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"DEPENDENCY LEGAL NEWS"

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Written by: Daniel Szrom (DS), Maggie Lee (ML), Kristin Hallak (KH), Michael Ono (MO), Ann-Marissa Cook (AMC), Stanley Wu (SW), Sarah Liebowitz (SL), Taylor Lindsley (TL), Liz Lopez (LL).

NEW DEPENDENCY CASE LAW

MODIFICATION OF ORDERS—WIC 388

In re R.M.—published 5/13/25; Fourth Dist., Div. Two
Docket No. E083229
Link to case: https://www4.courts.ca.gov/opinions/documents/E083229.PDF

A TRIAL COURT HAS AUTHORITY TO MODIFY AN ORDER SUA SPONTE UNDER WIC 385, SUBJECT TO NOTICE UNDER WIC 386; CONCLUSORY, VAGUE STATEMENTS DO NOT MAKE A PRIMA FACIE SHOWING OF CHANGED FACTS IN A WIC 388 MOTION.

At their initial hearing, children R.M. and N.M. were detained from both parents. The court granted the agency discretion to allow visits with relatives, "as appropriate," given that maternal grandmother had been involved in childcare prior to their removal. At the jurisdictional hearing, the court removed R.M. and N.M. from both parents, placed them with their paternal grandmother, and reiterated the agency's discretion to allow relative visits. At a three-month progress hearing, the agency expressed concerns regarding maternal grandmother's "constant interference" in the visitation schedule, which had prompted mother to minimize contact with her due to the latter's "over involvement" in the case. The six-month review hearing

report further illuminated the strife maternal grandmother caused. She constantly demanded that father's visits be stopped and that she have weekly visits on Fridays, which disrupted father's visitation schedule. At two different meetings, maternal grandmother had been confronted with how her "open anger" directed towards father and paternal relatives created distress for the children. Both meetings were terminated when they devolved into name calling and yelling. Finally, the report detailed a recent altercation between the paternal and maternal grandmothers when both tried to pick up the children from school on a Friday. Maternal grandmother demanded that Fridays be exclusively her time, but N.M. requested to see father and paternal relatives that day. N.M. told the social worker that he had been afraid to say he did not want to go with maternal grandmother that day and that he had told mother several times that he didn't want to stay with maternal grandmother. At the six-month review hearing, minor's counsel asked the court to make a finding that visits with maternal grandmother were detrimental to the children. The court did so and ordered the visits to stop. A month later, maternal grandmother filed a WIC 388 motion requesting reinstatement of her visits. Her moving papers alleged that she had been a consistent source of comfort and joy to the children, had previously cared for them three days a week, and that the lack of visits had created a vacuum in the children's lives. She also alleged that a sudden change in their lives "could be disorienting and emotionally disruptive," "could exacerbate existing tensions" in the family and could "potentially create confusion for the children." She also attached three letters: one from the school principal stating that both grandmothers had been banned from volunteering on campus, one from a student's parent describing how maternal grandmother's volunteer work benefitted the school, and one from a family friend accusing the paternal family of manipulating the children. The court summarily denied the motion, finding there was no evidence of changed circumstances or that the proposed change was in the children's best interest. Maternal grandmother appealed.

Affirmed. Maternal grandmother argued on appeal that the juvenile court (1) violated her due process rights when it granted minor's counsel's oral request to find her visits detrimental without first filing and serving a written motion; (2) terminated the visitation order without substantial evidence of detriment; and (3) abused its discretion when it summarily denied her WIC 388 motion. The juvenile court's orders were sound. Grandparents do not have a constitutionally protected right to visit a dependent child — they only have a statutory right to have the juvenile court consider whether a visit should happen. Here, the juvenile court considered it, notwithstanding it had never affirmatively ordered visits in the first place; rather, it had given the agency discretion to allow the visits. Furthermore, even if there was procedural error in granting an oral motion, it was harmless under state law.

WIC 385 allows the court to change an order at any time, including sua sponte subject to WIC 386 which in turn prohibits a change in order without first giving notice to the social worker and child's counsel. Even if the juvenile court's order had not been made sua sponte and minor's counsel's request had been an oral WIC 388, a trial court's judgment may not be set aside for procedural error unless it results in a miscarriage of justice. Here, had minor's counsel filed a written WIC 388 motion, it would have contained the same facts from the report already known to court and counsel. All parties had been present at the six-month review hearing or represented by counsel, had opportunity to be heard, and never objected to the ruling. Likewise, maternal grandmother was neither party nor caregiver, and therefore not entitled to notice that the juvenile court would consider setting aside her visitation. Further, there was substantial evidence that her visits were detrimental to the children as they interfered with the parents' visitation schedule, compromised mother's ability to co-parent with father, and impeded father's ability to visit his children as much as possible. Finally, the juvenile court did not abuse its discretion in summarily denying maternal grandmother's 388 motion when she failed to make a prima facie showing of a change in circumstances and that reinstatement of visits was in the children's best interest. Instead, maternal grandmother had made vague, conclusory statements that the children may be impacted by her absence and that a change in routine could be disorienting, disruptive, and potentially cause them confusion. The letters she attached did not provide new facts material to the children's well-being and the generalized allegations lacked sufficient specificity to show that more visits would be in the children's best interests. (LL)

JURISDICTION—WIC 300(b); 300(e)

In re B.L.—filed 05/14/2025; Fourth Appellate Dist., Div. Two
Docket No. E085039
Link to Case: https://www.courts.ca.gov/opinions/documents/E085039.PDF

A ONE-TIME INCIDENT INVOLVING ALCOHOL MAY BE SUFFICIENT TO SUSTAIN JURISDICTION AND ORDER MONITORED VISITATION WHERE THE CHILD SUFFERS SERIOUS INJURIES AND THE PARENT ATTEMPTS TO HIDE HER ACTIONS.

A 300 petition was filed after mother and 10-month-old B.L. were involved in a single-vehicle drunk-driving incident in which B.L. suffered a severe brain injury. On the day of the accident, mother consumed drinks at a party throughout the day and later drove into a utility pole at 65-70 miles per hour with B.L. in the car. When a motorist came to the car, mother was trying to

put B.L. back into the car seat, directed the motorist not to call for help, and hung up the call after learning that the motorist had contacted emergency services. B.L. was hospitalized for almost three weeks with a brain bleed before being placed in foster care. Prior to the jurisdiction hearing, B.L. was released to father, and mother was participating well in services and visitation. At the combined jurisdiction and disposition hearing, the juvenile court sustained counts under 300(b) and 300(e) and ordered sole physical and legal custody to father with monitored visitation to mother. Mother appealed.

Affirmed. Mother claims that a one-time incident with alcohol is insufficient to sustain jurisdiction, but this argument fails for multiple reasons. First, mother's appeal only challenges the juvenile court's jurisdictional finding under 300(b). This is fatal. Without a challenge to the 300(e) finding, it remains as an alternate, independently sufficient basis for jurisdiction here. Second, even assuming mother's arguments directed at 300(b) also contest jurisdiction under 300(e), they lack merit. A count under 300(e) provides for jurisdiction in "single act" instances at least where the parent "causes physical trauma of sufficient severity that, if left untreated, would cause permanent disfigurement, permanent physical disability, or death." Mother does not dispute that the child's brain bleed met this standard. Finally, while mother argues that her rehabilitative efforts by the time of adjudication rendered jurisdiction unnecessary, this claim is undercut by the severity of B.L.'s injuries and mother's actions following the accident, namely her efforts to conceal her child endangerment and prevent the assistance of emergency services. The juvenile court could reasonably conclude that additional court supervision beyond mother's two months of progress following the accident was a necessary safeguard. This same evidence supports the court's monitored visitation order. (AMC)

RESTRAINING ORDERS—WIC 213.5

In re D.B.—filed 5/28/2025; Sixth Dist.
Docket No. H051945
Link to case: https://www4.courts.ca.gov/opinions/documents/H051945.PDF

[1] WIC 213.5(a) AUTHORIZES THE JUVENILE COURT TO ISSUE A RESTRAINING ORDER AGAINST A DEPENDENT CHILD AS LONG AS THE JUVENILE COURT CONSIDERS THE CHILD'S BEST INTEREST. [2] SUBSTANTIAL EVIDENCE SUPPORTED THE ISSUANCE OF A RESTRAINING ORDER PROTECTING A MOTHER FROM HER 17 YEAR OLD CHILD BECAUSE THE MINOR HIT AND THREATENED MOTHER, AND MOTHER FEARED FOR HER SAFETY.

A multitude of child abuse referrals were received for D.B. beginning at the age of one and throughout her childhood. When D.B. was fifteen, she gave birth to her son, J.G. Following that, both mother and D.B. called in child abuse referrals alleging that J.G. was not safe around the other party. D.B. and mother both said the other was physically assaultive. D.B. admitted to hitting mother, but said it was in self-defense. A short while later, mother alleged D.B. punched her in the face and shoulder repeatedly. D.B. was arrested and detained in juvenile hall. Mother refused to let D.B. return home, stating she feared for her life. Dependency proceedings were initiated and D.B. was placed into protective custody at almost seventeen years of age. After the court assumed jurisdiction over D.B., she struggled at her placement, allegedly threatening violence and damaging property. Mother's reunification services were terminated at her request. D.B. was in agreement with the termination of reunification services. Two months later, mother requested a restraining order against D.B. pursuant to section 213.5, alleging harassing phone calls, calling in "welfare checks" on mother's home, and texting mother an image of her home designed to look like it was on fire. The court granted a temporary restraining order and set the matter for trial. At the trial, the court determined that section 213.5 authorizes the issuance of a restraining order against a dependent child and heard testimony from mother that D.B. was physically assaultive towards her and that she still feared for her safety, especially because D.B. threatened to bomb her home by sending the photo of it on fire and threatened her life. D.B. apologized for sending the picture, said it was a joke, and that it would not happen again. The social worker testified that D.B.'s behavior and progress had dramatically improved and that a restraining order would not help the family. The court issued the restraining order, noting it was familiar with the family's history, that D.B.'s actions needed to be taken seriously, and that in the future it could be modified if appropriate. D.B. appealed.

Affirmed. WIC 213.5 authorizes a juvenile court to issue a restraining order against a dependent child, but must first consider the best interest of the child. The plain language of WIC 213.5 is clear that a juvenile court can issue a restraining order against any "person," and that a dependent child qualifies as a person. While the language authorizing the juvenile court to issue dependency restraining orders does not specifically mention restraining a child as the subdivision which authorizes delinquency restraining orders does, the plain language is unambiguous that the court can restrain any "person." Even if mother had initiated the proceedings in civil or family court, those courts would have sent the matter to the dependency court since D.B. was an active dependent. Before restraining a dependent child, the court must consider the best interest of the child. It is possible that restraining a child can be in their best interest. Here, substantial evidence supported the issuance of a restraining order against the dependent child. D.B. was almost

18 years old, and had she physically harmed mother, she was at risk of entering the adult criminal justice system. The juvenile court could be flexible with any necessary modifications to the restraining order, consistent with the needs of the family, as it retained jurisdiction over D.B. WIC 213.5 does not require a court to consider family reunification in the child's best interest. The question of whether the restraining order violated D.B.'s constitutional right to reunify was not reached on the merits because the family's reunification efforts had already ceased after mother requested such an order and D.B. agreed to it. (KH)