IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re E.F., a Person Coming Under the Juvenile Court Law.

The People,

Respondent,

v.

E.F.,

Petitioner.

Case No. S260839

2d District, Division 2 No. B295755 LASC No. PJ53161

Answer Brief on the Merits

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ANSWER BRIEF ON THE MERITS

INTRODUCTION

E.F. (hereafter Petitioner) petitions this Court for review of the decision of Division Two of the Second District Court of the Appeal, filed February 13, 2020, which affirmed the judgment below in full. In a published opinion¹, the appellate court held that the People were not required to provide Petitioner with prehearing notice of intent to seek temporary restraining order (hereafter TRO) and disagreed with a recently published opinion in *In re L.W.* (2020) 44 Cal.App.5th 44 (hereafter *L.W.*) which held that advance notice is required.

^{1.} In re E.F. (2020) 45 Cal.App.5th 216 (hereafter E.F.).

The appellate court exercised its discretion to review Petitioner's procedural challenge that the juvenile court erred in issuing the TRO without advance notice despite the mootness of Petitioner's challenge. (*O'Kane v. Irvine* (1996) 47 Cal.App.4th 207, 210, fn. 4 [an "appeal from [a] TRO, following [a] trial court's grant of [a longer] restraining order, is moot"].)

Petitioner contends that pursuant to a plain reading of Welfare and Institutions Code ² section 213.5, subdivision (b) and Code of Civil Procedure (hereafter CCP) section 527, subdivision (c), as well as due process concerns, some notice of the prosecution's intention to seek the imposed TRO was due Petitioner prior to its imposition and accordingly, the relevant findings and holdings of Division Two of the Second District should be reversed. (Petitioner's Brief on the Merits (hereafter PBM), p. 7.) These claims lack merit, and this Court should affirm the appellate court's findings and holdings.

Advance notice for a TRO is not expressly required by either section 213.5 or CCP section 527. In addition, the applicable Rule of Court provides in pertinent part that where a petition has been filed pursuant to section 602, "the court may issue restraining orders as provided in section 213.5" and that a

^{2.} Unless otherwise indicated, all statutory references are to the Welfare and Institutions Code.

TRO application "may be submitted without notice." (Cal. Rules of Court, rule 5.630(a) and (d).)

The court in *In re Jonathan V.* (2018) 19 Cal.App.5th 236, 241-22, (hereafter *Jonathan V.*) expressly distinguished between TROs and protective orders and held that advance notice is only required for restraining orders and not TROs. The court stated, "When a party seeks a temporary restraining order, subdivision (c) of section 213.5 permits the juvenile court to issue a temporary restraining order without notice or a hearing. (See also Cal. Rules of Court, rule 5.630(b) and (d) (rule 5.630).)" (*Jonathan V., supra*, 19 Cal.App.5th at p. 241.)

L.W. was wrongly decided because despite the clear language in Jonathan V. distinguishing restraining orders from TROs, the court in L.W. improperly extended Jonathan V.'s holding and held that same-day notice was not sufficient notice for TROs. This improper extension of Jonathan V.'s holding contravenes the plain language of section 213.5 which expressly provides for two types of restraining orders: (1) temporary orders that may be issued without notice and a hearing, and which may remain in effect for a maximum of 25 days (§ 213.5, subd. (c)); and (2) restraining orders that may be issued after notice and a hearing and which can remain in effect for a period of up to three years. (Id., subd. (d).)

The Court of Appeal did not err in affirming the juvenile court's issuance of the TRO. This Court should affirm the appellate court's findings and holdings and find that *L.W.* was wrongly decided.

ISSUE PRESENTED

When the prosecution moves for a TRO in a juvenile wardship proceeding without having given advance notice to the minor, must it be shown that: (a) "great or irreparable injury will result" before the matter could be heard with proper notice, and (b) the prosecution notified the minor within a reasonable time prior to the hearing regarding when and where the order would be sought, or attempted to notify the minor, or for specified reasons should not have been required to notify the minor?

STATEMENT OF THE CASE AND FACTS

On January 28, 2019, a section 602 petition was filed in the Los Angeles County Juvenile court alleging that on or about December 7, 2018, Petitioner was in violation of Penal Code section 347, subdivision (a), commonly called poisoning, a felony. (Clerk's Transcript with a Notice of Appeal dated April 17, 2019 (hereafter CT), pp. 1-3.)

On February 11, 2019, Petitioner denied the allegation. (CT, p. 8.) The People requested a TRO. (Reporter's Transcript of Proceedings on February 11, 2019 (hereafter RT 2/11/2019), pp.

3:21-22, 5:20-27.) The defense counsel objected to the TRO. (*Id.* at pp. 3:23-5:5, 6:1-3.) The defense counsel argued that the People had failed to comply with CCP section 527 because she was not given notice of the request for a TRO. Since she did not have notice, the defense counsel argued that the People violated CCP 527 by not submitting an affidavit or verified complaint that provided the court information that great or irreparable injury will result to the applicant. (*Id.* at pp. 7:4-8:18.)

The juvenile court, the People and the defense counsel engaged in the following colloquy in pertinent part:

THE PEOPLE: YOUR HONOR, TO RESPOND TO MS. CHOI'S COMMENTS, I DIDN'T KNOW WHO WAS EVEN ASSIGNED TO THIS CASE UNTIL MS. CHOI SAT DOWN JUST BEFORE THE CASE WAS CALLED AND SAID THAT WE ARE CALLING THIS CASE.

SO, YOU KNOW, I GUESS, ANY ALLEGATION THAT I DIDN'T INFORM HER IN TIME IS PARTIALLY DUE TO THE FACT THAT SHE NEVER CHECKED IN WITH ME UNTIL 11:00 SOMETHING A.M. RIGHT WHEN THE CASE WAS CALLED.

ADDITIONALLY, THE VICTIM IN THIS CASE SPOKE WITH LAW ENFORCEMENT AND, IN FACT, WROTE A STATEMENT TO LAW ENFORCEMENT ABOUT WHAT HAPPENED.

FOR THE COURT'S INFORMATION, THE MINOR HEATED UP A CUP OF NOODLES IN A MICROWAVE WITH BLEACH IN IT AND HANDED IT TO THE MINOR FOR THE MINOR TO CONSUME - - QUOTING WHAT THE MINOR SAID ABOUT KNOWING THE VICTIM WOULD GET SICK RATHER [SIC].

WE DON'T HAVE INFORMATION AS TO WHY THE MINOR DID THAT AT THIS TIME, AND IT CONCERNS THE PEOPLE. IT CONCERNS THE PEOPLE THAT THE VICTIM IN THIS CASE WHO IS ALSO UNDER THE AGE OF 18 IS POTENTIALLY IN HARM'S WAY WITH THE MINOR BEING OUT OF CUSTODY. SO THAT IS WHY THE PEOPLE ARE REQUESTING THE TEMPORARY RESTRAINING ORDER. . .

(RT 2/11/2019, pp. 8:20-9:15.)

DEFENSE COUNSEL: ... SO THE ALLEGATIONS ARE THE ALLEGATIONS. THERE IS NOTHING INDICATING, FOR EXAMPLE, MY CLIENT REACHED OUT TO THE COMPLAINING WITNESS AND THREATENED TO HURT THAT PERSON PRIOR TO THE DATE OF THE RESTRAINING ORDER HEARING.

AND ALSO, I WOULD THINK THAT PEOPLE WOULD HAVE TO TESTIFY UNDER OATH BECAUSE THAT'S WHAT THE EQUIVALENT IS FOR THE AFFIDAVIT OR VERIFIED COMPLAINT, AND THE INFORMATION THE PEOPLE PROVIDED TO THE COURT WAS NOT UNDER OATH.

SO, AGAIN, IT STILL DOES NOT MEET THE REQUIREMENTS FOR TRO UNDER CCP 527(C).

(*Id.* at pp. 10:1-12.)

THE JUVENILE COURT: WELL, I NOTE THE PETITION WAS FILED JANUARY 28^{TH} OF 2019, ALLEGING OFFENSE OCCURRED ON OR ABOUT DECEMBER 7, 2018.

WE NOTE THE CHARGE ALLEGED IN THE PETITION IS A VIOLATION OF A FELONY, PENAL CODE SECTION 347(A), COMMONLY CALLED AS POISONING. WE NOTE THAT THE MINOR WAS CITED TO APPEAR IN THIS COURTROOM ON DECEMBER 13. CITATION WAS GIVEN TO HER AND HER FAMILY TO APPEAR HERE TODAY.

WE NOTE THAT THE PEOPLE PROVIDED TO THE COURT A COPY OF THE ARREST REPORT WHICH INCLUDES A SUMMARY OF THE ACTIVITY AND ALLEGED STATEMENT MADE BY THE SO-CALLED VICTIM BY THE MINOR.

THE COURT FINDS SUBSTANTIAL COMPLIANCE AND WILL TODAY SIGN THE TEMPORARY RESTRAINING ORDER KNOWING WE WILL HAVE A FURTHER HEARING MARCH 5.

(*Id.* at pp. 10:13-10:28.)

The juvenile court imposed a TRO on Petitioner protecting victim, L.S., using Form JV-250 and set a noticed protective order hearing for March 5, 2019. (CT, pp. 9-12.) Petitioner filed a timely Notice of Appeal on February 14, 2019. (*Id.* at pp. 13-14.) On March 5, 2019, the hearing was continued to April 2, 2019 and the juvenile court ordered that the TRO remain in full force and effect until the next court date. (*Id.* at p. 27.)

On April 2, 2019, L.S. testified that on December 7, 2018, L.S. and Petitioner were at Verdugo Hills High School in an art class. (Reporter's Transcript of Proceedings on April 2, 2019 (hereafter RT 4/2/2019), p. 4:8-25.) Petitioner had a Cup of Noodles and offered to make one for L.S. (*Id.* at p. 5:1-2.) Petitioner microwaved it and gave it to L.S. (*Id.* at p. 5:3-6.) L.S. was about to drink the broth, but didn't because it smelled like bleach. (*Id.* at p. 5:6-8, 5:18-22.) L.S. asked Petitioner, "What's in it?" (*Id.* at p. 5:8-9.) Petitioner wasn't paying attention to L.S. and

didn't answer the question. L.S. threw away the Cup of Noodles. (*Id.* at p. 5:10-12.)

After the hearing, the juvenile court imposed a protective order on Petitioner protecting victim, L.S., using Form JV-255. (CT, pp. 53-56.) Petitioner filed a timely Notice of Appeal on April 17, 2019. (*Id.* at pp. 58-59.) The two appeals were consolidated on May 13, 2019.

ARGUMENT

I. STANDARD OF REVIEW

On appeal from the issuance of a restraining order by the juvenile court pursuant to section 213.5, appellate courts apply the substantial evidence standard to determine whether sufficient facts supported the factual findings in support of a restraining order and the abuse of discretion standard to determine whether the court properly issued the order. (*In re Carlos H.* (2016) 5 Cal.App.5th 861, 866.) However, the de novo standard of review applies to issues of statutory interpretation. (*In re Cassandra B.* (2004) 125 Cal.App.4th 199, 210; *Jonathan V., supra*, 19 Cal.App.5th at p. 241.) Because Petitioner's contention turns on statutory interpretation, this Court should apply the de novo standard of review.

II. PETITIONER WAS PROVIDED SUFFICIENT NOTICE OF THE PEOPLE'S INTENTION TO SEEK A TEMPORARY PROTECTIVE ORDER

A. Same-Day Notice is Sufficient Notice for TROs

Section 213.5 empowers the juvenile court to issue a wide range of restraining orders in connection to petitions brought pursuant to section 602. It provides for two types of restraining orders: (1) temporary orders that may be issued without notice and a hearing, and which may remain in effect for a maximum of 25 days (§ 213.5, subd. (c)); and (2) restraining orders that may be issued after notice and a hearing and which can remain in effect for a period of up to three years. (*Id.*, subd. (d).)

Subdivision (b) of section 213.5 authorizes both types of restraining orders and requires an "application in the manner provided by Section 527 of the Code of Civil Procedure." (§ 213.5, subd. (b).) CCP section 527, subdivisions (c)(1) and (2) provides:

- (c) No temporary restraining order shall be granted without notice to the opposing party, unless both of the following requirements are satisfied:
- (1) It appears from facts shown by affidavit or by the verified complaint that great or irreparable injury will result to the applicant before the matter can be heard on notice.
- (2) The applicant or the applicant's attorney certifies one of the following to the court under oath:

- (A) That within a reasonable time prior to the application the applicant informed the opposing party or the opposing party's attorney at what time and where the application would be made.
- (B) That the applicant in good faith attempted but was unable to inform the opposing party and the opposing party's attorney, specifying the efforts made to contact them.
- (C) That for reasons specified the applicant should not be required to so inform the opposing party or the opposing party's attorney.

The applicable Rule of Court provides in pertinent part that where a petition has been filed pursuant to section 602, "the court may issue restraining orders as provided in section 213.5" and that a TRO application "may be submitted without notice." (Cal. Rules of Court, rule 5.630(a) and (d).)

The plain language of the statutes and Rule of Court authorize the juvenile court to issue a TRO "without notice" in cases where the prosecutor does not give advance notice of his or her intent to do so. (*People v. Maultsby* (2012) 53 Cal.4th 296, 299 ["The statute's plain language controls unless its words are ambiguous."].) Advance notice for a TRO is not expressly required in section 213.5, CCP section 527 and Rules of Court, rule 5.630(a) and (d). Same-day notice is sufficient to satisfy the notice requirement for TROs under CCP 527.

The court in *Jonathan V*. expressly distinguished between TROs and restraining orders and held that advance notice was only required for restraining orders and not TROs. The court stated in pertinent part:

When a party seeks a temporary restraining order, subdivision (c) of section 213.5 permits the juvenile court to issue a temporary restraining order without notice or a hearing. (See also Cal. Rules of Court, rule 5.630(b) and (d) (rule 5.630).)

(Jonathan V., supra, 19 Cal.App.5th at p. 241.)

The restraining order in this case is not a temporary restraining order. It was not issued on form JV-250, the form designated for temporary restraining orders, but rather on form JV-255, the form used to issue restraining orders. And the order is effective for a period of two years, from February 10, 2016 through February 10, 2018, well beyond the 21 or 25 days permitted for a temporary restraining order. Before the court can issue such an order, however, subdivision (d) of section 213.5 requires notice and a hearing. Jonathan received neither.

(*Id.* at p. 242.)

While the specific amount of time necessary to satisfy the "notice" requirement is not delineated in section 213.5, more than courtroom notice is required. (See *Babalola, supra*, 192 Cal.App.4th at p. 965, 121 Cal.Rptr.3d 740.) The issuance of a two-year restraining order has substantial consequences. A violation of such a restraining order could subject Jonathan to a new delinquency or criminal proceeding.

(*Id.* at p. 245.)

Not requiring advance notice in TROs accords with due process because TROs issued at arraignments are not literally "without notice", they are issued without notice in advance of the hearing. Notice is sufficient if provided on the day of the hearing before the court hears the matter and issues the TRO. When a question of statutory interpretation implicates constitutional issues, we are guided by the precept that "'[i]f a statute is susceptible of two constructions, one of which will render it constitutional and the other unconstitutional in whole or in part, or raise serious and doubtful constitutional questions, the court will adopt the construction which, without doing violence to the reasonable meaning of the language used, will render it valid in its entirety, or free from doubt as to its constitutionality, even though the other construction is equally reasonable.'" (*People v. Gutierrez* (2014) 58 Cal. 4th 1354, 1373.)

A minor appearing at arraignment with counsel is still notified in court of the People's request for a TRO and has an opportunity to oppose its issuance. There is no due process violation because the minor has notice and the opportunity to be heard. (*Today's Fresh Start, Inc. v. Los Angeles County Office of Education* (2013) 57 Cal.4th 197, 212.)

In the present case, the TRO was not issued "without notice." Petitioner was notified in court of the People's request for

a TRO and her counsel argued against its issuance. (RT 2/11/2019, pp. 3:21-5:5, 5:20-6:3, 7:4-8:18, 9:19-10:12.) Thus, the People were not required to submit a sworn affidavit or verified complaint articulating concern of great or irreparable injury that could result without the imposition of the restraining order pursuant to CCP section 527. The juvenile court imposed a TRO on Petitioner protecting victim, L.S., using the proper form, Form JV-250, and set a noticed protective order hearing for March 5, 2019.

For the reasons set forth, the appellate court did not err in affirming the juvenile court's issuance of the TRO.

B. L.W.'s Improper Extension of Jonathan V.'s Holding Contravenes the Plain Language of Section 213.5

Petitioner cites *L.W.* and contends that prior to the issuance of a TRO, some notice of the intent to seek the order must be provided. (PBM, pp. 5-14.) Despite the clear language in *Jonathan V.* distinguishing restraining orders from TROs, the court in *L.W.* improperly extended *Jonathan V.*'s holding requiring advance notice prior to the issuance of a restraining order and held that same-day courtroom notice was not sufficient notice for TROs. The court in *L.W.* stated:

"While the specific amount of time necessary to satisfy the 'notice' requirement is not delineated in section 213.5, more than courtroom notice is required. [Citation.]" (*Jonathan V., supra,* 19 Cal.App.5th at p. 245, 228 Cal.Rptr.3d 161.) Because

the People presented no evidence of an emergency or other urgency and made no attempt to give appellant prior notice of their intent to seek the temporary restraining orders, the court erred in issuing those orders without notice.

(L.W., supra, 44 Cal.App.5th at p. 51.)

L.W. was wrongly decided because same-day notice is sufficient notice for TROs. L.W.'s improper extension of Jonathan V.'s holding contravenes the plain language of section 213.5 which expressly authorizes two types of restraining orders: (1) temporary orders that may be issued without notice and a hearing, and which may remain in effect for a maximum of 25 days (§ 213.5, subd. (c)); and (2) restraining orders that may be issued after notice and a hearing and which can remain in effect for a period of up to three years. (Id., subd. (d).) Statutes must be read as a whole so that all parts are harmonized and given effect and avoid interpretations that render any part of a statute superfluous. (Ste. Marie v. Riverside County Regional Park & Open-Space Dist. (2009) 46 Cal.4th 282, 289; People v. Villatoro (2012) 54 Cal.4th 1152, 1173.)

Requiring more than same-day notice for TROs makes the language of section 213.5, subdivision (c)(1) that TROs may be issued "without notice" superfluous. TROs are distinguished from restraining orders because TROs are temporary by their nature and are subject to a noticed formal hearing for the restraining

order. TROs are meant to be used in more emergency situations for the protection of the public for a limited time

The appellate court in the present case noted that none of the cases that Petitioner cited in support of her argument that advance notice is required involve TROs. (*E.F.*, supra, 45 Cal.App.5th at pp. 221-222.) The appellate court stated that Jonathan V. was careful to point out that "[t]he restraining order in this case is not a temporary restraining order." (*Id.* at p. 222.) The appellate court properly limited Jonathan V.'s holding to restraining orders and refused to extend the advance notice requirement to TROs because that would contravene the plain language of section 213.5.

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CONCLUSION

For the reasons set forth, the Court of Appeal did not err in affirming the juvenile court's issuance of the TRO. There appears to be a conflict between this case and *L.W.* Courts need guidance in the future as to which rule to apply. For this reason, the Court should affirm the appellate court's findings and holdings and find that *L.W.* was wrongly decided.

Respectfully submitted,

JACKIE LACEY
District Attorney of
Los Angeles County

By ____/S/____

JOHN POMEROY Deputy District Attorney

GRACE SHIN
Deputy District Attorney

Attorneys for Respondent

CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies that pursuant to Rule 8.504(d)(1) of the California Rules of Court, the enclosed **Answer Brief on the Merits** is produced using 13-point Roman type, and contains approximately 3,209 words, including footnotes, which is fewer than the 8,400 words permitted by this rule. Counsel relies on the word count of the computer program used to prepare this brief.

Dated: This 4th day of September, 2020

/S/
GRACE SHIN
Deputy District Attorney

DECLARATION OF ELECTRONIC SERVICE VIA TRUEFILING IN RE E.F., S260839; 2D DIST. NO. B295755; LASC NO. PJ53161

The undersigned declares under the penalty of perjury that the following is true and correct:

I am over eighteen years of age, not a party to the within cause and employed in the Office of the District Attorney of Los Angeles County with offices at 320 West Temple Street, Suite 540, Los Angeles, California 90012. On the date of execution hereof, I served the attached document entitled **Answer Brief on the**Merits via TrueFiling to the following recipients:

Office of the Attorney General 300 South Spring Street Los Angeles, California 90013 docketinglaawt@doj.ca.gov

Court of Appeal Second District Court of Appeal Division Two 300 South Spring Street Los Angeles, California 90013 (Via automatic service through TrueFiling)

Executed on September 4, 2020, at Los Angeles, California.

/S/ MONICA TSAI-CHEN

DECLARATION OF SERVICE BY MAIL IN RE E.F., S260839; 2D DIST. NO. B295755; LASC NO. PJ53161

The undersigned declares under the penalty of perjury that the following is true and correct:

I am over eighteen years of age, not a party to the within cause and employed in the Office of the District Attorney of Los Angeles County with offices at 320 West Temple Street, Suite 540, Los Angeles, California 90012. On the date of execution hereof, I served the attached **Answer Brief on the Merits** by depositing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail in the County of Los Angeles, California, addressed as follows:

HONORABLE JUDGE MORTON ROCHMAN of the Los Angeles Superior Court Sylmar Juvenile Courthouse, Department 279 16350 Filbert Street Sylmar, CA 91342

COURTNEY M. SELAN 11664 National Boulevard, Suite 258 Los Angeles, CA 90064

Attorney for E.F.

Executed on September 4, 2020, at Los Angeles, California.

/S/ MONICA TSAI-CHEN

Supreme Court of California

Jorge E. Navarrete, Clerk and Executive Officer of the Court

Electronically FILED on 9/4/2020 by M. Chang, Deputy Clerk

STATE OF CALIFORNIA

Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA Supreme Court of California

Case Name: IN RE E.F.
Case Number: S260839
Lower Court Case Number: B295755

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Los Angeles District Attorney

Law Firm