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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re J.O. et al., Persons
Coming Under the Juvenile
Court Law.

B279807
(Los Angeles County
Super. Ct. No. CK88067)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Respondent,

v.

J.B.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los
Angeles County. Margaret Henry, Judge. Affirmed.

John L. Dodd, under appointment by the Court of Appeal,
for Defendant and Appellant.

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

Defendant and appellant J.B. (Guardian) and her partner M.P. are the court-appointed legal guardians (Guardians) of three special needs children, J.O., C.N., and J.N. Guardian appeals the juvenile court's December 19, 2016 order denying two Welfare and Institutions Code section 388 petitions.¹ In the petitions, Guardian asked the juvenile court to change its previous orders of legal guardianship to an order of adoption so that Guardians could adopt the children. In considering the petitions, the juvenile court received and heard evidence on the substantial government funding Guardians currently receive for care of the children, which funding would be lost if adoption were ordered. Guardian argues it was an abuse of discretion for the juvenile court to consider the issue of funding.

As discussed below, we disagree and affirm. However, we note our decision is without prejudice to Guardian bringing a future section 388 petition supported by new evidence showing the children would not be harmed by the loss of government funding or, at the least, would not be harmed to such an extent that the loss of funding would outweigh the benefits of adoption.

¹ Subsequent undesignated statutory references are to the Welfare and Institutions Code.

BACKGROUND

This case has a long history. We summarize only those facts relevant to this appeal.

1. Placement with Guardians, Department Concerns, Involuntary Decertification, and Loss of Government Funding

In 2011, the juvenile court declared the children dependents of the court.² At the time, the youngest child, J.N., who was born prematurely in April 2011, remained in a pediatric medical facility because of multiple health conditions that required constant medical attention. In June 2011, the two older children were placed with Guardians, who were certified as a foster family through a foster family agency. Over time, the Department developed concerns with Guardians' ability to care for the children. For example, the Department believed Guardians misconstrued and misreported information about the children and sometimes disregarded information acquired through professional assessments of the children. In March 2012, as a result of its concerns, which were echoed by the foster family agency, the Department removed the two older children from Guardians' care and placed them with a different family.

Later that year, however, in November 2012, the juvenile court ordered the two older children be placed back in Guardians' care. At that time, Guardians were certified by a different foster family agency and had expressed a desire to care for and adopt all the children, including the youngest child, who remained at

² The children's mother had a fourth child who also was declared a dependent of the court and placed with Guardians. Eventually, however, that child was placed with and adopted by a different family. He is not a party to or subject of this appeal.

the medical care facility. During the two older children's second placement with Guardians, the Department continued to have concerns with Guardians' ability to care for the children. The Department stated Guardians "continue to diagnose as well as label the children and their behaviors and then tend to undermine and/or dismiss the advice and the direction provided by the service providers."

Eventually, in May 2013, Guardians were involuntarily decertified by the foster family agency. According to the foster family agency, Guardians failed to comply with various regulations and obstructed agency staff in the performance of their legal and professional duties. As a result of their involuntary decertification, Guardians were no longer eligible for government funding and the Department could not recommend them as caregivers. Additionally, and in compliance with Department policy, the Department put a "hold" on its assessment of Guardians and their home for adoption purposes.

Nonetheless, the two older children remained placed with Guardians and, despite the Department's concerns, did well in their care. Indeed, in early 2014, the Department reported Guardians "are very structured and run an orderly household and have demonstrated their ability to provide for the educational, medical and psychological needs of J[.O.] and C[.N.] without any financial assistance from [the Department]" and "[o]verall the boys are healthy and really are catching up with physical/mental and social skills development/delays due to the diligence of this placement." It was also reported, however, that the lack of funding had "put a strain on the financial funding for the boys[]" on-going care and support."

2. Funding Reinstated

Guardians successfully sought administrative review of the Department's decision to stop funding for the two older children. In April 2014, the California Department of Social Services ordered the Department to "fund Foster Care" for both children from May 2013 (when Guardians were decertified) forward. Although the Department complied with the order and continues to provide funding for the children's care, Guardians remain uncertified as a foster family and the Department has maintained its "hold" on their home for adoption purposes.

3. Orders of Legal Guardianship

In July 2014, the juvenile court ordered legal guardianship for the two older children and ordered them placed with Guardians. At the same time, the juvenile court released the youngest child, J.N., who continued to have multiple specialized medical needs, to Guardians' care. In anticipation of J.N.'s placement with them, Guardians had completed medical training courses in order to care for him.

In March 2015, after the youngest child had been with Guardians for approximately eight months, the juvenile court appointed Guardians legal guardians of the youngest child as well. The court made its order over the Department's objection and ordered as the permanent plan "legal guardianship and a specific goal of adoption."

4. Termination of Dependency Jurisdiction

On June 23, 2015, the juvenile court terminated its jurisdiction over the case "subject to further proceedings re financial responsibility per [section] 903." That same day, the court released the children to Guardians, where they have

remained. The juvenile court did not terminate parental rights and Guardians remain uncertified.

5. Section 388 Petitions

Almost one year later, on May 16, 2016, Guardian filed two substantially similar section 388 petitions, which are at issue in this appeal. One petition related to the two older children, J.O. and C.N.; the other petition related to the youngest child, J.N.

Guardian stated circumstances had changed since the juvenile court ordered legal guardianship and terminated its jurisdiction.³ Specifically, the section 388 petitions stated: “The DCFS case has remained open requiring ongoing supervision of the child[ren] and legal guardians. [The children] cannot be adopted due to DCFS blocking the adoption and homestudy with an administrative hold.” Guardian asked the juvenile court to reopen the dependency case, order the Department to order an adoption home study (or pay for an agency to update its adoption home studies), terminate parental rights, and order Guardians to be the children’s adoptive parents. Counsel for the children supported Guardian’s request and believed adoption was in the children’s best interests.

Over the course of four months, the juvenile court held five hearings on the section 388 petitions. The evidence showed Guardians received \$6,036 in monthly government funding to care for the children. In particular, each month Guardians received \$3,078 to care for the youngest child, and \$1,479 for each of the two older children. These rates were higher than the

³ In both petitions, Guardian stated the juvenile court terminated its jurisdiction over the case on March 3, 2015. However, the court did not terminate its jurisdiction until June 23, 2016.

normal foster family funding rate because each of the children had special needs.

Two experts testified with respect to whether or how Guardians could keep or acquire government funding if they became the children's adoptive parents (as opposed to their legal guardians). Both experts determined that, if the juvenile court ordered Guardians to be the adoptive parents of the children, Guardians would lose their current funding. It appeared the main stumbling block was the Department's opposition to Guardians being adoptive parents and its refusal to sign an adoption assistance program agreement. Thus, citing both Family Code section 8704 and Welfare and Institutions Code section 16120, one expert testified that, while the juvenile court could order adoption over the Department's objection, if the court were to do so, Guardians would lose their funding because the Department had refused to sign the adoption assistance program agreement.

During the course of the hearings on the section 388 petitions, Guardians did not specifically address or indicate whether they could adequately care for the children without government funding. Based on comments made at the hearings, however, it appeared funding was, at the least, important to Guardians and was something with which they were concerned. At a hearing in October 2016, Guardian spoke with the juvenile court judge about the best course of action and stated, somewhat cryptically, "We need a caregiver at home, lack of funding won't allow us." At the same hearing, Guardian referenced the lower rate of funding Kin-Gap offered versus what Guardians currently were receiving.

On December 19, 2016, at the conclusion of the last hearing on the matter, the juvenile court denied the 388 petitions. The court held there was no change in circumstances and it would not be in the children's best interests to grant the petitions. The court held the children needed funding, but would lose it if adoption were ordered. The court stated: "In terms of the children's best interest, I think they need funding. And the only way to keep funding is to keep the guardianship in place." Thus, the court denied the petitions and again terminated jurisdiction.

That same day, Guardian appealed.

DISCUSSION

1. Applicable Law

On a section 388 petition, the moving party bears the burden of proof and must "show by a preponderance of the evidence that there is new evidence or that there are changed circumstances that make a change of placement in the best interests of the child." (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317; § 388.)

"The grant or denial of a section 388 petition is committed to the sound discretion of the trial court and will not be disturbed on appeal unless an abuse of discretion is clearly established. [Citation.] A trial court exceeds the limits of legal discretion by making an arbitrary, capricious or patently absurd determination." (*In re Shirley K.* (2006) 140 Cal.App.4th 65, 71.) "We must uphold the juvenile court's denial of appellant's section 388 petition unless we can determine from the record that its decisions 'exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for

that of the trial court.” ’ ” (*In re Brittany K.* (2005) 127 Cal.App.4th 1497, 1505.)

2. The juvenile court did not abuse its discretion.

Guardian argues the juvenile court abused its discretion because it considered whether, if Guardians became adoptive parents, they would lose government funding to help care for the children. We conclude it was not an abuse of discretion for the juvenile court to consider the issue of funding. Indeed, given the children’s special needs and the substantial amount of funding at issue, it was appropriate for the juvenile court to consider the issue of funding in the context of the children’s best interests.

It is undisputed all the children have special needs. In particular, the youngest child has extensive long-term medical needs. It is also undisputed that, after the foster family agency decertified Guardians and the Department stopped their funding, Guardians nonetheless continued to care for the two older children for almost a year without funding.⁴ However, the evidence also shows the lack of funding put a strain on Guardians, who sought and eventually received full funding, including retroactive payments covering the months Guardians had been without funding. At the time of the hearings on the section 388 petitions, Guardians were receiving more than \$6,000 each month to care for the children, which amounts to more than \$72,000 a year. And as Guardian correctly stated in her opening brief on appeal, beyond the substantial government funding they received, the record is silent on Guardians’ resources. There is no express indication whether Guardians could or could not continue

⁴ At that time, the youngest child had not yet been placed with Guardians.

adequately caring for the children without the government funding. Finally, Guardians do not dispute they would lose their substantial funding if the juvenile court ordered adoption over the Department's objection.

Based on the record before the juvenile court, we conclude it was reasonable for the court to infer the loss of Guardians' substantial government funding would decrease the level of care Guardians had been providing to the children such that adoption would not be in the children's best interests. Throughout the many hearings on the section 388 petitions, it was clear funding was an important, if not the main, issue being considered. Yet Guardians did not give any, let alone a clear indication of their ability or inability adequately to care for the children if government funding ended. As the moving party, it was Guardian's burden to prove by a preponderance of the evidence that the requested order would be in the children's best interests. (*In re Stephanie M.*, *supra*, 7 Cal.4th at p. 317.) She failed to do so.

Guardian also argues substantial evidence does not support the juvenile court's finding that Guardians needed funding. We disagree. Although Guardian offered no evidence that Guardians could or could not continue adequately to care for the children absent funding, it was reasonable for the juvenile court to conclude the loss of over \$72,000 each year would have a negative impact on Guardians' ability to care for the children. The evidence demonstrated not only that the children, especially the youngest, had special needs requiring a heightened level of care, but also that Guardians sought and received retroactive funding for the period the Department had stopped funding. In addition, although not entirely clear, Guardian told the juvenile court, "We

need a caregiver at home, lack of funding won't allow us." We conclude the evidence supported the juvenile court's implied finding that funding was necessary.

Because we conclude the juvenile court did not abuse its discretion in finding it would not be in the children's best interests to order adoption, we need not and do not address whether Guardian's section 388 petitions showed changed circumstances or new evidence.

It is important to note, however, although we conclude the juvenile court did not abuse its discretion in denying the section 388 petitions on the record before it, we are not foreclosing Guardians from filing a future section 388 petition showing new evidence that government funding is not necessary for them to care for the children.

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED.

LUI, J.

We concur:

ROTHSCHILD, P. J.

JOHNSON, J.