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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

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

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Respondent,

v.

MARGARET M.,

Appellant.

B284086

Los Angeles County
Super. Ct. Nos. CK92346A
and CK92346B

APPEAL from an order of the Superior Court of
Los Angeles County, Lisa R. Jaskol, Judge. Reversed with
directions.

Law Offices of Vincent W. Davis & Associates and
Stephanie M. Davis, under appointment by the Court of Appeal,
for Appellant.

No appearance for Respondent.

INTRODUCTION

Appellant Margaret M. is the maternal grandmother of minors B.M. and S.M. The juvenile court ordered the children into a permanent plan of legal guardianship with the paternal grandparents and terminated dependency jurisdiction. Over a year later, Appellant petitioned the court to modify the legal guardianship order under Welfare and Institutions Code section 388.¹ The juvenile court summarily denied the petition on the ground that it no longer had jurisdiction to rule on the request for modification. Appellant contends this was an error of law. We agree, and reverse.

FACTS AND PROCEDURAL HISTORY

According to her section 388 petition, Appellant was previously the children's legal guardian.² In February 2012, the juvenile court terminated Appellant's guardianship "because of issues surrounding [her then] husband," and the court ordered the girls placed with the paternal grandparents. The order granted Appellant unmonitored visits with her granddaughters every other weekend.

¹ Statutory references are to the Welfare and Institutions Code unless otherwise designated.

² Consistent with the mandate to liberally construe a section 388 petition in favor of granting a full hearing on the merits, we assume the truth of the petition's allegations, where not directly contradicted by incontrovertible facts in the record. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309-310 [a section 388 petition must be "liberally construed in favor of granting a hearing to consider the [petitioner's] request" and the petitioner "need only make a prima facie showing to trigger the right to proceed by way of a full hearing"].)

On April 6, 2015, the juvenile court terminated dependency jurisdiction, following the establishment of a legal guardianship with the paternal grandparents.

In October 2015, the paternal grandparents began denying Appellant visitation with her granddaughters, including telephone contact.

On December 30, 2016, Appellant filed her section 388 petition. The petition asked to modify the guardianship order by either returning the children to Appellant's legal guardianship, or establishing a visitation schedule to allow Appellant unmonitored visits with the children "as frequent[ly] as possible," including "overnights and weekends."

In support of the petition, Appellant declared that, as of June 2015, she had divorced her former husband and she no longer lived with him. Based on this change of circumstances, Appellant maintained the requested modification would not place the children at risk. She also urged that the proposed modification would be in the children's best interest because "they are bonded to their maternal grandmother and would benefit emotionally from being parented by and/or having extended contact with her on a frequent basis."

On April 3, 2017, the juvenile court held a hearing on Appellant's petition. At the start of the hearing, the court questioned why the petition had not disclosed that jurisdiction was terminated two years earlier. Appellant's attorney explained he was unaware of the termination, as Appellant was not a party to the proceeding and did not have access to the file. He then asked whether jurisdiction was terminated by way of a guardianship. The children's attorney confirmed it was

terminated in a guardianship with the paternal grandparents. The following exchange then occurred:

“THE COURT: So since the case closed two years ago, I have no authority at this point to intervene. The case is closed and there is no ground for granting any of the relief sought.

“[APPELLANT’S ATTORNEY]: Your Honor, with respect to the court’s decision, may I state for the record [that] since it was a guardianship, . . . the court retains jurisdiction, and if anyone, including the guardian, or anyone else . . . wants to modify those guardianship orders, a 388 filed in this court would be the proper procedure. This court still has jurisdiction. . . .

“THE COURT: I have no authority before me that would authorize me or give me any indication that the court has authority in this context.”

The juvenile court denied the section 388 petition on the ground that it lacked jurisdiction to grant the requested relief. This appeal followed.

DISCUSSION

The sole issue for this appeal is whether the juvenile court had jurisdiction to grant Appellant’s section 388 petition, in which case it should have considered the petition on its merits. The issue is a legal question subject to our de novo review. (*Guardianship of Ariana K.* (2004) 120 Cal.App.4th 690, 701; see also *In re Priscilla D.* (2015) 234 Cal.App.4th 1207, 1215 (*Priscilla D.*) [where juvenile court erred in deciding that it

lacked authority under section 388 to terminate legal guardianship, its error of law constituted an abuse of discretion].)

Priscilla D. states the relevant rules. After denying the mother reunification services due to her 30-year history of substance abuse, the juvenile court in *Priscilla D.* ordered the children into a legal guardianship with the maternal uncle and aunt, and terminated its dependency jurisdiction. (*Priscilla D.*, *supra*, 234 Cal.App.4th at pp. 1210-1211.) Almost three years later, the mother filed a section 388 petition. She asserted she had successfully completed substance abuse treatment and asked the juvenile court to change its guardianship order. (*Id.* at pp. 1211-1212.) The juvenile court initially reinstated its dependency jurisdiction to hold a hearing, but later reversed itself, reasoning that section 388 did not authorize it “to reinstate jurisdiction to review the status of the [kinship] guardianship.” (*Id.* at pp. 1211, 1214-1215.) The juvenile court denied the petition. (*Id.* at p. 1215.) The *Priscilla D.* court reversed.

Although guardianship is a more stable solution than foster care, the *Priscilla D.* court explained that “it is not irrevocable” and “[c]ontinuity in a legal guardianship is not equivalent to the security and stability of a permanent caretaker.” (*Priscilla D.*, *supra*, 234 Cal.App.4th at pp. 1215-1216.) Thus, when a relative of a dependent child is appointed legal guardian, the juvenile court “dismisses its [dependency] jurisdiction under section 366.3 in recognition of the fact that the kinship guardianship is a permanent plan for the child and there is no need for ongoing scheduled court and social services supervision of the placement. [Citations.] However, the juvenile court *still maintains jurisdiction over the child as a ward of the legal guardianship and can vacate its order dismissing its dependency jurisdiction.*”

(*Id.* at p. 1216, citing §§ 366.3, subds. (a) & (b), 366.4, italics added.)³

As for the juvenile court's authority to modify or terminate the legal guardianship, the *Priscilla D.* court explained that “[a] parent has the continuing right to petition the [juvenile] court for a modification of any of its orders based upon changed circumstances or new evidence pursuant to section 388.’ [Citation.] This includes the right to petition the court to terminate guardianship.” (*Priscilla D.*, *supra*, 234 Cal.App.4th at p. 1216, quoting *In re Marilyn H.*, *supra*, 5 Cal.4th at pp. 308-309.) Having reinstated its dependency jurisdiction as contemplated by section 366.3, the juvenile court had authority to act on the mother's petition to terminate the guardianship under section 388. (*Priscilla D.*, at p. 1216.) Thus, the *Priscilla D.* court

³ Section 366.3 provides in relevant part: “Following establishment of a legal guardianship, the court may continue jurisdiction over the child as a dependent child of the juvenile court or may terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the legal guardianship, as authorized by Section 366.4. If, however, a relative of the child is appointed the legal guardian of the child and the child has been placed with the relative for at least six months, the court shall, except if the relative guardian objects, or upon a finding of exceptional circumstances, terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship, as authorized by Section 366.4.” (§ 366.3, subd. (a).) Section 366.4, subdivision (a) states that “[a]ny minor . . . for whom a related guardianship has been established pursuant to Section 360 . . . is within the jurisdiction of the juvenile court.” For termination of a relative guardianship, section 360 provides, “Sections 366.4 and 388 shall apply to this order of guardianship.” (§ 360, subd. (a).)

reversed the order denying the mother's section 388 petition and directed the juvenile court to conduct a new hearing to consider the petition's merits. (*Id.* at p. 1219.)

The *Priscilla D.* court's holding is apposite to this case. According to the children's counsel, the juvenile court here, like the juvenile court in *Priscilla D.*, terminated its dependency jurisdiction after establishing a kinship guardianship with the children's paternal grandparents. But the juvenile court "maintain[ed] jurisdiction over the child[ren] as . . . ward[s] of the legal guardianship" under section 366.3, subdivision (a), and it had authority to reinstate its dependency jurisdiction to act upon any motion brought to terminate the guardianship. (*Priscilla D.*, *supra*, 234 Cal.App.4th at p. 1216.) This includes the authority to act upon Appellant's motion under section 388, which permits "[a]ny parent or *other person having an interest in a child* who is a dependent child of the juvenile court [to] . . . upon grounds of change of circumstance or new evidence, petition the court . . . for a hearing to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court." (§ 388, subd. (a)(1), italics added.) In summarily denying Appellant's section 388 petition without considering its merits, the juvenile court erred. (See *Priscilla D.*, at p. 1218; see also *In re Jeremy W.* (1992) 3 Cal.App.4th 1407, 1413-1414.)

DISPOSITION

The order denying Appellant's Welfare and Institutions Code section 388 petition is reversed and the juvenile court is directed to conduct a new hearing to consider the merits of the petition under section 388, including any evidence developed subsequent to the filing of her petition.

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EGERTON, J.

We concur:

EDMON, P. J.

LAVIN, J.