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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re ALEXIS P., A Person Coming  
Under the Juvenile Court Law.

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LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Appellant,

v.

ALEXIS P.,

Objector and Respondent.

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B278036

(Los Angeles County  
Super. Ct. No. XK03558)

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

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Tracey F. Dodds, Deputy County Counsel, for Plaintiff and Appellant.

Megan Turkat Schirn, under appointment by the Court of Appeal, for Objector and Respondent.

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Appellant Los Angeles County Department of Children and Family Services (department) appeals from an order granting a petition by nonminor former dependent Alexis P. to reenter foster care. The order is affirmed.

### **FACTUAL AND PROCEDURAL BACKGROUND**

In 2002, the juvenile court sustained a dependency petition under section 300 of the Welfare and Institutions Code<sup>1</sup> on behalf of Alexis, then four years of age. She was detained from her parents and placed with a family member, Ms. M. Several years later, in June 2007, the court appointed Ms. M. as Alexis's legal guardian under the Kinship Guardianship Assistance Payment (Kin-GAP) program,<sup>2</sup> and dismissed the dependency action. Notwithstanding the termination of its dependency jurisdiction, the juvenile court retained general jurisdiction over Alexis as a

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<sup>1</sup> All further statutory references are to this code.

<sup>2</sup> “The Kin-GAP program is a state program that provides ongoing funding for children who exit the dependency system to live with relative legal guardians. In order to receive funding under the program the county welfare agency must enter into a written binding agreement with the relative guardian and dependency jurisdiction must be terminated. (§§ 11386, 11387.)” (*In re Priscilla D.* (2015) 234 Cal.App.4th 1207, 1211, fn. 2.)

ward of the guardianship. (*In re Priscilla D.*, *supra*, 234 Cal.App.4th at p. 1216.)

At age 17, Alexis had difficulties with Ms. M.'s husband and periodically stayed with other family members. Two months before her 18th birthday, Alexis sought to resume living with Ms. M. and attempted a reconciliation. According to Alexis, Ms. M.'s husband no longer was willing to have her in their home, and Ms. M. reported her as "AWOL" to the department without informing the department that Alexis was staying with relatives. The department did not contact Alexis or notify the juvenile court that her guardianship had failed before it unilaterally terminated Kin-GAP payments while Alexis still was a minor, in August 2015.

In March 2016, after her 18th birthday, Alexis filed a Judicial Council Form JV-466, "Request to Return to Juvenile Court Jurisdiction and Foster Care." Alexis checked the boxes on the form stating that the court had placed her in a guardianship; her guardian no longer was supporting her or receiving support on her behalf; and she was willing to comply with the statutory educational and employment requirements to reenter foster care.<sup>3</sup> Alexis also submitted a declaration informing the court of her enrollment at California State University, Los Angeles, and of her intention to work at least 80 hours per month.

The department argued that the juvenile court lacked jurisdiction to rule on the petition, citing the termination of

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<sup>3</sup> The boxes she checked on the JV-466 form state: "I plan to attend a high school or a high school equivalency certificate (GED) program." "I plan to attend a college, a community college, or a vocational educational program." "I plan to work at least 80 hours per month."

Alexis's Kin-GAP payments before her 18th birthday. The court rejected the jurisdictional challenge. It concluded that following the termination of Alexis's dependency case, she remained under the court's general jurisdiction as a ward of the guardianship. In addition, the court found the department had erred by not bringing the failure of Alexis's guardianship to the court's attention while Alexis was still a minor and in need of a new placement order. The court stated that in light of the department's failure to seek a new placement order for Alexis prior to her 18th birthday, it "should be" equitably estopped to assert its termination of her Kin-GAP aid as a disqualifying factor.

Turning to the merits, the court rejected the department's contention that Alexis was ineligible to reenter foster care under subdivision (a) of section 388.1. The court concluded the department's reliance on subdivision (a) of section 388.1 was misplaced because its provisions are permissive rather than mandatory, and that Alexis was eligible to reenter foster care under the broader provisions of subdivision (c) of that statute.

The court granted the petition and ordered the department to provide Alexis with appropriate services. This appeal followed.

## **DISCUSSION**

The department contends the juvenile court lacked jurisdiction to rule on the petition to reenter foster care because the petition was filed after Alexis's 18th birthday. The jurisdictional challenge fails for two reasons. First, notwithstanding the termination of its dependency jurisdiction when the Kin-GAP guardianship was established, the juvenile court retained general jurisdiction over Alexis as a ward of the

guardianship. (See *In re Priscilla D.*, *supra*, 234 Cal.App.4th at p. 1216.) Second, as we explain in our analysis of the substantive issues, the juvenile court retains general jurisdiction over a nonminor former dependent in order to rule on a petition to reenter foster care under section 388.1. (§ 11403, subd. (c).)

Because the resolution of this appeal turns on the correct interpretation of the applicable statutes, we apply the de novo standard of review. “Where, as here, the material facts are undisputed, the trial court’s interpretation of the [applicable statutes] is subject to de novo review. [Citation.]” (*Diablo Valley College Faculty Senate v. Contra Costa Community College Dist.* (2007) 148 Cal.App.4th 1023, 1031.)

We begin with the statutory definition of “nonminor former dependent.” According to subdivision (aa)(2) of section 11400, this designation applies to a person over 18 years of age who had been found to be a dependent child of the juvenile court and whose dependency action was dismissed upon the establishment of a guardianship pursuant to section 360 or 366.26. (§ 11400, subd. (aa)(2).) Alexis fits this definition.

A separate designation—“nonminor dependent”—applies to current dependent children or wards of the juvenile court, or those who are under the transition jurisdiction of the juvenile court and who meet the criteria listed in subdivision (v) of section 11400. Because she does not meet those criteria, Alexis is not a “nonminor dependent.” Accordingly, Alexis is not eligible for relief under subdivision (b) of section 303, which provides that “[i]f the court terminates dependency, delinquency, or transition jurisdiction, the nonminor dependent shall remain under the general jurisdiction of the court in order to allow for a petition under subdivision (e) of Section 388.” (§ 303, subd. (b).)

Subdivision (e) of section 388, which allows “a nonminor who attained 18 years of age while subject to an order for foster care placement” to petition to reenter foster care (§ 388, subd. (e)(1)), has no bearing on this case. Because Alexis was not subject to an order for foster care placement on her 18th birthday, she does not meet the definition of “nonminor dependent” and therefore is not eligible for relief under section 388, subdivision (e). To the extent Alexis relies on this provision, her reliance is misplaced.

The statutory scheme provides a separate avenue for reentry into the foster care system that is available to those, like Alexis, who qualify as “nonminor former dependents.” That avenue is section 388.1. Following the 2015 amendment by Assembly Bill 731 (Stats. 2015, ch. 303, § 592, eff. Jan. 1, 2016), subdivision (c) of section 11403 expressly authorizes a section 388.1 petition by a nonminor former dependent such as Alexis. It provides in relevant part: “Nonminor former dependents, as identified in paragraph (2) of subdivision (aa) of Section 11400, are not eligible for reentry under subdivision (e) of Section 388 as nonminor dependents under the jurisdiction of the juvenile court, but may be eligible for reentry pursuant to Section 388.1 if (1) the nonminor former dependent was receiving aid pursuant to Kin-GAP under Article 4.5 (commencing with Section 11360) or Article 4.7 (commencing with Section 11385) . . . and (2) the nonminor’s former guardian . . . no longer provides ongoing support to, and no longer receives benefits on behalf of, the nonminor after the nonminor turns 18 years of age but before the nonminor turns 21 years of age.”

The department argues that its termination of Alexis’s Kin-GAP payments before her 18th birthday, even if erroneous,

renders her ineligible to file a petition under section 388.1. There is nothing in section 11403, subdivision (c) which conditions eligibility for section 388.1 relief on the age of the minor upon termination of Kin-GAP aid. The department contends that this limitation is found in subdivision (a) of section 388.1. We do not find it there.

Subdivision (a) of section 388.1 is not an exclusionary statute. It is a permissive statute which allows “a nonminor who has not attained 21 years of age [to] petition the court in which he or she was previously found to be a dependent or delinquent child of the juvenile court for a hearing to determine whether to assume dependency jurisdiction over the nonminor, if he or she meets any of the following descriptions.” The enumerated descriptions are set out in four subparts. The first two apply to nonminor former dependents who received Kin-GAP aid after attaining 18 years of age and whose former guardians are either deceased or no longer providing ongoing support and are no longer receiving aid on their behalf. The third and fourth subparts apply to nonminors who received adoption assistance payments after attaining 18 years of age. There is nothing in subdivision (a) which precludes a section 388.1 petition by a nonminor former dependent whose Kin-GAP aid was terminated before age 18.

Our conclusion that this statute is not preclusive is supported by subdivision (c) of section 388.1, which affords a hearing to applicants regardless of the age of the minor on the date of termination of Kin-GAP aid.<sup>4</sup> In addition, subdivision

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<sup>4</sup> The juvenile court is required to hold a hearing on the petition if the nonminor makes a prima facie showing that: “(A) He or she was a minor under juvenile court jurisdiction at the

(c)(5), which lists the findings that must be made in order for a nonminor to reenter foster care, is silent as to the applicant's age upon termination of Kin-GAP aid.<sup>5</sup>

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time of the establishment of a guardianship pursuant to Section 360, Section 366.26, or subdivision (d) of Section 728, or he or she was a minor or nonminor dependent when his or her adoption was finalized.

“(B)(i) His or her guardian or guardians, or adoptive parent or parents, as applicable, died after the nonminor attained 18 years of age, but before he or she attained 21 years of age.

“(ii) His or her guardian or guardians, or adoptive parent or parents, as applicable, no longer provide ongoing support to, and no longer receive payment on behalf of, the nonminor after the nonminor attained 18 years of age, but before he or she attained 21 years of age, and it may be in the nonminor's best interest for the court to assume dependency jurisdiction.

“(C) He or she intends to satisfy at least one of the conditions set forth in paragraphs (1) to (5), inclusive, of subdivision (b) of Section 11403.

“(D) He or she is requesting assistance in maintaining or securing appropriate supervised placement, or needs immediate placement and agrees to supervised placement pursuant to the voluntary reentry agreement described in subdivision (z) of Section 11400.” (§ 388.1, subd. (c).)

<sup>5</sup> Pursuant to subdivision (c)(5) of section 388.1, the “court shall assume dependency jurisdiction over a former dependent or ward, and order his or her placement and care be under the responsibility of the county child welfare services department, the probation department, tribe, consortium of tribes, or tribal organization, if the court finds all of the following:

“(A) The nonminor was a minor under juvenile court jurisdiction at the time of the establishment of a guardianship pursuant to Section 360, Section 366.26, or subdivision (d) of Section 728, or he or she was a dependent at the time his or her adoption was finalized.



The department also relies on mandatory language in subdivision (h) of section 11386. This statute provides that “[e]ffective January 1, 2014, Kin-GAP payments shall continue for youths who have attained 18 years of age and are under 21 years of age, if they reached 16 years of age before the Kin-GAP negotiated agreement payments commenced.” (§ 11386, subd. (h).) Putting to one side the lack of a request by Alexis to extend Kin-GAP payments, we disagree with the assertion by the department that because her Kin-GAP “payments commenced when Alexis was nine years old, [she is] ineligible for extended KinGAP payments.” The underlying assumption that a gap exists in the statutory scheme—that it affords no relief to nonminor former dependents whose Kin-GAP payments commenced *before* his or her 16th birthday—is flawed. Section 11403.01 authorizes continued Kin-GAP aid for qualifying

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“(B) The nonminor’s guardian or guardians, or adoptive parent or parents, as applicable, have died, or no longer provide ongoing support to, and no longer receive payment on behalf of, the nonminor, and it is in the nonminor’s best interests for the court to assume dependency jurisdiction.

“(C) The nonminor has not attained 21 years of age.

“(D) Reentry and remaining in foster care are in the nonminor’s best interests.

“(E) The nonminor intends to satisfy, and agrees to satisfy, at least one of the criteria set forth in paragraphs (1) to (5), inclusive, of subdivision (b) of Section 11403, and demonstrates his or her agreement to placement in a supervised setting under the placement and care responsibility of the placing agency by signing the voluntary reentry agreement described in subdivision (z) of Section 11400.”

nonminor former dependents “whose Kin-GAP payments began prior to the child’s 16th birthday.”

We conclude that regardless of the age of the child for whose benefit Kin-GAP payments commenced or terminated, a section 388.1 petition may be filed by a nonminor former dependent who meets the eligibility requirements under subdivision (c) of section 11403: “(1) the nonminor former dependent was receiving aid pursuant to Kin-GAP under Article 4.5 (commencing with Section 11360) or Article 4.7 (commencing with Section 11385) . . . and (2) the nonminor’s former guardian . . . no longer provides ongoing support to, and no longer receives benefits on behalf of, the nonminor after the nonminor turns 18 years of age but before the nonminor turns 21 years of age.” Alexis meets these criteria, and, therefore, she is eligible for relief under section 388.1.

### **DISPOSITION**

The order is affirmed.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

COLLINS, J.