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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION THREE

In re AARON R., a Person Coming Under  
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

AARON R.,

Defendant and Appellant.

A133597

(Contra Costa County  
Super. Ct. No. J1000458)

Eighteen-year-old Aaron R. appeals from an order terminating his wardship and releasing him from custody. He contends the juvenile court abused its discretion in terminating his wardship because it was likely he would be deported upon his release from custody and he “needed the support of the juvenile court to apply for immigration relief.” He also contends the court erred in failing to prohibit the probation department from notifying federal immigration authorities of his pending release from juvenile hall and in failing to make factual findings in support of his application for classification as a Special Immigrant Juvenile (SIJ) under the Immigration and Nationality Act, 8 United States Code section 1101(a)(27)(J).<sup>1</sup>

<sup>1</sup> Classification as an SIJ provides relief from deportation and a path towards permanent residency for alien minors. “An unaccompanied minor is eligible for SIJ status if he or she is under 21 years of age, unmarried, has been declared a dependent of a juvenile court in accordance with state law and is eligible for long-term foster care, and the juvenile court determines it would not be in the child's best interest to be returned to his or her country, or parent’s country, of nationality or last habitual residence.” (*In re Y.M.* (2012) 207 Cal.App.4th 892, 915.) For purposes of this opinion, we assume without deciding

We conclude that the trial court did not abuse its discretion in terminating Aaron's wardship. We reject the Attorney General's argument that the appeal as a whole should be dismissed as moot, but our conclusion that the court's jurisdiction was properly terminated renders the remaining contentions moot. We do not believe that the relatively unique circumstances of this case frame issues of such widespread public importance to justify the exercise of our discretion to resolve the remaining issues despite the absence of any available effective relief for Aaron. Accordingly, we shall affirm the order terminating Aaron's wardship.

### **Factual and Procedural History**

Aaron was born in Mexico but moved with his parents to Los Angeles when he was approximately six months old. In 2002, his family moved to Martinez but Aaron almost immediately returned to Los Angeles with his father after his parents divorced. In 2005, his father was deported to Mexico and Aaron returned to Martinez to live with his mother.

In March 2010, a petition was filed pursuant to Welfare and Institutions Code<sup>2</sup> section 602 alleging that Aaron had committed the misdemeanor violation of receiving stolen property (Pen. Code, § 496). Aaron admitted the violation and was placed on home supervision for 60 days subject to certain terms and conditions.

In November 2010, a second petition was filed pursuant to section 602 alleging that Aaron had committed, among other things, the misdemeanor violation of possessing burglary tools (Pen. Code, § 466). The juvenile court sustained the section 466 violation and Aaron was committed to a juvenile rehabilitation facility for 180 days.

In December 2010, just prior to his commitment to the rehabilitation facility, Aaron's mother returned to Mexico, leaving Aaron under the care of his aunt and uncle.

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that SIJ status may be conferred on a juvenile declared a ward of the court under Welfare and Institutions Code section 602 as well as those found to be dependents under section 300.

<sup>2</sup> All statutory references are to the Welfare and Institutions Code unless otherwise noted.

Following his graduation from the rehabilitation facility on May 6, 2011, Aaron was released to the home of his aunt and uncle. Two weeks later, Aaron was detained and placed in juvenile hall after the probation department was informed by his aunt and uncle that they could no longer afford to care for him. At the time of his detention, Aaron was residing with his mother's boyfriend. Thereafter, the probation department filed a petition alleging that a change of circumstance had occurred which required modification of the prior dispositional order. The petition explained that Aaron was without a viable living option because his mother was still in Mexico and his aunt and uncle could no longer care for him due to financial restraints. The probation department also indicated that immigration officials had been notified that Aaron was in custody and that an immigration detainer had been placed on Aaron's release.

On June 9, 2011, Aaron filed a motion seeking, among other things, to prohibit the probation department from notifying immigration officials upon his release from juvenile hall. Aaron also filed a motion requesting that the juvenile court make factual findings in support of an application to federal immigration authorities for SIJ status.<sup>3</sup>

Prior to the hearing on the pending motions, the probation department filed a memorandum requesting that Aaron's wardship be vacated and that he be released immediately. The probation department explained that the wardship should be terminated because Aaron was 18 years old and, having performed well at the rehabilitation facility and after his release, there was little the probation department could do to further assist him in his rehabilitation. The probation department also explained that while it would

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<sup>3</sup> To apply for SIJ status, the applicant must submit a petition for classification to federal immigration authorities that is supported by, among other things, a juvenile court order, issued by a court of competent jurisdiction located in the United States, showing that the court has found the applicant to be dependent upon that court and eligible for long-term foster care, as well as "[e]vidence of a determination made in judicial or administrative proceedings by a court or agency recognized by the juvenile court and authorized by law to make such decisions, that it would not be in the [applicant's] best interest to be returned to the country of nationality or last habitual residence of the beneficiary or of his or her parent or parents." (8 C.F.R. § 204.11(d).)

abide by any order issued by the court, it was the policy of the department to comply with notification requests contained in immigration detainers.

At a hearing on August 26, 2011, the court denied Aaron's motions and ordered that his wardship be terminated and that he be released to himself. The court explained that termination of jurisdiction was appropriate because Aaron had completed his rehabilitation. "The court's overriding concern for the wardship is his rehabilitation, and as far as probation is concerned and as far as the court is concerned that is more than completed. He's not in violation of the terms of his probation. He was not even technically in violation of the terms of his probation when probation brought him before the court when his relative was unable to house him any longer. So his current incarceration is above and beyond any rehabilitation that this minor ever needed, and now he's an adult." Having determined that he "must be released forthwith," the court concluded that there was no basis to prohibit the probation department from notifying immigration authorities of Aaron's imminent release. The court explained, "At the core of this contention is the belief that the detention and/or deportation of juveniles by the [ICE] is contrary to their best interests; however, in this motion no facts were cited in support of this conclusion. . . . [¶] . . . [¶] Because there was no evidence whatsoever that the communication by probation to the INS is contrary to the best interests of this defendant, the court cannot even consider using its equitable powers to enjoin such communications . . . ." Finally, the court rejected Aaron's argument that continued wardship was in his best interest, at least temporarily, because he lacked anywhere to live and it was possible that immigration officials would not act on the detainer. The court explained that if immigration officials opted not to take Aaron into custody, he "would in effect be like all other minors that do not have immigration issues before this court" and in that situation, dismissal was still appropriate based on Aaron's completed rehabilitation.

Aaron filed a timely notice of appeal. According to Aaron’s appellate counsel, Aaron has been deported.<sup>4</sup>

### **Discussion**

On appeal, Aaron contends the court erred in failing to make factual findings in support of his application for SIJ status, that the court erred in allowing the probation department to notify immigration officials of his pending release, and that the court abused its discretion in terminating his wardship. The Attorney General disputes each of these contentions, but argues first that the appeal should be dismissed as moot because Aaron’s wardship has been terminated and he has been deported.

1. *The appeal as a whole is not moot.*

The Attorney General contends that Aaron’s deportation has rendered his appeal moot. She argues that Aaron “is now a resident of Mexico and, consequently, is beyond the jurisdiction of this court. Any ruling by this court in [his] favor could provide him with no relief because [he] would remain a Mexican resident and citizen not subject to the laws of this state.”

Aaron asserts that if his wardship is reinstated and if this court determines that the juvenile court erred in denying his request for SIJ findings, and if on remand the juvenile court makes the requested findings, then he will be eligible to file a motion to reopen his immigration proceedings and seek to be paroled back into the United States. Once back in the United States, Aaron could use the state court’s SIJ findings to file an application for SIJ status. The Attorney General argues that this theory is “too attenuated to withstand scrutiny,” suggesting that Aaron cannot establish the “urgent humanitarian reasons” necessary to support his parole into the United States under 8 United States Code section 1182(d)(5)(A).<sup>5</sup> The likelihood of accomplishing this scenario, however, is

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<sup>4</sup> Counsel asks that we take judicial notice of the removal proceedings initiated against Aaron but counsel has not filed a motion for judicial notice or any supporting documentation.

<sup>5</sup> 8 United States Code section 1182(d)(5)(A) provides: “The Attorney General may . . . in his discretion parole into the United States temporarily under such conditions as he

not properly considered in determining mootness. (See *In re Sodersten* (2007) 146 Cal.App.4th 1163, 1217 [test is whether it is “impossible for this court, if it should ever decide the case in favor of plaintiff, to grant him any effectual relief whatever”].) However unlikely, we cannot say as a matter of law that Aaron could not possibly obtain the results he seeks if this court were to direct the reinstatement of his wardship. Therefore the appeal is not moot. (See, e.g., *People v. Puluc-Sique* (2010) 182 Cal.App.4th 894, 900 [defendant’s appeal challenging conditions of probation is not moot because the resolution of the appeal “could affect defendant’s rights should he return to this country in the future”]; *In re Edwardo V.* (1999) 70 Cal.App.4th 591, 593, fn. 1 [appeal is not moot even though juvenile ward had been deported and lost contact with attorney because conviction would be minor’s first strike and could have subsequent effect under the three strikes law].) Accordingly, the Attorney General’s request that the entire appeal be dismissed is denied.

The Attorney General also argues that Aaron’s appeal is moot because “the juvenile court terminated wardship and its jurisdiction over [Aaron] . . . [t]hus any decision by this court on the validity of the juvenile court’s modification of [Aaron’s] disposition will have no effect on him.” Although Aaron’s first and second contentions, regarding the court’s alleged failure to make SIJ findings and to enjoin the probation department from releasing information about Aaron to immigration authorities, will be rendered moot if this court affirms the termination of wardship, his argument challenging the termination itself must first be decided. Were Aaron to prevail on this issue, the other issues would require determination.

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may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States . . . .”

The Attorney General’s additional argument that Aaron is not eligible for SIJ status because he is 18 years old is incorrect. “An alien is eligible for classification as a special immigrant under [8 United States Code section 1101(a)(27)(J)] if the alien . . . [i]s under twenty-one years of age.” (8 C.F.R. § 204.11(c)(1).)

2. *The juvenile court did not abuse its discretion in terminating Aaron's wardship.*

Section 778 authorizes the probation department to file a petition to terminate the court's jurisdiction over a juvenile ward upon a showing of changed circumstances.<sup>6</sup>

"The modification or termination rests in the sound discretion of the trial court and, in the absence of a clear showing of abuse of discretion, an appellate court is not free to interfere with the trial court's order." (*In re Corey* (1964) 230 Cal.App.2d 813, 831-832.)

The trial court did not abuse its discretion in finding that changed circumstances warranted reconsideration of its prior dispositional order. When the petition for modification was filed, Aaron's relatives were no longer able to care for him. He had left their home and was residing with his mother's boyfriend. The boyfriend was not a relative and was not an approved placement. This change in housing undoubtedly supported reconsideration of what disposition would be in Aaron's best interest.

Nor did the court abuse its discretion in finding that termination of jurisdiction was in Aaron's best interest. The probation department reported that Aaron did not pose a significant threat to the community and was at a low risk to reoffend. The department explained that "considering that Aaron is 18 years old; he performed well at [the rehabilitation facility] and after his release from [the facility]; and the services that have been applied to him (wardship for 16 months, home supervision, [the rehabilitation

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<sup>6</sup> Section 778 provides: "Any parent or other person having an interest in a child who is a ward of the juvenile court or the child himself through a properly appointed guardian may, upon grounds of change of circumstance or new evidence, petition the court in the same action in which the child was found to be a ward of the juvenile court for a hearing to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court. The petition shall be verified and, if made by a person other than the child, shall state the petitioner's relationship to or interest in the child and shall set forth in concise language any change of circumstance or new evidence which are alleged to require such change of order or termination of jurisdiction. [¶] If it appears that the best interests of the child may be promoted by the proposed change of order or termination of jurisdiction, the court shall order that a hearing be held and shall give prior notice, or cause prior notice to be given, to such persons and by such means as prescribed by Sections 776 and 779, and, in such instances as the means of giving notice is not prescribed by such sections, then by such means as the court prescribes."

facility] counseling, etc),” it believed “that little can be done to further assist him in his rehabilitation.” These circumstances normally would provide ample support for the termination of jurisdiction.

Aaron’s counsel argues that despite Aaron’s age and rehabilitation, the court should have determined whether placement with his mother’s boyfriend was in his best interest before terminating jurisdiction. The probation report indicates that the probation department had conducted an initial investigation of the boyfriend and was uncomfortable recommending placement with him at this time. The report also considered alternative placements but rejected the alternatives. The report concluded that placing Aaron in a court approved home would be “unreasonable and costly due to Aaron being the age of majority and the increased costs of placing a non-resident youth.” The report also rejected placing Aaron back at the rehabilitation facility on the ground that it “would delay his housing problems” and be contrary to his best interest. In light of Aaron’s age and apparent rehabilitation, the court did not abuse its discretion in determining that Aaron should be released to himself.

Aaron’s primary contention is that the threat of deportation in this case made the termination of wardship contrary to his best interests. He argues that the termination interfered with his ability to seek relief from deportation based on classification as a SIJ. Counsel reiterates the claim made in the trial court that deportation is contrary to Aaron’s best interest because “if he were to be deported he would be going to a place that he has not been since he was six months old, and to a region of Mexico where his family currently resides, . . . that the U.S. State department has recognized as being very dangerous in light of the current drug cartel violence.”

However, Aaron was not deported because the court terminated his wardship. The immigration detainer requested notification upon his release from juvenile hall. Even if the court had not terminated his wardship, Aaron would still have been released from custody and subject to arrest and deportation by federal immigration officials.

The termination of his wardship did, however, preclude Aaron from applying for immigration relief based on classification as a SIJ. (See 8 C.F.R. § 204.11(c) [“An alien

is eligible for classification as a special immigrant under [8 United States Code section 1101(a)(27)(J)] of the Act if the alien: [¶] . . . [¶] (5) Continues to be dependent upon the juvenile court and eligible for long-term foster care, such declaration, dependency or eligibility not having been vacated, terminated, or otherwise ended”].) The trial court found that Aaron’s potential relief from deportation was not a sufficient basis on which to maintain jurisdiction because there is insufficient evidence that deportation would be contrary to his best interest. Aaron was homeless and jobless in the United States, not enrolled in any educational program , and presumably would be deported to Mexico, where both of his parents reside. The court observed that while one might argue that it is not in the best interests of the minor “to be deported to where his parents and extended family live,” Aaron failed to produce evidence that would support such a finding. And while the government has recognized the dangers posed by drug violence in parts of Mexico, counsel did not offer evidence suggesting that Aaron was likely to be exposed to such violence. Presumably any such danger would be considered by the federal immigration officials in removal proceedings. We cannot say, on the present record, that the court abused its discretion in failing to maintain jurisdiction over Aaron for the sole purpose of supporting his application for immigration relief.

3. *Aaron’s remaining arguments are moot.*

“An appeal becomes moot when, through no fault of the respondent, the occurrence of an event renders it impossible for the appellate court to grant the appellant effective relief. [Citation.] However, a reviewing court may exercise its inherent discretion to resolve an issue rendered moot by subsequent events if the question to be decided is of continuing public importance and is a question capable of repetition, yet evading review.” (*In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1404.) As noted above, eligibility for SIJ status requires the minor to establish that he or she is presently a dependent of the court. (8 C.F.R. § 204.11(c).) Having found that Aaron’s wardship was properly terminated, he is no longer eligible for SIJ status. Any alleged error with regard to the court’s denial of Aaron’s motion for factual findings in support of an application

for classification as a SIJ is therefore moot. Aaron's argument that the court erred in failing to prohibit the probation department from complying with the notification request contained in the immigration detainer is also moot. The immigration authorities have already been notified and Aaron has been deported. In addition, because of Aaron's age and the termination of his wardship, there is no possibility that Aaron will be subject to supervision by the juvenile probation department in the future. A determination by this court that the trial court should have granted Aaron's request thus would be of no benefit to Aaron.

Contrary to Aaron's suggestion, we do not believe the present case is an appropriate one in which to exercise our discretion to consider an issue that is moot but of continuing public importance. Aaron's contention that the juvenile court abused its discretion in failing to exercise its equitable powers to prohibit the probation department from notifying immigration officials of his pending release from custody depends in large part on an individualized analysis of Aaron's best interests. His circumstances are relatively unique — he was no longer a minor and was being detained at the time immigration officials were notified of his detention because he was essentially homeless and had no parents or other family in the country able to house him. Any decision would be of limited value in other cases. We see no justification for consideration of this otherwise moot issue.

### **Disposition**

The order terminating Aaron's wardship is affirmed.

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Pollak, Acting P.J.

We concur:

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Siggins, J.

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Jenkins, J.