

IN THE SUPREME COURT FOR THE STATE OF CALIFORNIA

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

_____)	Supreme Court
THE PEOPLE OF)	S260839
THE STATE OF CALIFORNIA,)	
)	
Plaintiff and Respondent,)	2d District Criminal
)	Div 2 B295755
v.)	
)	Los Angeles County
E. F.,)	Juv. Delinquency
)	PJ53161
Defendant and Appellant/Petitioner.)	
_____)	

HONORABLE MORTON ROCHMAN, JUDGE PRESIDING

PETITIONER’S REPLY BRIEF ON THE MERITS

Courtney M. Selan, Attorney at Law
California State Bar Number 236770
11664 National Boulevard, Suite 258
Los Angeles, California 90064
Telephone & Facsimile (310) 452-6870
Electronic Mail: courtneymselan@yahoo.com
By Appointment of the California Supreme Court
Independently Assigned by the California Appellate Project

Attorney for Appellant/Petitioner, E. F.

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PETITIONER'S REPLY BRIEF ON THE MERITS

INTRODUCTION

Petitioner does not intend to repeat the arguments and authorities presented in the Brief on the Merits. This Reply Brief on the Merits is limited to only those issues set forth in the Answer Brief on the Merits that require further comment. Any failure to repeat arguments or authorities advanced in the Brief on the Merits, or to reply to any specific point raised in the Answer Brief on the Merits, is not intended as a concession or waiver, but reflects only petitioner's determination that the matter has been sufficiently addressed.

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FACTUAL SUMMARY

At the citation hearing of February 11, 2019, the prosecution asked the juvenile court to impose a temporary restraining order (hereinafter, “TRO”) on petitioner, pending her adjudication. (Vol. 1 RT 3, 5.) The defense objected because the requirements of the California Code of Civil Procedure had not been met; specifically, the defense had not been provided with any notice by the prosecution of its intention to seek the TRO, nor had the defense been provided with a copy of the sought order by the time the request was made. (Vol. 1 RT 4, 6.)

In response to the repeated objections to the imposition of the TRO for lack of notice and evidentiary support, the prosecution stated that the basis for the request was the sum of the underlying allegations leading to the filing of the petition. (Vol. 1 RT 8-9.) On this basis, the juvenile court imposed the TRO and set the matter for a noticed hearing. (Vol. 1 RT 4-5, 10.)

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ARGUMENT

NEITHER WELFARE AND INSTITUTIONS CODE SECTION 213.5 NOR CODE OF CIVIL PROCEDURE SECTION 527 PERMIT THE IMPOSITION OF A TEMPORARY RESTRAINING ORDER ABSENT EITHER SOME NOTICE OR EXIGENCY.

Petitioner and respondent do not appear to be in dispute over the underlying facts. (BOM pp. 8-9, ABOM pp. 10-14.) Further, petitioner and respondent agree on the applicable standard of review. (BOM p. 10, ABOM p. 14.) Petitioner and respondent however disagree on the interpretation of Welfare and Institutions Code section 213.5¹, and on California Code of Civil Procedure section 527, subdivision (c) (hereinafter, “CCP sec. 527 sub. (c)”) with respect to the issue of notice as that issue applies to the imposition of a TRO. Respondent asserts that any such notice requirement is something born of petitioner’s imagination, as neither section 213.5 or by CCP sec. 527 expressly requires notice prior to the imposition of a TRO. (ABOM p. 8, 15-16.)

In support for this position, respondent relies initially on California Rules of Court, rule 5.630, subdivision (d). (Hereinafter, “rule 5.630”.) (ABOM pp. 8-9. 16.) Respondent relies too on *In re Jonathan V.* (2018) 19 Cal. App. 5th 236, 241-242 (hereinafter, “*Jonathan V.*”), as opposed to the

¹ All code references herein are to the Welfare and Institutions Code unless otherwise specified.

Court’s findings in *In re L. W.* (2020) 44 Cal. App. 5th 44. (Hereinafter, “*L. W.*”) (ABOM p. 9, 17-21.) Respondent’s reliance is however misplaced, as section 213.5 together with the applicable CCP 527 sub. (c), expressly state that absent emergency and/or exigency, some form of notice to the defendant is required prior to the imposition of even a TRO.

A. The Plain Language of CCP 527 Sub. (c) Expressly Requires Concern of Imminent Harm to the Individual to be Protected if Notice is to Be Excused.

Both petitioner and respondent urge a plain reading of both section 213.5, and CCP 527 sub. (c). (BOM p. 15, ABOM p. 16.) As set forth in the Brief on the Merits, a plain reading of both provisions however establishes, expressly and unequivocally, that the prosecution must have either evidence of pending imminent harm, or it must provide the defense with at least some opportunity to prepare a defense against the imposition of the TRO.

CCP 527 sub. (c) states:

“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."

(Ibid. Emphasis added.)²

In petitioner's case, the prosecution presented evidence of only the underlying allegations, nothing more, and certainly nothing suggesting that the alleged victim of the alleged poisoning was in any further danger of

² Additionally, subdivision (c) of section 213.5 states that, *if* a temporary restraining order is granted without notice, *then* it shall be subject to a particular time of expiration, et al. Section 213.5, subdivision (c) does not provide the prosecution with the opportunity to avoid the notice requirements established by section 213.5, subdivision (b) and section 527, subdivision (c). Rather, section 213.5, subdivision (c) simply states that *if*, meaning *where* or *when* or *in the event that* the requirements for forgoing notice are otherwise met, *then and in that event*, the provision shall apply.

harm by petitioner.³ In addition, and as addressed in the Brief on the Merits, reliance on rule 5.360 is likewise misplaced as that Judicial Council rule contradicts the intent and efforts of the State Legislature. (BOM p. 13 citing *Butler-Rupp v. Lourdeaux* (2007) 154 Cal. App. 4th 918, 926 [“Rules promulgated by the Judicial Council may not conflict with governing statutes. If a rule is inconsistent with a statute, the statute controls.”])

B. The Focus of *Jonathan V.* was on the Topic of Protective Orders After Noticed Hearings While the Focus of *L. W.* was on the Topic of TROs and Therefore *L. W.* Should Now Control.

At the time that *Jonathan V.* was decided, the focus of the controversy was a protective order imposed after (a noticed) hearing. (*Jonathan V.*, *supra*, 19 Cal. 5th at 242-245.) TROs were not at issue in that case. (*Ibid.*)

The topic of TROs was not thoroughly addressed until the question was raised in *L. W.*, where the Court found expressly, “Rule 5.630, however, cannot be interpreted to dispense with the requirements of section 213.5.” (*L. W.*, *supra*, 44 Cal. App. 5th at 50-51.) As the subject of TROs

³ The poisoning in question alleged took place on December 7, 2018, over two months passed before the prosecution requested the TRO, and with no reference to any concern of additional, immediate harm to the named victim. (BOM p. 18 citing Vol. 1 CT 9; Vol. 1 RT 3, 5.)

was not thoroughly investigated or addressed in *Jonathan V.* to the degree it was in *L. W.*, it would be unreasonable that *Jonathan V.* should now control in a manner that contradicts the express directives of sections 213.5 and CCP 527 sub. (c).

CONCLUSION

Accordingly, and pursuant to the authority raised in the Brief on the Merits, the imposition of a TRO within a juvenile delinquency proceeding must be supported by either some, adequate notice, or by a showing of significant exigency.

Dated: September 23, 2020

Respectfully submitted,
/s/ Courtney M. Selan
Courtney M. Selan
Attorney for Petitioner, E. F.

CERTIFICATE OF WORD COUNT

In re E. F./People v. E. F. S260839 Second District B295755 [PJ53161]

I certify the Petitioner's Reply Brief on the Merits was produced by the Microsoft Word word-processing program, that the font type and size is Times New Roman 13 point, and that the word count for the document is 1,821 as counted by Microsoft Word.

Dated: September 23, 2020

/s/ Courtney M. Selan
Courtney M. Selan

CERTIFICATE OF SERVICE BY AN ATTORNEY

In re E. F./People v. E. F. S260839 Second District B295755 [PJ53161]

I, Courtney M. Selan, declare that I am over eighteen (18) years old, I am an active member of the California State Bar, and not a party to the within action. My electronic address is courtneymselan@yahoo.com, and my business address is 11664 National Boulevard No. 258, Los Angeles, California 90064.

On September 23, 2020, I filed one true electronic copy (by True-Filing) of the PETITIONER'S REPLY BRIEF ON THE MERITS with the California Supreme Court. On the same date, I served one true electronic copy of the same also by True-Filing to the 1) Second District Court of Appeal and 2) Los Angeles Office of the Attorney General. On the same date, I served one true electronic copy of the same to CAPLA by regular email to capdocs@lacap.com and to the Sylmar Office of the Public Defender at vkouljian@pubdef.lacounty.gov. On the same date, I served one true paper copy of the same by U. S. First Class Mail on:

Office of the District Attorney
16350 Filbert Street
Sylmar, California 91342

E. F. (Petitioner)
Address on File Court Appeal

Honorable Morton Rochman (Dept 279)
16350 Filbert Street
Sylmar, California 91342

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 23, 2020 at Los Angeles, California

/s/ Courtney M. Selan

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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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

9/23/2020

Date

/s/Courtney Selan

Signature

Selan, Courtney (236770)

Last Name, First Name (PNum)

Courtney M Selan

Law Firm