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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re Virginia B., a Person Coming Under
the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

W.B.,

Defendant;

Virginia B.,

Objector and Appellant.

B269295

(Los Angeles County
Super. Ct. No. CK70272)

APPEAL from an order of the Superior Court of Los Angeles
County, Nichelle Blackwell, Commissioner. Reversed and remanded.

Merrill Lee Toole, under appointment by the Court of Appeal, for Objector and Appellant Virginia B.

Mary C. Wickham, County Counsel, R. Keith Davis, Acting Assistant County Counsel, and Peter Ferrera, Principal Deputy County Counsel, for Plaintiff and Respondent.

Appellant Virginia B.—a former dependent minor—challenges the decision by the juvenile court to terminate its jurisdiction following her 18th birthday. We conclude the failure to comply with section 391 of the Welfare and Institutions Code constitutes reversible error.¹ (*In re Shannon M.* (2013) 221 Cal.App.4th 282, 297 [decision to terminate jurisdiction over nonminor is subject to § 391 requirements].) We reverse and remand for further proceedings.

FACTUAL AND PROCEDURAL BACKGROUND

Virginia B. was born in 1997 to O.B. (mother), now deceased, and W.B., Sr. (father). After mother and father were divorced, father acquired custody of Virginia B. and her siblings, W.B., Jr. and B.B.²

While the children were living with father, respondent Los Angeles County Department of Children and Family Services (department) filed a section 300 petition on their behalf in October 2007. The petition alleged in relevant part that Virginia B. had been sexually abused by father's female companion (K.G.). As a result of father's failure to comply with a voluntary family maintenance plan agreement (he tested positive for marijuana), Virginia B. was detained at the home of her maternal grandmother, J.M. In February 2008, the juvenile court sustained a modified petition and ordered that Virginia B. be placed with J.M. (§ 300, subds. (b), (d), (g), (j).) Following a brief

¹ All further statutory references are to the Welfare and Institutions Code.

² The siblings are not parties to this appeal.

period when Virginia B. lived with mother,³ the court approved a permanent plan and appointed J.M. as Virginia B.'s legal guardian in 2009. The court terminated jurisdiction over Virginia B. in March 2010.

Virginia B. began having mental health problems after mother died in 2012. Virginia B. was involuntarily hospitalized in February 2013 for "psychosis." J.M., whose own health was failing, allowed Virginia B. to stay with father. In February 2014, while living with father, Virginia B. gave birth to a son, J.B.⁴ In August of that year, the department met with Virginia B. and father to discuss her living situation. Father said he was willing to have Virginia B. and J.B. live with him, but because J.M. was Virginia B.'s legal guardian, father could not obtain services for Virginia B. or enroll her in school.

After this meeting, the department filed a section 387 petition seeking to terminate the guardianship and formally release Virginia B. to father.⁵ In its December 2014 order sustaining this petition, the court reinstated its dependency jurisdiction over Virginia B. under the original petition filed in 2007. Virginia B. and father began receiving wraparound services.

³ According to a supplemental petition (§ 342), Virginia B. was removed from mother's home because mother had hit her.

⁴ Virginia B. reported to police that the child was conceived as a result of being beaten and raped by a former boyfriend.

⁵ The court was informed that "the guardian has not made any attempts to legally relinquish her rights, and as a result has kept [Virginia's] eligibility for services tied to Kern County"; father, who was living in Los Angeles, was unable to enroll Virginia B. in school; as a result, the guardian was inadvertently interfering with Virginia B.'s ability to obtain much needed mental health services and placing her at risk of harm.

The following month, the electricity in father's apartment was turned off and he was evicted.⁶ Having nowhere to live, father sent Virginia B. and J.B. to stay with his sister (T.W.). But during a violent argument with T.W., Virginia B. received a black eye and bruises. As a result, the department detained Virginia B. in foster care and filed a section 342 petition on January 23, 2015. The petition alleged that father had placed Virginia B. in a detrimental and endangering situation which allowed her to be physically abused by T.W.

Virginia B. ran away from the foster care home. A protective custody warrant was issued. J.B. was removed from Virginia B.'s custody,⁷ and a separate dependency petition was filed on his behalf. (Case No. DK07592.)

Virginia B. maintained her Facebook page but kept her location hidden from the department. Two days before her 18th birthday, Virginia B. telephoned Ahmad Emdad, a children's social worker with the department, and said that she was going to meet with police on her birthday in July 2015. But after Emdad told her she was likely to be arrested, Virginia B. apparently changed her mind and did not attend the meeting. The Department related this conversation in a "Last Minute Information" for the August 12, 2015 hearing on the section 342 petition. Virginia B., who was now 18 years old, did not attend that hearing. Because she was no longer a minor, the court recalled the protective custody warrant.

Before the October 13, 2015 hearing, the department provided a "Last Minute Information" stating that Virginia B., a nonminor whose

⁶ According to the department's report for the December 3, 2014 hearing, Virginia B. and father were in financial distress. Because father had stopped receiving general relief payments, he had no income. J.M., the payee of Virginia B.'s SSI benefits, was sending Virginia B. only \$300 of her monthly payment of \$700 or \$800.

⁷ According to a statement made by Virginia B. in May 2015, she had been staying with her aunt and father. Virginia B. said that her aunt had called police because "she wants to have my baby."

whereabouts remained unknown to the department, was ineligible for independent living placement services or Assembly Bill 12 services.⁸ At the October 13 hearing, the court dismissed the section 342 petition (without adjudicating it), terminated jurisdiction over Virginia B., who was present and represented by counsel, and found she was ineligible for services under Assembly Bill 12. Virginia B. timely appealed from the October 13 order.

DISCUSSION

A juvenile court may retain jurisdiction over a dependent child until age 21. (§ 303, subd. (a).) The fact that a dependent child has reached age 18 does not require a termination of jurisdiction. “Dependency jurisdiction does not automatically terminate at age 18 [citation], and the decision to retain or terminate jurisdiction generally remains within the sound discretion of the juvenile court [citation].” (*In re Shannon M.*, *supra*, 221 Cal.App.4th at p. 292.)

Section 391, which governs the termination of jurisdiction over a nonminor, was not mentioned at the October 13, 2015 hearing. In their respective briefs on appeal, the parties agree that because the requirements of section 391 were not met, reversal of the October 13 order and remand for a new hearing are appropriate remedies. We conclude Virginia B. is entitled to a reversal and remand for a new hearing.

I

The pre-termination requirements under section 391 were analyzed by the court in *In re A.A.* (2016) 243 Cal.App.4th 765 (A.A.), which is cited in the briefing. Because the court’s discussion in A.A. is instructive, it is quoted at length below.

Subdivision (b) of section 391 requires the department to submit a certain report, and following its receipt, the court must conduct a hearing compliant with subdivision (e). This hearing, which was not

⁸ The California Fostering Connections to Success Act, Assembly Bill No. 12 (2009-2010 Reg. Sess.) (Assembly Bill 12).

held in this case, serves to verify that information and documents which are vital to the nonminor's ability to function independently have been provided before jurisdiction is terminated.

As the court in *A.A.* explained, subdivision (e) of section 391 “provides that the juvenile court ‘shall not’ terminate dependency jurisdiction over a nonminor after he or she has turned age 18 ‘until a hearing is conducted pursuant to this section and the department has submitted a report verifying that the following information, documents, and services have been provided to the nonminor’:

“(1) Written information concerning the nonminor's case;

“(2) The nonminor's Social Security card, birth certificate, health and education summary, driver's license or identification card, parents' death certificates (if applicable), proof of citizenship or legal residence, advance health care directive form, Judicial Council form to petition for reinstatement of dependency jurisdiction, and the written 90-day transition plan prepared pursuant to section 16501.1;

“(3) Assistance in completing an application for Medi-Cal or in obtaining other health insurance;

“(4) Referrals to transitional housing, or assistance in obtaining other housing;

“(5) Assistance in obtaining employment or other financial support;

“(6) Assistance in applying for admission to college or another educational institution and in obtaining financial aid;

“(7) Assistance in maintaining relationships with individuals who are important to the nonminor;

“(8) Assistance in accessing the ‘Independent Living Aftercare Program’; and

“(9) Written information regarding student assistance or internship preferences. (§ 391, subd. (e).)” (*A.A.*, *supra*, 243 Cal.App.4th at pp. 775–776.)

In addition, in its report, the department must recommend to the court whether to terminate jurisdiction or provide additional services.

Under subdivision (b) of section 391, the department is required to provide a “report that *either*:

“(1) Recommends a transitional independent living case plan and continuing jurisdiction for the nonminor (§ 391, subd. (b)(2)); *or*

“(2) If the department recommends termination of the court’s dependency jurisdiction, submits documentation of the reasonable efforts made by the department to provide the nonminor ‘with the assistance needed to meet or maintain eligibility as a nonminor dependent, as defined in paragraphs (1) to (5), inclusive, of subdivision (b) of Section 11403’ (§ 391, subd. (b)(3)); *or*

“(3) If the nonminor has indicated that he or she does not want dependency jurisdiction to continue, describes ‘the manner in which the nonminor was advised of his or her options, including the benefits of remaining in foster care, and of his or her right to reenter foster care and to file a petition pursuant to subdivision (e) of Section 388 to resume dependency jurisdiction prior to attaining 21 years of age.’ (§ 391, subd. (b)(4).)” (A.A., *supra*, 243 Cal.App.4th at pp. 776–777.)

Given the department’s failure to provide the required pre-termination reports and the trial court’s failure to conduct a hearing in compliance with section 391, we conclude the order terminating jurisdiction must be reversed. On remand, the department is directed to provide Virginia B. with the assistance, information, and documents required under section 391, and submit the required pre-termination reports to the juvenile court.

II

On remand, Virginia B.’s eligibility for aid under Assembly Bill 12 must be re-determined based on *present* circumstances, not those in existence at the October 13, 2015 hearing. The right to prospective assistance under Assembly Bill 12 must be determined in the first instance based on the information presented at the new hearing. We therefore do not discuss Virginia B.’s challenge to the October 13, 2015 ineligibility finding, which is moot.

DISPOSITION

The order terminating jurisdiction is reversed. The matter is remanded with directions to conduct a new hearing pursuant to section 391.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

COLLINS, J.