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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

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

B279375

(Los Angeles County  
Super. Ct. No. CK87325 )

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

A.C.,  
Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Philip L. Soto, Judge. Reversed and remanded.

Michelle L. Jarvis, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Aileen Wong, Deputy County Counsel, for Plaintiff and Respondent.

A.C. (Mother) appeals from an order denying her Welfare and Institutions Code section 388 petition<sup>1</sup> regarding court ordered visitations between Mother and her four children. Because the court erred in denying Mother's request for a hearing pursuant to her section 388 petition, we reverse and remand the case in order for the court to hold a hearing on the issue of visitation.

## **FACTUAL AND PROCEDURAL SUMMARY**

### **A. Dependency Proceedings**

In light of the limited nature of Mother's appeal, we only briefly summarize the underlying facts of the dependency proceedings.

In April 2011, the Los Angeles Department of Children and Family Services (DCFS) filed a juvenile dependency petition on behalf of Mother's four children, then ages seven, six, five and two. The allegations detailed violent altercations between Mother and the children's father<sup>2</sup> and Mother's history of substance abuse as well as, at the time of the petition, Mother's abuse of methamphetamine, alcohol and prescription medication. DCFS later amended the petition to include allegations that the father had a history of substance abuse and, at the time of the petition, was abusing methamphetamine, marijuana and alcohol.

On May 17, 2011, the petition was sustained and the children were removed from the parents' care. The court ordered reunification services and placed the children in the home of the paternal grandmother.

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<sup>1</sup> All statutory references are to Welfare and Institutions Code.

<sup>2</sup> The father is not a party to this appeal.

Although Mother regularly visited the children, she continued to struggle with substance abuse and failed to consistently participate in her case plan. Accordingly, on October 9, 2012, the court terminated family reunification services as to the parents.

On April 9, 2013, the court ordered that legal guardianship be established for the children with the paternal grandmother and the paternal uncle. The court ordered that visitation be at the discretion of the legal guardian.

#### **B. Section 388 Petition (October 2015)**

Mother filed several section 388 petitions following the court's 2013 order seeking to reestablish family reunification services or, in the alternative, seeking to modify the court's visitation order. Those petitions were denied.

On October 15, 2015, Mother filed a section 388 petition alleging that the paternal grandmother—the children's guardian—disliked Mother, denied Mother visitation with the four children, and was seeking to alienate them from Mother. According to Mother, the children “have all bonded with me and they continue to express their needs for me.” Mother requested that the children be returned to her care and custody, or, in the alternative, that the court order visitation on a particular day and time with a monitor other than the paternal grandmother.

On January 21, 2016, the court held a hearing and granted Mother's petition as to visitation, ordering that “Mother [is] granted monitored visits (paternal grandmother is not to be the monitor) every Saturday for 4 hours in a public setting ([the paternal aunt] is to be the monitor).”

### **C. Section 388 Petition (November 2016)**

On November 1, 2016, Mother filed another section 388 petition requesting unmonitored visits or a new visitation order. Mother stated in the petition that the monitor, the paternal aunt, had cancelled visitations once, sometimes twice, a month and only allowed the visits to be two and a half to three hours rather than the four hours designated in the court's visitation order. Additionally, on October 28, 2016, the monitor called and told Mother that the monitor would be terminating all future visitations. Mother stated her request was in the best interests of her children in order to "continue the bond attachment that is vitally important between a mother and child and to alleviate any feelings of abandonment which in turn will only promote a strong and whole sense of self and well[-]being."

The court denied Mother a hearing on the petition, finding that the petition did not state any new evidence or change of circumstances and that it would not be in the best interests of the children to make any changes.

Mother filed a timely notice of appeal.

### **DISCUSSION**

#### **Mother Made a Prima Facie Showing of Changed Circumstances in Her Section 388 Petition to Warrant a Hearing**

Mother alleges that the court abused its discretion when it summarily denied her section 388 petition requesting a hearing regarding a new visitation order. We agree.

Section 388 allows a person having an interest in a dependent child to petition the court for a hearing to change, modify, or set aside any previous order on the grounds of change of circumstances

or new evidence. (§ 388.) The petition “shall set forth in concise language any change of circumstance or new evidence that is alleged to require the change of order or termination of jurisdiction.” (§ 388, subd. (a)(1).)

The parent seeking modification must “ ‘make a prima facie showing to trigger the right to proceed by way of a full hearing. [Citation.]’ ” (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 250.) There are two parts to this showing: A parent must demonstrate (1) a genuine change of circumstances or new evidence, and that (2) revocation of the prior order would be in the best interests of the child. (*Ibid.*)

#### **A. Change of Circumstances**

Under the court’s section 362.4<sup>3</sup> authority, the court terminated dependency jurisdiction over the children but issued visitation orders. Indeed, the court issued a specific visitation order—Mother was granted visitation every Saturday in a public place for four hours with the maternal aunt as the monitor.

Circumstances had changed, according to Mother’s sworn section 388 petition, because the designated monitor was no longer willing to serve. Indeed, the monitor called Mother and stated

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<sup>3</sup> Under section 362.4, “[w]hen the juvenile court terminates its jurisdiction over a minor who has been adjudged a dependent child of the juvenile court prior to the minor’s attainment of the age of 18 years, and . . . an order has been entered with regard to the custody of that minor, the juvenile court on its own motion, may issue . . . an order determining the custody of, or visitation with, the child.” (*In re J.T.* (2014) 228 Cal.App.4th 953, 959.) The court retained jurisdiction over its visitation order pursuant to section 366.4, subdivision (a), which governs any motions relating to guardianship, including visitation orders related to legal guardianship.

that the monitor intended to cancel all visitations in the future. The judge had ordered visitation on the condition that the paternal aunt monitor the visits. In the absence of that specific monitor, Mother had no right to visit with her children. Mother's only recourse was to file a section 388 petition.

DCFS argues that Mother's petition was inadequate because Mother did not provide any "documentary evidence" to support it. There is, however, no requirement that Mother provide documentary evidence. She was only required to file a verified petition, which she did. (§ 388, subd. (a)(1); Cal. Rules of Court, rule 5.570(a).)

#### **B. Best Interests of the Children**

The court determined that consistent visitations with Mother were in the best interests of the children in its initial visitation order and again, in 2015, when it granted Mother's section 388 petition wherein it specified the frequency and duration of the visitations and named the paternal aunt as the monitor. There is nothing in the record to indicate that the court found that its visitation order was no longer in the children's best interests. Indeed, it was the paternal aunt who refused to act as a monitor and cancelled visitations despite the court's determination that visitations were in the best interests of the children.

A visitation order which fails to protect a parent's right to visit is illusory. If, as here, the court grants visitation, "it must also ensure that at least some visitation, at a minimum level determined by the court itself, will in fact occur." (*In re S.H.* (2003) 111 Cal.App.4th 310, 313.)

Accordingly, the court erred when it denied Mother a hearing on her section 388 petition. We reverse and remand the matter in order for the court to hold a hearing on the issue of visitation as presented in Mother's petition.

**DISPOSITION**

The order denying the section 388 petition is reversed.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

LUI, J.