mother. The father then left the home. None of the children expressed fear of the father or wanted him to leave the home. (*Id.* at pp. 358-359.) The Court of Appeal concluded that this single incident of domestic violence between father and mother was insufficient evidence supporting the conclusion that the three minor children should be protected under the restraining order. (*Id.* at pp. 365-366.)

Here, the evidence before the trial court was quite different. Both Matthew and mother reported father had struck mother while she was pregnant with the two younger children. Mother stated father hit her on three occasions after the children were removed by the department. Father admitted to having been hospitalized as a minor for self-harming behavior and never sought treatment or received a diagnosis for any mental issues. The evidence also showed that father threatened to kill himself on multiple occasions and repeatedly threatened to harm Matthew. Mother stated she saw father using drugs, and father admitted to using drugs.

A dependency court could reasonably infer that father's drug usage, mental health issues, threats of harm to himself and Matthew, and past violence against mother while she was pregnant with Douglas Jr. and Marjorie posed a serious risk of



harm to the two very small children. The dependency court could also reasonably infer that father might threaten Douglas Jr. and Marjorie to coerce or pressure mother.

These facts are similar to *In re B.S.*, *supra*, 172 Cal.App.4th 183, where a father also asserted that there was insufficient evidence to support a juvenile court order prohibiting him from contacting his seven-month-old son except as required for court-ordered visitation. There the court observed that the father had committed various acts of domestic violence against the mother, had threatened to shoot the mother and a friend who had tried to help her during a violent episode, and had little ability to control himself when he was upset. His past behavior included physically assaulting the mother and throwing her down onto B.S., although he and the mother claimed that particular incident was an accident. The court held that because of this history the father might be a threat to his own child. It noted that “Such a threat could arise, even in the mother’s absence, if the father got angry with another adult or with B.S. himself. Even assuming an opposite inference might be equally reasonable, we are not authorized to second-guess the juvenile court on this point.” (*Id.* at p. 194.) It therefore upheld the restraining order protecting B.S.

The history of father’s behavior in the case before us is as egregious, if not more so, than in *In re B.S.* We therefore reach the same conclusion. The trial court could reasonably impose a restraining order requiring father to stay away from Douglas Jr. and Marjorie. Father has failed to demonstrate the dependency court erred by including Douglas Jr. and Marjorie in the restraining order.

#### **IV. DISPOSITION**

The order is affirmed.

LANDIN, J.\*

We concur:

KRIEGLER, Acting P.J.

BAKER, 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.