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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

Guardianship of K.S., a Minor.

B281398

(Los Angeles County  
Super. Ct. No. BP117752)

T.S.,

Petitioner and Respondent,

v.

M.B.,

Objector and Appellant.

APPEAL from an order of the Superior Court of  
Los Angeles County. Maria E. Stratton, Judge. Affirmed.

M.B., in pro. per., for Objector and Appellant.

No appearance for Petitioner and Respondent.

Rebecca Loo for the Minor as Amicus Curiae, upon  
the request of the Court of Appeal.

K.S. is the minor son of respondent T.S. (mother). Appellant M.B. is K.S.'s grandmother and was, for approximately seven years, his legal guardian (grandmother). On appeal, grandmother seeks reversal of the trial court's January 2017 order terminating her guardianship of K.S. Grandmother argues it is in K.S.'s best interests to keep the guardianship in place, and that termination of the guardianship is detrimental to him. Based on the record before us, however, which among other things does not include the reporter's transcript of the court trial below, we find no error and affirm.

### **BACKGROUND**

#### **1. Guardianship of K.S.**

In August 2009, mother sought and was granted an order appointing grandmother the legal guardian of then four-year-old K.S. Mother sought a guardianship for K.S. because she was planning to enlist in the United States Army, which required that she have a guardian in place for her son.

#### **2. First Petition for Termination of Guardianship**

Five years later, in October 2014, mother filed a petition to terminate grandmother's guardianship of K.S. (first petition). In her first petition, mother stated she was "no longer going to the military" and, therefore, the guardianship was not necessary. Mother also stated grandmother agreed to termination of the guardianship.

However, grandmother did not agree to the termination of the guardianship and filed an objection. In her objection, grandmother stated mother never enrolled in the military, was unfit to be a parent, did not have a good relationship with K.S., was under investigation by the Los Angeles County Department

of Children and Family Services (Department), and mother's fiancé was incarcerated for the rape of a minor.

In March 2015, the superior court denied mother's first petition without prejudice because a related case was pending in children's court.

### **3. Second Petition for Termination of Guardianship**

#### **a. Second Petition**

In October 2015, mother filed a second petition to terminate the guardianship (second petition). In her second petition, mother explained that instead of enlisting in the Army years before, she enrolled in school to become a massage therapist. While mother was in school, she and K.S. lived with grandmother. Mother stated she was able to care for K.S. and had been taking care of him while living with grandmother. According to mother, the guardianship was always understood to be temporary.

Mother also explained that the day after she filed her first petition, the Department appeared at their home stating it had received allegations that K.S. was being abused. According to mother, she cooperated fully with the Department and, a few weeks later, the case was closed for lack of evidence. However, in February 2015, the Department opened another case and removed K.S. and his younger half sister from grandmother's home and mother was forced to move out. Mother stated that she regained full custody of her daughter in August 2015 and the case was closed as to her in September 2015. However, mother said the case remained open as to grandmother because, according to mother, "they feel that she [i]s mentally disabling my son." Mother did not believe K.S. was safe with grandmother, claiming grandmother was "emotionally abusing him, and is

purposefully keeping him away from me and his sister. She will not let me visit him or acknowledge me as his mom. She also has put him down to the point that he has suicidal thoughts.” Mother stated that despite requests from the Department, grandmother refused to organize visits for mother with K.S. and grandmother would not allow mother to call K.S.

In December 2015, the superior court ordered a probate investigation report and appointed counsel for K.S. In January 2016, the court also ordered grandmother to permit visits between mother and K.S. as well as to keep mother informed on, among other things, K.S.’s health, therapy, and education.

**b. Objection to Second Petition**

In February 2016, grandmother filed an objection to mother’s second petition. Grandmother stated she had cared for K.S. since his birth and he was accustomed to living with her. According to grandmother, mother had “serious anger issues” (including making death threats against grandmother) and was unfit to be a parent. Grandmother also claimed mother made it difficult to schedule visits with K.S. and that mother lived in the home of her fiancé, who according to grandmother had been convicted of statutory rape. Grandmother believed she offered K.S. stability that mother could not provide. As to the Department’s open case involving grandmother, grandmother stated: “I have a ‘voluntary’ case because if I had agreed to dismissing everything . . . [K.S.] would have loss [*sic*] his WRAP AROUND team that day! I chose to put [K.S.] 1st so he wouldn’t have to deal w/anymore loss. He had already lost so much. I wanted everything dismissed but not @ [K.S.]’s expense! I am not now, nor have I ever abused him. Our WRAP team, soc. wrkr, Support Grp., Friends, Family, Rabbi, etc, will verify this.”

**c. Report of Appointed Counsel**

In March 2016, K.S.'s appointed counsel filed a report with the court. Counsel stated she had reviewed case documents and interviewed K.S., mother, grandmother, K.S.'s therapist, and others. Counsel reported on a variety of matters including whether the Department currently had an open case involving grandmother and K.S., which remained unclear, and a mediation that mother and grandmother had participated in, which resulted in the parties agreeing to participate in reunification therapy.

After interviewing both mother and grandmother and interacting with them by phone and in person, counsel stated it was apparent neither trusted the other. Counsel reported it was difficult for mother and grandmother to schedule mother's visits with K.S. Counsel observed a visit in March 2016, during which grandmother consistently belittled mother in front of K.S. After speaking with K.S., it was clear to counsel that K.S. believed mother was doing something wrong.

Counsel believed grandmother took her role as K.S.'s guardian too far, stating grandmother "views [K.S.] as her own child and is treating him as such." In addition, counsel believed that, despite court orders in place, grandmother deliberately withheld information from mother regarding the well-being of K.S., and purposely alienated K.S. from mother. Counsel noted that both Department cases involving the family had been closed as to mother, and counsel believed grandmother had made the referrals to the Department in order to delay termination of her guardianship. Counsel concluded grandmother was "adamantly and deliberately manipulating [K.S.]'s relationship with his Mother," and was "not in any way working in the best interest of [K.S.] in fostering a relationship with his mother. Quite the

opposite, it appears that she is purposely making sure that they not have a relationship.”

K.S.’s counsel recommended that the guardianship be terminated. She believed the problems presented were not related to mother’s relationship with K.S., but rather were related to the “toxic” relationship between mother and grandmother. Although counsel recommended that the court grant the second petition, she advised that, because it had been seven years since mother and K.S. had a close relationship, the court should permit a “transition” or “reunification” period. Counsel recommended that mother’s visits with K.S. be unmonitored, scheduled for a set time and place, and that grandmother not be present during the visits. Counsel also recommended that mother, grandmother, and K.S. each participate in individual therapy as well as reunification therapy together.

**d. Visitation and Suspension of Guardianship**

At a March 2016 hearing, following receipt of K.S.’s counsel’s report, the trial court ordered visitation at a set place and at set times, to occur once a week for two hours. The court also ordered mother and grandmother not to mention the other in the presence of K.S. The court scheduled a status conference six months later.

In June 2016, mother filed an ex parte application for an order to show cause why grandmother should not be held in contempt for her failure to abide by the court’s visitation order. Mother included a declaration and notes pertaining to the alleged difficulties she experienced with grandmother. Grandmother filed a response to the ex parte application, stating she had not failed to abide by the court’s order. Instead, grandmother

insisted mother was not abiding by the court's order. Grandmother included a declaration, copies of text messages between her and mother, and seven letters of reference supporting grandmother's side of the story. The letters of reference were from K.S.'s doctors, a Department social worker, friends of grandmother, and the rabbi at her temple.

In order to obtain additional information, the trial court continued the hearing on mother's ex parte application a few times. The court also made additional visitation orders, including overnight visits with mother.

Eventually, the hearing on mother's ex parte application was held in August 2016. The reporter's transcript from the hearing is not in the record on appeal. However, the minute order from the hearing indicates the parties stipulated to a denial of the ex parte application without prejudice. The minute order also states the trial court "suspended" grandmother's guardianship, ordered mother to enroll K.S. in a school near her home, and ordered grandmother to "turn over" K.S. to mother and not to have any contact with him. The trial court also appointed mother as K.S.'s "temporary guardian."

**e. Trial on the Second Petition<sup>1</sup>**

In December 2016, and prior to trial on the matter, counsel for K.S. filed a trial brief. Counsel again argued the court should grant mother's second petition for termination of grandmother's

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<sup>1</sup> In October 2016, mother filed a third petition for termination of grandmother's guardianship as well as an ex parte application seeking an order terminating grandmother's guardianship. The trial court denied the ex parte application, stating the matter was already scheduled for a trial in December 2016.

guardianship. Counsel asserted grandmother “has grossly hindered with the process of reunification” between mother and K.S. Counsel also stated she had spoken with therapists and a psychologist familiar with the family, all of whom believed grandmother “has mental and emotional issues that need to be resolved before the minor should continue to be her responsibility, should there be a guardianship. [Grandmother]’s involvement with the Minor’s life is unnatural and very unhealthy for the Minor and for the Minor’s family.” According to K.S.’s counsel, the therapists and psychologist “all feel that long strides have been made in stabilizing the Minor’s psychological and emotional being in the months that he has been with [mother].” Counsel also stated that, at the time, there was “no indication that [mother] is an unfit mother.”

In her trial brief, counsel for K.S. also reported that, in August 2016, K.S. had tried to hang himself at a department store. Grandmother tried to hide the incident from both mother and K.S.’s therapist. But K.S. mentioned it to his therapist, who then set up a suicide watch at both mother’s and grandmother’s homes. In addition, K.S. told both mother and her significant other that grandmother twice had molested him. As a result, K.S.’s therapist made a referral to the Department. The Department investigated the claim and closed the case as unsubstantiated.

Finally, counsel for K.S. reported on K.S.’s statements about his family. K.S. stated that he loved grandmother and mother and wanted to be with both of them. He also stated he loved his younger sister and wanted to be with her.

Although not in the clerk’s transcript on appeal, grandmother attached to her opening brief on appeal a copy of



what appears to be her trial brief filed below.<sup>2</sup> In her trial brief, grandmother asserted mother would be unable to satisfy her burden at trial. Grandmother argued instead that the guardianship was in K.S.'s best interest and that termination of the guardianship would not be in his best interest. Grandmother also claimed K.S.'s appointed counsel was biased against grandmother and had made many false accusations against her. Grandmother asserted she had been K.S.'s primary caregiver for at least seven years and always had his well-being in mind. Rather than being in K.S.'s best interest, grandmother argued removing K.S. from her home would be detrimental to him because she had provided a loving home for him and was familiar with his needs. Grandmother also insisted that, contrary to mother's and counsel for K.S.'s claims, she did not make any referrals to the Department. As support for her position, grandmother referred to confidential documents that are not in the record on appeal.

A court trial on the second petition was held December 16, 2016. Mother, grandmother, K.S.'s therapist Cynthia Juarez, and third party witness Sylvie de Toledo testified. The reporter's transcript from the trial is not in the record on appeal. At the conclusion of the trial, the court took the matter under submission.

**f. Ruling on the Second Petition**

In a January 9, 2017 minute order, the trial court issued its decision. The court granted mother's petition to terminate the

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<sup>2</sup> We granted grandmother's application to file her opening brief with 15 pages of attached documents. The argument section of her opening brief repeats almost verbatim portions of these 15 pages.

guardianship and ordered no visitation for grandmother “in person, by telephone, or via any electronic device” until further order of the court. The court stated grandmother could file a petition for visitation, but any such petition would not be heard before March 1, 2017.

The trial court detailed its factual findings in support of its ruling. First, the court reviewed the testimony of Juarez, who had been K.S.’s therapist since July 2016. The court found Juarez to be “a very credible and solid witness.” Juarez testified that, in early August 2016 when K.S. was 11 years old, he was suicidal and had tried to kill himself. Mother knew K.S. had tried to kill himself and called Juarez. K.S. told Juarez he was afraid of mother’s fiancé because grandmother had told K.S. he was dangerous. However, Juarez testified she “never had any concerns about [mother’s] fiancé.” Juarez also stated K.S. had told her that grandmother sexually molested him, although she gave no details, citing patient privacy. Juarez attributed K.S.’s suicidal ideation to “the tension of going between his grandmother . . . and mother.” She believed “his suicidal ideation ha[d] stopped because he is not in the middle of his mother and grandmother any longer, now that he is living with his mother.” Juarez reported that, since K.S. began living with mother on August 18, 2016, he seemed “happy and not anxious.” However, she believed he was not yet stable and visitation with grandmother was not appropriate.

The trial court also found mother to be a “credible and thoughtful” witness. Mother testified she believed grandmother made referrals to the Department when mother began seeking termination of the guardianship. Mother stated K.S. told her grandmother made the referrals. The trial court noted that,

contrary to previous allegations, mother had no mental health diagnosis and did not use drugs or alcohol. As a result of the referrals to the Department, mother had been evaluated by five therapists and satisfied all conditions the Department imposed. Since K.S. moved in with mother, he had been thriving, attending a new school, making new friends, doing well academically, and participating in extracurricular activities. Mother also testified as to K.S.'s allegations of sexual abuse by grandmother and his suicide attempt.

The court found grandmother was not a credible witness. The court stated: "Unfortunately for her credibility, [grandmother's] recollection failed on points which one would expect a guardian to remember. She could not recall agreeing to cooperate with reunification. She could not recall if the therapist recommended reunification. She could not recall if [mother] ever said she wanted to terminate the guardianship. She could not recall if she received notice through the mail of the second petition to terminate guardianship, although she remembers not being personally served. She could not recall, initially, if she advised [mother] about the suicidal note she saw."

Grandmother testified she was a better caretaker for K.S., stating, "I can take care of him better. I would provide a better home." Grandmother denied making the referrals to the Department. The trial court found grandmother "had a very convenient failure of recollection on important points that a responsible guardian, particularly one opposing termination, should recall. She has no reason to object to the termination of the guardianship other than she believes she would be a better parent than her daughter [mother]." The court also determined grandmother had "been less than cooperative and has put her

own self-interest in remaining as [K.S.]’s primary caretaker before [K.S.]’s best interest. As a result [K.S.] has been caught in the middle of his grandmother and mother . . . [and grandmother] is not a fit guardian at this time.”

Third party witness Sylvie de Toledo also testified.<sup>3</sup> According to the court’s order, she stated she had never seen “abusive conduct by [grandmother] towards [K.S.] and she attend[s] her parenting program regularly.”

The court found: “There is no reason that [K.S.] should not be reunited with his mother . . . [who] is a fit mother.” And “[b]ased on Juarez’s testimony,” the court determined mother’s relationship with her fiancé “is not detrimental to [K.S.] or a threat to his physical or mental well-being. [K.S.] is thriving in his new home.” Thus, the court concluded, “given [mother]’s fitness as a parent, [grandmother]’s elevation of her desire to be [K.S.]’s primary caretaker over his mental stability, and [K.S.]’s improved mood and mental state since he has been removed from [grandmother]’s home and the chaos of being in the middle of these two women, the court finds that it is in [K.S.]’s best interest to be reunited immediately with his mother and that the guardianship should be terminated forthwith.”

On January 20, 2017, the trial court filed its final order granting mother’s second petition.

#### **4. Appeal**

On March 9, 2017, grandmother appealed. To date, mother has not participated in this appeal.

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<sup>3</sup> Other than being designated as a third party witness for grandmother, the record on appeal does not reveal who Sylvie de Toledo is or the nature of her relationship to the parties.

## DISCUSSION

### 1. Applicable Law and Standard of Review

California law recognizes two types of guardianships pertaining to minor children—probate guardianships and dependency guardianships—each of which is governed by a separate statutory scheme. (*In re Z.F.* (2016) 248 Cal.App.4th 68, 72.) This case concerns a probate guardianship and is governed by the applicable provisions of the Probate Code. “The probate guardianship statutes are . . . intended to ensure and protect the welfare of a minor who ordinarily cannot protect himself or herself.” (*Guardianship of A.L.* (2014) 228 Cal.App.4th 257, 267.)

A trial court may terminate a probate guardianship “if the court determines that it is in the ward’s best interest to terminate the guardianship.” (Prob. Code, § 1601; Cal. Rules of Court, rule 7.1004.) “The best interest of the child is the sole criterion governing guardianship termination proceedings.” (*Guardianship of A.L.*, *supra*, 228 Cal.App.4th at p. 268; *Guardianship of L.V.* (2006) 136 Cal.App.4th 481, 489, 490.)

“What constitutes the best interest of a child presents an inherently factual issue” and “is ‘an inquiry that is particularly founded on application of the trial court’s experience with human conduct.’” (*Guardianship of A.L.*, *supra*, 228 Cal.App.4th at p. 268.) We review the trial court’s factual findings for substantial evidence. (*Guardianship of L.V.*, *supra*, 136 Cal.App.4th at p. 487.) “We view the evidence in a light most favorable to the trial court’s decision, resolving all conflicts in the evidence and drawing all reasonable inferences in support of that court’s findings. [Citation.] In short, we review the evidence but do not weigh it; we defer to the trial court’s findings to the extent they are supported by substantial evidence.” (*Ibid.*) “[I]ssues of

fact and credibility are the province of the trial court.” (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.)

“The decision whether to terminate a guardianship is committed to the sound discretion of the trial court.” (*Guardianship of L.V., supra*, 136 Cal.App.4th at p. 488.) “ “The appropriate test for abuse of discretion is whether the trial court 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 Stephanie M.* (1994) 7 Cal.4th 295, 318–319.)

**2. The trial court did not err in terminating the guardianship.**

As noted above, in considering mother’s petition for termination of the guardianship, the only issue before the trial court was K.S.’s best interest. (*Guardianship of A.L., supra*, 228 Cal.App.4th at p. 268.) Thus, grandmother is incorrect when she suggests, for example, that the trial court also was required to consider mother’s “overall moral fitness.” It is clear the trial court applied the correct legal standard. In its ruling on the petition, the court concluded “it is in [K.S.]’s best interest to be reunited immediately with his mother and that the guardianship should be terminated forthwith.”

As also noted above, the reporter’s transcript for the trial is not in the record on appeal. This omission hinders our review. Although grandmother is representing herself on appeal, she is not exempt from the rules governing appeals. A self-represented party “is to be treated like any other party and is entitled to the same, but no greater consideration than other litigants and attorneys.” (*Barton v. New United Motor Manufacturing, Inc.*

(1996) 43 Cal.App.4th 1200, 1210; *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246–1247.)

Nonetheless, based on the record before us which includes the trial court’s findings of fact as stated in its ruling on the second petition, we conclude the trial court did not abuse its discretion in terminating the guardianship. First, we presume the trial court’s order is correct. “[A]n appealed judgment is presumed correct, and appellant bears the burden of overcoming the presumption of correctness.” (*Boyle v. CertainTeed Corp.* (2006) 137 Cal.App.4th 645, 649–650.)

Second, although grandmother points to facts that support her position, the record contains facts that support the opposite position. For example, although grandmother argues she has provided and would continue to provide stability for K.S., Juarez and mother both stated K.S. was quite unstable while in grandmother’s care, including attempting suicide. The trial court also heard testimony that K.S. was happy and doing well in mother’s care, attending a new school, making friends, and no longer anxious. And although grandmother claimed she had K.S.’s best interest in mind, others argued she did not. “ ‘ “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 Stephanie M., supra*, 7 Cal.4th at p. 319.)

And finally, the trial court found both mother and Juarez to be credible witnesses, but found grandmother was not credible. The court did not make a credibility finding as to the brief testimony of Sylvie de Toledo. “[I]ssues of fact and credibility are the province of the trial court.” (*In re Heather A., supra*, 52 Cal.App.4th at p. 193.) There is nothing in the record on appeal

that would cause us to reverse the trial court's credibility findings, and grandmother does not address those findings on appeal.<sup>4</sup>

Thus, despite grandmother's recitation of facts that she believes support her position, other facts as found by the trial court undercut her position, and instead amply support the trial court's decision to grant mother's second petition. As such, we conclude the trial court did not err in terminating the guardianship.

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<sup>4</sup> Six days before oral argument, grandmother filed a motion to augment the record on appeal. Grandmother asked us to augment the record with documents she said she received from the Clark County, Nevada Department of Family Services (DFS), including a September 19, 2018 letter from DFS stating K.S. and his half sister were, or may soon be, in DFS custody. The letter did not indicate why the children were or might soon be in DFS custody. We denied the motion to augment because the documents at issue were never before the trial court. Indeed, the trial court made the decision currently on review long before September 2018. As we indicated at oral argument, any Nevada case will be handled by the Nevada authorities. Grandmother is free to participate in those proceedings, and we take no position on them nor can we speculate as to how they might conclude.



**DISPOSITION**

The January 20, 2017 order granting T.S.'s petition for termination of guardianship is affirmed. The parties are to bear their own costs on appeal.

NOT TO BE PUBLISHED.

LUI, P. J.

We concur:

ASHMANN-GERST, J.

CHAVEZ, J.