Filed 7/26/12 In re Julia C. 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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 JULIA C. et al., Persons Coming Under the Juvenile Court Law.	B235137
DANIEL C., Appellant, v. LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.	(Los Angeles County Super. Ct. No. CK73415)

APPEAL from an order of the Superior Court of Los Angeles County. Stephen Marpet, Juvenile Court Commissioner. Affirmed.

Karen B. Stalter, under appointment by the Court of Appeal, for Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, and Jeanette Cauble, Deputy County Counsel, for Respondent.

SUMMARY

The father, Daniel C., appeals from the juvenile court's July 13, 2011 permanent restraining order against him. The juvenile court enjoined the father from contacting mother and four children except for peaceful contact required for monitored visitation with children and ordered the father to remain 100 yards from mother and children, their house, mother's workplace, the children's school, mother's vehicle and their place of worship. Father's visitation was subject to a monitor and location approved by the Department of Children and Family Services (DCFS).

On appeal, the father challenges the sufficiency of the evidence in support of the permanent restraining order against him. We disagree and affirm the juvenile court's restraining order.

PROCEDURAL AND FACTUAL BACKGROUND

Daniel C. and the mother, Judy G., have four children: nine-year-old J.C., seven-year-old S.C., five-year-old G.C., and three-year-old C.C. (the children).

In prior proceedings initiated in June 2008, before the birth of C.C., the three older children were dependents of the juvenile court after the court sustained a Welfare and Institutions Code section 300 petition including allegations of violent altercations between the parents in the children's presence and Daniel's substance abuse and mental and emotional problems. The children were ordered suitably placed in September 2008 and returned to Judy's home in February 2009. In August 2009, the juvenile court terminated jurisdiction in the prior proceeding.

On March 23, 2010, the children again came to the attention of the DCFS when it received a hotline referral alleging Daniel physically assaulted Judy in the children's presence while under the influence of drugs. The referral alleged that Judy moved out of the home due to the domestic violence.

On April 9, 2010, a DCFS social worker arrived at the referral home address unannounced. The social worker found Judy with Daniel, although at the time Daniel

identified himself as "Daniel G.", a maternal cousin.[1] Judy denied the allegation in the hotline referral and stated that she and Daniel were not together and had been separated for two months and she had not had contact with Daniel. In her interview with the social worker, Judy stated the following: Two months earlier, on February 9, 2010, Judy arrived home with the children to find Daniel, who was not living with them, inside their former residence. Daniel's parents owned the home so Daniel felt he could come and go as he pleased. Judy asked Daniel to leave but he refused. They began to argue and Daniel punched Judy in the face. Daniel called the police and was taken to jail.

In her interview with the social worker, Judy stated that she was provided a temporary restraining order, apparently referring to the emergency protective order issued in the domestic violence criminal proceeding, but that she did not follow through with it because it was only valid for five days and Judy wanted to move as soon as possible and the temporary restraining order expired during the process of moving.

As part of its Detention Report, DCFS included a copy of a criminal protective order and of a police report. The criminal protective order was issued on February 11, 2010 (two days after Daniel's arrest), named Judy and all the children as protected persons, and expired three years from the date of issuance, or February 11, 2013. According to Judy's statements in the police report from the February 9, 2010 incident, Daniel and Judy argued about finances and alleged infidelity and Judy repeatedly told Daniel to leave and tried to push him out the door when Daniel started swinging at Judy with both hands, striking her face and scratching her neck. The police report also shows that S.C. told the police "'Daddy hit mommy,'" that J.C. said "'Mommy and daddy got into a fight and daddy made mommy cry when he hit her,'" and that the officers observed "swelling, redness and bruising" on Judy's cheek and a four-inch scratch across her neck.

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[1] In a telephone interview three days after the social worker's April 9, 2010 unannounced visit, Daniel admitted to the social worker that he was the man at Judy's home during the visit and that he was "Daniel G."

At the April 19, 2010 juvenile court hearing with Judy and Daniel present, mother's attorney stated that Judy had filed the paperwork for a restraining order earlier in the week and "did get a temporary restraining order."[2] Father's attorney indicated that Daniel was unaware that the criminal protective order was in place for three years, but that Daniel had talked to his criminal attorney since then and now understood that the criminal restraining order remained in effect until 2013. Father's attorney also indicated that Daniel "expects he will be spending about . . . two to three years in custody" and "will abide by the restraining order and the criminal protective order that is in place until 2013."

The DCFS's attorney indicated that the February 9, 2010 incident was not cross-reported to DCFS.

At the April 19, 2010 hearing, the juvenile court noted that "[u]nbeknownst to [Judy], there was a restraining order that father had. She didn't know it existed. All she needed to do when father walked in that door that day was pick up the phone and call the police." After mother's attorney noted that Judy had filed for a restraining order and it was set for hearing, the court responded "Well, we can certainly have the restraining order heard here. It is going to be duplicative, but it probably isn't as to the children." The court also stated, "So, understand, you now are restrained - - Mr. [C.], you are not being punished." The court directed the mother to file a new restraining order that day and set the hearing date by stipulation. Mother's attorney filed a new temporary restraining order on April 20, 2010, indicating that the TRO was in place from April 19, 2010 to May 12, 2010 by stipulation.

In an April 29, 2010 interview by a social worker, Daniel denied ever being the perpetrator of domestic violence. In an April 30, 2010 interview, J.C. told a social worker that her mother would hit her dad and her dad slapped her mom and she saw the "'hand mark'" on her mother's cheek.

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[2] Judy had apparently obtained a domestic violence temporary restraining order from Department 8 of the Superior Court. The court had the clerk contact Department 8 to have the restraining order heard by the juvenile court.

At the May 12, 2010 hearing which Daniel and his attorney attended, the court indicated it would reissue the TRO and keep it in place until the June 17, 2010 trial date. Daniel asked if the restraining order was "just for the mother but not the kids" and the court explained it was for both mother and kids, but he would still have the right to monitored visits, but could not be "around the school, child care and place of residence."

Due to the court's schedule, the June 17, 2010 trial was put over until June 22, 2010 and the restraining order was reissued until the new trial date. On the June 17, 2010 original trial date, both Daniel and Judy were present when the court stated to Daniel that the "restraining order, sir, is going to go over to that date." Daniel's attorney then stated "And to mother, there should be two restraining orders" and the court responded that there was just one and in the meantime to "just stay away." The minute order for June 17, 2010 indicates that the "mother to also stay away from the father" and all restraining orders would be put over and addressed on June 22, 2010.

At the June 22, 2010 hearing, both Daniel and Judy were present and waived their right to trial. During the hearing, the parties discussed Daniel's participation in domestic violence programs as part of his criminal case. The court scheduled a non-appearance progress report hearing for August 31, 2010 to see how parents are doing and for update on Daniel's criminal proceedings. The hearing did not address the request for a restraining order and did not reissue the temporary restraining order.

At the scheduled August 31, 2010 non-appearance hearing, with neither parent present, counsel for both Daniel and Judy orally asked for restraining orders against the other. According to Daniel's counsel, Daniel alleged that Judy "continues to show up and harass him and his family outside of his house, threatening phone calls until she stole his cell phone a couple weeks ago." According to Judy's counsel, Judy alleged that Daniel "had been texting her and calling her repeatedly, harassing her. The text – many of the texts were of a sexual nature. Many were threatening that if she didn't come back to him, he was going to hurt himself. She changed her number. . . . She also is saying that he is waiting outside her home." The court noted that "when I get documents before me with declarations and statements, I'll certainly address it, but, at this point, I'm not

going to issue restraining orders on anybody. I mean, just allegations by attorneys telling me what their clients told them to tell me." The court later stated "we were here 6-28 [sic], and I had temporary restraining orders, and I took them off calendar. So do it the right way, and we can certainly address it." Daniel's attorney asked "would the court consider issuing mutual restraining orders in this case?" and the court stated "I'll issue stay-away orders for mother and father to stay away from each other, but, frankly, I don't have anything before me other than mother's attorney, father's attorney. We had this case already, the restraining order that we took off calendar last time we were here on 6-22, so –."

On December 6, 2010, Daniel and Judy were present for a six-month review hearing. The court noted Judy's compliance with case plan and ordered the children placed at home with Judy. The court noted Daniel's partial compliance and ordered six months more of reunification services. The court told Daniel "Let's get those programs resolved and get back so we can liberalize visits." Daniel then stated that the issue was with the program intake questions, and the court noted that if Daniel kept saying he was the victim he would not be allowed in the perpetrators program, and Daniel responded "I can't lie to them." The court stated "if you want to enroll and complete a program of a perpetrators 52-week program, then and only then will the court ever consider even liberalizing your visits."

In a June 6, 2011 Status Review Report, a DCFS social worker stated that there "have been a few occasions where father has been going to mother's home on his non-visiting days to see the children. [Children J.C. and S.C.] have stated to this CSW that father gets very mad and begins to yell at them. Child [J.C.] states that father came to visit her outside mother's home and got mad and told [J.C.] that he will not be seeing her anymore because mother doesn't love him and doesn't want him to see them."

According to the report, Daniel told the social worker that when he stopped by the home on April 20, 2011, he heard C.C. crying inside, but Judy would not let him inside the home. Daniel also contacted the social worker at "various times complaining about the visits and how he doesn't feel safe to pick up the girls at home" and was told by

social worker he should not be picking the children up from mother's home and that "he should continue to pick up the girls at [their school]."

The June 6, 2011 report also stated that on April 20, 2011, J.C. left the social worker a voice message stating that she never wanted to see her father again because he said he was not allowed to see them anymore and said "awful things." J.C. said that Daniel told J.C. (who was 7 years old at the time) that she was going to become a teen mom and do drugs if she continued to live with Judy because Judy was not a good mother. J.C. stated that she started to cry and did not understand why her father says mean things to her.

S.C. (who was five years old at the time) stated that she doesn't understand why her father sometimes says mean things to them about their mother and about how they are going to be "'young teen mothers when they grow up.'"

At the June 6, 2011 hearing, Daniel and children were present and Judy arrived during the proceedings. Counsel for the children indicated that the children did not want the court to terminate jurisdiction, that the children felt there were ongoing incidents between the parents, including the father coming to the home and knocking on windows, and that the children did not feel safe and wanted the social worker to continue to check on them. The court agreed and responded "I'm going to issue a temporary restraining order today. We had one in place and, evidently, that went away." Counsel for DCFS noted that the last time a temporary restraining order was requested, "the court was looking for declarations, but, at this point, it would seem appropriate to reissue." The court then issued a temporary restraining order as to Daniel, restraining him "from 100 yards of the children's home, mother's home, children's school, place of worship, their phone contact." Daniel responded that he had not been able to see his kids in three months, that when he went "over for the visits to pick them up, they won't answer the door. They won't come out." Daniel stated that his criminal "case was dismissed due to false statements made by the mother." The court ordered the matter put over until July 13, 2011 and, by stipulation, extended the restraining order to that date. The minute order from the hearing shows that the court also ordered that Daniel continue to have

monitored visits, but also ordered the father to not visit the children at the mother's family home.

In a July 13, 2011 Interim Review Report, the social worker reported that S.C. stated that "her father came at night and knocked on the window and was crying because her mother would not let him inside the house." G.C. made a similar report. The report also indicates that Judy told the social worker that she saw Daniel "cruising around the house" and she contacted the police but was unable to find a copy of the minute order to give to officers; the officers left a business card with notations dated June 28, 2011.

At the July 13, 2011 termination hearing, at which Judy and Daniel were present, Judy's counsel stated that "[t]here is a restraining order in place. According to mother, the father has continued to violate that restraining order. She has seen the father and so have her family members seen the father driving up and down her street, outside of her house. [¶] He also has continued to text her. She showed me countless texts from him from an inappropriate name. At this time, I don't know what more the department can do." After Daniel stated that he had not completed his 52-week class, referring apparently to his domestic violence program, and was "not going to", the court found that he was not in compliance with the case plan, terminated his reunification services, and issued a permanent restraining order for three years. Neither Daniel nor his counsel voiced any objection.

On July 13, 2011, the juvenile court issued the restraining order at issue in this appeal. The order expires on July 13, 2014 and requires Daniel to stay at least 100 yards from the children's school and home except for court-ordered visitation supervised by a DCFS-approved monitor at a DCFS-approved location.

Daniel timely appealed from the July 13, 2011 order.[3]

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[3] After the filing of this appeal, Daniel filed a second appeal from the juvenile court's findings entered at a Welfare and Institutions Code section 364 review. (See *In re Julia C.*, No. B239146.) The second appeal was dismissed as abandoned after appointed counsel filed an appellate brief stating, pursuant to *In re Phoenix H.* (2009) 47 Cal.4th 835, that she was unable to identify any arguable issues and Daniel did not present any issues to the Court.

DISCUSSION

On appeal, Daniel contends that the juvenile court's July 13, 2011 permanent restraining order was not supported by substantial evidence. We disagree and affirm.

The juvenile court's issuance of the July 13, 2011 restraining order will not be disturbed if substantial evidence supports the order. (*In re B.S., Jr.* (2009) 172 Cal.App.4th 183, 193; *In re Brittany K.* (2005) 127 Cal.App.4th 1497, 1512; *In re Cassandra B.* (2004) 125 Cal.App.4th 199, 210-211.) We draw all reasonable inferences from the evidence to support the findings and adhere to the principle that issues of fact, weight, and credibility are the juvenile court's provinces. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393; *In re Shelley J.* (1998) 68 Cal.App.4th 322, 329.)

Welfare and Institutions Code section 213.5 provides for the issuance of a restraining order by the dependency court. A person need not have engaged in violent behavior to be subject to a restraining order. (*In re Cassandra B., supra*, 125 Cal.App.4th at p. 211.) "Specifically, 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." (*Ibid.*) "Molesting" does not refer exclusively to sexual misconduct, but includes "conduct designed to disturb, irritate, offend, injure, or at least tend to injure, another person." (*Id.* at p. 212, quoting *People v. Carskaddon* (1957) 49 Cal.2d 423, 426.) The term "stalking" "refers broadly to conduct that is designed to 'follow' a particular person in a more general sense, as in to pursue, monitor, watch or keep that person under surveillance for no legitimate purpose, and with the consequent effect of seriously harassing, alarming, annoying, tormenting, or terrorizing the person being followed, pursued, monitored, watched or kept under surveillance." (*In re Brittany K., supra*, 127 Cal.App.4th at p. 1511.)

Here, there was evidence of the father's behavior that could reasonably be characterized as molesting or stalking. The DCFS June 6, 2011 and July 13, 2011 reports show that Daniel was going to Judy's home on his non-visiting days as well as at night, one time getting mad and yelling at the children and another time knocking on the window and crying so that the children were upset, as well as attempting to pick up the

children for his visits from their home even though the DCFS-approved location for Daniel to pick up was the school. The reports also show that Daniel was apparently driving by the house repeatedly including late at night. In addition, the reports indicate that Daniel was saying "mean" and "awful things" to J.C. and S.C., including telling the then seven-year-old and five-year olds that they were going to end up as teenage mothers and doing drugs. Thus, the father exhibited behavior that the juvenile court could reasonably consider to be stalking and molesting conduct and the juvenile court could reasonably conclude that such behavior was likely to continue absent a restraining order. Even assuming opposite inferences might be equally reasonable, "we are not authorized to second-guess the juvenile court on this point." (*In re B.S., Jr., supra*, 172 Cal.App.4th at p. 194.)

Daniel, however, argues that there was not sufficient evidence because "of the lack of verified complaints, affidavits, or witness testimony under oath." Daniel bases this argument on the reference in Welfare and Institutions Code section 213.5, subdivision (a), to Code of Civil Procedure section 527. When the juvenile court issued the restraining order, section 213.5, subdivision (a), provided: "[a]fter a petition has been filed pursuant to Section 311 to declare a child a dependent child of the juvenile court, and until the time that the petition is dismissed or dependency is terminated, upon application in the manner provided by Section 527 of the Code of Civil Procedure, the juvenile court may issue ex parte orders (1) enjoining any person from molesting, attacking, striking, sexually assaulting, stalking, or battering the child or any other child in the household; (2) excluding any person from the dwelling of the person who has care, custody, and control of the child; and (3) enjoining any person from behavior, including contacting, threatening, or disturbing the peace of the child, that the court determines is necessary to effectuate orders under paragraph (1) or (2). A court may also issue an ex parte order enjoining any person from contacting, threatening, molesting, attacking, striking, sexually assaulting, stalking, battering, or disturbing the peace of any parent, legal guardian, or current caretaker of the child, regardless of whether the child resides with that parent, legal guardian, or current caretaker, upon application in the manner

provided by Section 527 of the Code of Civil Procedure." (Welf. & Inst. Code, former § 213.5, subd. (a).) On its face, however, former section 213.5's reference to Code of Civil Procedure section 527 is limited to the context of ex parte restraining orders. While Code of Civil Procedure section 527, subdivision (c), states that "[n]o temporary restraining order shall be granted without notice to the opposing party" unless, *inter alia*, facts justifying the order are "shown by affidavit or verified complaint," this requirement does not apply here where both Daniel and his counsel were present at the June 6, 2011 and July 13, 2011 hearings.

Rather the juvenile court's issuance of its restraining order was governed by former rule 5.630 of the California Rules of Court, rule 5.630. At the time the restraining order was issued, the rule stated: "[p]roof may be 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, former rule 5.630(h)(2).) Thus, evidence to support the restraining order may be found in the contents of the DCFS file, including the social workers' reports, that were before the juvenile court.

Finally, we note that Daniel argues that even though a criminal protective order was in effect until February 2013, the "juvenile court behaved as if there were no order in place." To the extent that Daniel is challenging the authority of the juvenile court to issue an additional restraining order, we reject the contention as "the Legislature has clearly provided that a criminal court restraining order and a juvenile court restraining order must be allowed to coexist." (*In re B.S., Jr.*, *supra*, 172 Cal.App.4th at p. 193.)

DISPOSITION

The July 13, 2011 restraining order is affirmed.

NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

MALLANO, P. J.

ROTHSCHILD, J.