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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re W.C., a Person Coming Under the
Juvenile Court Law.

ALAMEDA COUNTY SOCIAL
SERVICES AGENCY,

Plaintiff and Respondent,

v.

W.C.,

Defendant and Appellant.

A148265

(Alameda County
Super. Ct. No. 0J15024692)

STATEMENT OF FACTS

W.C. was born in Guatemala in 1997. He lived in Guatemala with his grandparents from an early age, because his mother was dead and his father missing. Eventually, W.C. left Guatemala because of threats to his safety and came to the United States. He arrived in this country alone, with no parental support, in the summer of 2014. At the border, W.C. was taken into protective custody by American officials and eventually placed with a distant relative in Oakland in August 2014. The relative agreed to sponsor W.C. for asylum, but their relationship became difficult and W.C. left that residence, becoming homeless in October 2014.

Living on his own in Oakland presented W.C. with several problems. He had difficulty in school and developed behavior issues, including cutting and drug use. He

was taken to Children's Hospital in Oakland for a Welfare and Institutions Code¹ section 5150 assessment after cutting himself at school. However, he was denied treatment because he lacked insurance and had no legal guardian available to approve mental health assessments.

W.C. lived at the Dream Catcher's Youth Services shelter after February 2015. At the end of the month, he told the Alameda County Social Service Agency (Agency) he was living with a friend, working, and paying rent. Eventually, W.C. was suspended from school because he was under the influence of drugs, possessed a knife, and engaged in theft from a local store. On April 13, 2015, W.C. told school officials he needed to go into protective custody.

W.C. first came to the juvenile court's attention on April 15, 2015, when the Agency filed a petition alleging appellant, then two weeks shy of his 18th birthday, was a child who came under section 300, subdivision (g). The Agency alleged he had been left without any provision for support, because his parents were reportedly deceased, he was no longer living with any sponsor, and had no means of support.

The Agency filed a report recommending W.C. be detained. A detention hearing in this matter took place on April 17, 2015. Its purpose was to assess whether the Agency could establish a prima facie case for detaining W.C. The court ordered him detained, with temporary placement and care provided by the Agency pending disposition. The court appointed counsel for W.C. on its own motion.

On April 30, 2015, the Agency filed a jurisdiction report with the court recommending the petition be dismissed without prejudice because W.C.'s lack of support had arisen in part from his own decision to leave the care of his sponsor and another family "who had both, at one point, committed to caring for [him] until he turned

¹ Unless otherwise stated, all statutory references herein are to the Welfare and Institutions Code.

18.” Additionally, W.C.’s lack of commitment to his education, lack of contact with the Agency, difficulty following house rules, remaining in placement, and ongoing legal/disciplinary hearings made him an “unlikely candidate for AB12 services.” Also, he was turning 18 the next day.

On the same day, the trial court conducted a jurisdictional hearing. The court found true by a preponderance of the evidence the allegation W.C. was a person described by section 300, subdivision (g). The court continued the present order and set a dispositional hearing for May 26, 2015. Importantly, on May 1, 2015, W.C. turned 18.

The Agency also prepared a report for the hearing on May 26. W.C. had been placed in a group home in Fresno. On May 20, W.C. packed his bags and informed group home staff he did not care about attending school and would not be returning to Fresno after his immigration hearing in San Francisco on May 21, 2015. Apparently W.C. did return to Fresno, since he came to court from his group home placement with Fresno Youth Services. The Agency again recommended the dependency be dismissed because there was no cause to take jurisdiction. In addition, W.C. was now 18 and the Agency believed it was inappropriate to make a dispositional finding for an adult. Also, W.C. had social supports for finding housing through immigration counsel and he had a history of finding employment. The Agency identified additional community resources for an immigrant seeking health care and counseling. Both sides at the May 26 hearing requested further discovery and briefing on the issue of jurisdiction. The specific legal issue to be addressed was whether W.C. could be declared a dependent after his 18th birthday.

On July 7, 2015, the juvenile court dismissed the section 300 petition. The minute order does not indicate the dismissal was entered pursuant to section 391, or that jurisdiction was retained pursuant to section 303, subdivision (b). The parties were advised of their right to appeal the dismissal. No appeal was filed by appellant.

The next event in this case took place seven months later, on February 10, 2016, when W.C. filed his Request to Return to Juvenile Court Jurisdiction and Foster Care (Request). In his Request, W.C. claimed he needed placement, and he signed a voluntary reentry agreement stating he planned to participate in a program for employment training if accepted. The matter was set for hearing on March 2, 2016. The Agency prepared a report in the matter, recommending reentry be denied because W.C. was never a dependent under the laws of California. The trial court received the report on March 4, 2016, setting a hearing date on the issue of whether a nonminor who was never declared a dependent of the court could reenter and be subject to juvenile court jurisdiction.

On April 1, 2016, after briefing and argument from counsel, the juvenile court denied W.C.'s Request.

Appellant filed his appeal after the trial court denied his Request.

DISCUSSION

In his Request, W.C. filed a petition pursuant to section 388, subdivision (e). Section 388, subdivision (e), in relevant part, states: “On or after January 1, 2012, a nonminor who attained 18 years of age while subject to an order for foster care placement and . . . who has not attained 21 years of age . . . for whom the court has dismissed dependency jurisdiction pursuant to Section 391, . . . but has retained general jurisdiction under subdivision (b) of Section 303 . . . may petition the court in the same action in which the child *was found to be a dependent or delinquent child of the juvenile court*, for a hearing to resume the dependency jurisdiction over a former dependent . . .” (§ 388, subd. (e)(1), italics added.) W.C. is not a person covered by this statute. He has never been “found to be a dependent or delinquent child of the juvenile court.” Also, at no time did the juvenile court dismiss a “dependency jurisdiction [matter] pursuant to Section 391.” Furthermore, at no time did the court “retain[] general jurisdiction under subdivision (b) of Section 303.”

Section 388, subdivision (e) was added to the code as part of the California Fostering Connections to Success Act (Assem. Bill No. 12 (2009–2010 Reg. Sess.) Sept. 30, 2010, as amended by Assem. Bill No. 212 (2011–2012 Reg. Sess.) Oct. 4, 2011 (Act)). The purpose of the Act is to cover adverse outcomes faced by dependent youth who are aged out of the foster care system at 18. The Legislature concluded that former foster youth, when compared with other young adults of the same age, are less likely to complete high school, attend college, or be employed. They also are more inclined to become homeless and realize incarceration. (Assem. Com. on Human Services, analysis of Assem. Bill No. 12, Apr. 14, 2009, pp. 9–10.) As a result of this concern, the Legislature, through the Act, essentially created a classification called “nonminor” dependents who are eligible for additional foster care services and federal funds providing support. (*In re Shannon M.* (2013) 221 Cal.App.4th 282, 284–285 (*Shannon M.*).

The Act, in an effort to realize these goals and benefit from available federal funding, amended several statutes that determine when a court may terminate or continue dependency jurisdiction for “dependents” after age 18. Section 303 governs when the court can retain jurisdiction over a dependent after age 18. Section 303, subdivision (a) states, “The court *may* retain jurisdiction over any person who is found to be a ward or *a dependent child of the juvenile court* until the ward or *dependent child* attains the age of 21 years.” (Italics added.) Section 303, subdivision (b) states that after January 1, 2012, “the court shall have within its jurisdiction any *nonminor dependent* as defined in subdivision (v) of Section 11400.” (Italics added.)² Section 303, subdivision (c)

² The Act also amended section 11400 et seq. to realize the recent federal provisions for foster care dependent children who are or were in foster placement when they turned 18. A nonminor dependent is defined as “on or after January 1, 2012, *a foster child*, as described in Section 675(8)(B) of Title 42 of the United States Code under the federal Social Security Act *who is a current dependent child* or ward of the juvenile court, or who is a nonminor under the transition jurisdiction of the juvenile court, as

provides a nonminor who exited foster care at or after age 18 may, until age 21, petition the court to *resume dependency* pursuant to section 388, subdivision (e). As concluded by *Shannon M.*, section 303 creates opportunities for *nonminor dependents* to enjoy certain benefits up to the age of 21 provided they were originally under the jurisdiction of the juvenile court before their 18th birthday. (*Shannon M., supra*, 221 Cal.App.4th at p. 295.)

Accordingly, for W.C. to be legally considered a nonminor dependent, he must first have been a dependent who was deemed such by the juvenile court. In our case, the juvenile court held a dispositional hearing after W.C. made his initial appearances in April 2015 and after the court permitted briefing by counsel of the specific question whether W.C., now over 18, could be deemed subject to the jurisdiction of the juvenile court. The dispositional hearing was held on July 7, 2015. The court dismissed the

described in Section 450 [of Title 42], who satisfies all of the following criteria” (§ 11400, subd. (v), italics added.) Section 11400, subdivision (v) only applies to *dependents* of the juvenile court.

A foster child is described in title 42 United States Code section 675(8)(B) as an individual “(i)(I) who *is in foster care* under the responsibility of the State; [¶] (II) with respect to whom an adoption assistance agreement is in effect under section 473 of this title if the child had attained 16 years of age before the agreement became effective; or [¶] (III) with respect to whom a kinship guardianship assistance agreement is in effect under section 473(d) of this title if the child had attained 16 years of age before the agreement became effective; [¶] (ii) who has attained 18 years of age; [¶] (iii) who has not attained 19, 20, or 21 years of age, as the State may elect; and [¶] (iv) who is— [¶] (I) *completing secondary education* or a program leading to an equivalent credential; [¶] (II) *enrolled in an institution* which provides post-secondary or vocational education; [¶] (III) *participating in a program* or activity designed to promote, or remove barriers to, employment; [¶] (IV) *employed* for at least 80 hours per month; or [¶] (V) *incapable of doing any of the activities described* in subclauses (I) through (IV) due to a medical condition, which incapability is supported by regularly updated information in the case plan of the child.” (Italics added.)

Appellant does not meet the criteria for a “nonminor dependant” under these statutes. (See, e.g., *In re A.A.* (2016) 243 Cal.App.4th 765, 773–774.)

petition *without further comment*. It never declared W.C. a dependent of the juvenile court.

Appellant argues the determination by the juvenile court on April 30, 2015, that he was a minor described by section 300, subdivision (g) made him a dependent of the court. However, that determination allowed the juvenile court to take jurisdiction over the case so it could consider its options within the dependency laws of California. It did not, by itself, make W.C. a dependent of the court. The court may continue the dispositional hearing to consider all of its legal options before determining the appropriate disposition (§ 358). Review of the case by counsel, along with the Agency investigation and assessment, were all shifted to the hearing date of July 7, 2015. The court then had the option to find W.C. was a dependent of the juvenile court or dismiss the petition filed by the Agency; it could order informal supervision under section 301, or it could appoint a legal guardian. (§§ 360, subds. (a) & (b), 390, Cal. Rules of Ct., Rule 5.695(a)(1); Seiser & Kumli, Cal. Juvenile Courts Practice and Procedure (2016) Summary of the Dispositional Hearing, § 2.15.) These options are exercised by the juvenile court only at the dispositional hearing. “After *receiving and considering the evidence on the proper disposition* of the case, the juvenile court may *enter judgment* as follows: [¶] . . . [¶] (d) *If the court finds* that the child is a person described by Section 300, it may order and adjudge the child to be a dependent child of the court.” (§ 360, subd. (d), italics added.) What took place on April 30, 2015, was a jurisdictional order. “A jurisdictional order is only a finding. [Citation.] The dispositional order is the judgment (§ 360). Only the judgment is appealable.” (*In re Tracy Z.* (1987) 195 Cal.App.3d 107, 112.)

In *In re Candida S.* (1992) 7 Cal.App.4th 1240, the juvenile court held a jurisdictional hearing on December 5, 1988, and declared the children to be dependents of the court at that time. The appellate court concluded this was error because the disposition and definitive finding of dependency took place on March 2, 1989, when the court made *dispositional findings* after considering the evidence: “We agree that the

adjudication of dependency occurred on March 2, 1989.” (*Id.* at p. 1248.) “Before minors may be adjudged dependents, the court must first ‘receiv[e] and consider[] the evidence on the proper disposition of the case. . . .’ (§360; see also [former] Cal. Rules of Court, rule 1456 [now rule 5.695]. . . .) The court did not receive or consider evidence on the proper disposition of this case until the dispositional hearing on March 2, 1989.” (*Id.* at pp. 1248–1249.)

The Agency in our case submitted a “disposition report” on May 22, 2015, almost a month after the jurisdictional hearing, and at that time renewed its recommendation to dismiss the dependency. The hearing was continued until July so W.C.’s counsel had time to file his papers and prepare for the dispositional hearing.

A “ ‘[d]ependent’ means a person described in Section 300” (§ 101, subd. (e)). Section 300 states: “A child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court.” “To become a ‘dependent child’ subject to jurisdiction under the dependency statutes, a person must be under 18 years of age.” (*In re K.L.* (2012) 210 Cal.App.4th 632, 640.) Importantly, in his brief submitted by counsel before the July dispositional hearing, W.C. acknowledged the juvenile court had not declared him a dependent at any time before his 18th birthday: “[T]he Court should today declare [him] the dependent of the juvenile court.” Counsel’s reason for this was to permit W.C. to obtain the benefits of the Act and foster care services. The trial court denied the request, dismissed the petition filed under section 300, subdivision (g), and in its minute order advised the parties of the right to appeal the order. This order was filed on July 7, 2015.

The juvenile court’s decision to accept or decline dependency jurisdiction is reviewable by appeal from its disposition order. (§ 395, subd. (a); *In re Candida S.*, *supra*, 7 Cal .App.4th at p. 1249; *In re Sheila B.* (1993) 19 Cal.App.4th 187, 196.) “Once a juvenile court asserts jurisdiction and issues a dispositional order, the ‘ ‘dependency

proceedings [become] proceedings of an ongoing nature and often result in multiple appealable orders.” ’ [Citations.] [¶] By contrast, the appealability of *predispositional* orders turns largely (but not entirely) on their finality. A juvenile court’s order accepting dependency jurisdiction over children is not immediately appealable because *it is merely a precursor to a possible dispositional order*; in this situation, ‘the dispositional order is the adjudication of dependency and is the first appealable order in the dependency process.’ ” (*In re Nicholas E.* (2015) 236 Cal.App.4th 458, 463, first italics in original, second italics added, quoting *In re Michael H.* (2014) 229 Cal.App.4th 1366, 1374 [order dismissing a dependency petition after an adjudication of the petition on the merits is an appealable *predispositional* order].) Thus, the entry of an order dismissing a petition at the dispositional hearing is a final judgment from which an appeal may be taken. (§ 395; *In re Daniel K.* (1998) 61 Cal.App.4th 661, 666.) “Such a dismissal results from the juvenile court’s determination that the Department has failed to prove the allegations of the petition and the need for exercising juvenile court jurisdiction over the child or children named in the petition. An order dismissing a dependency petition is appealable because, ‘[u]nlike a jurisdiction order, which is followed by an adjudication of dependency and many possible subsequent orders, *nothing follows a dismissal order*: It is the end of the matter’ ” (*In re Michael H.*, at p. 1374, quoting *In re Sheila B.*, at p. 197; see *In re Nicholas E.*, at p. 463.)

Once dismissal is issued, trial counsel must file a timely notice of appeal from the order to preserve the right to appeal the judgment. (*In re Meranda P.* (1997) 56 Cal.App.4th 1143, 1151; *Wanda B. v. Superior Court* (1996) 41 Cal.App.4th 1391, 1396.) The notice of appeal must be filed within 60 days after the juvenile court makes the appealable order. (Cal. Rules of Court, rules 5.590, 5.661(b), 8.406(a).)

After full briefing and argument by the parties, the juvenile court concluded that W.C. was not a dependent and dismissed the dependency petition. Unfortunately for W.C., no appeal was taken from the dismissal order of July 7, 2015. Thus, the dismissal

order became final, and the court’s underlying finding that the predicate for asserting jurisdiction was absent is res judicata. “If an order is appealable . . . and no timely appeal is taken therefrom, the issues determined by the order are res judicata.” (*In re Matthew C.* (1993) 6 Cal.4th 386, 393, superseded by statute on another point, as stated in *People v. Mena* (2012) 54 Cal.4th 146, 156; *In re Daniel D.* (1994) 24 Cal.App.4th 1823, 1832–1833; *In re Lauren P.* (1996) 44 Cal.App.4th 763, 767.)

The court below denied W.C.’s section 388, subdivision (e) petition because “the nonminor was not previously under juvenile court jurisdiction subject to an order for foster care placement when he or she attained 18 years of age” and “[t]he juvenile court has not previously declared [W.C.] to be a dependent child.” We are now asked to address in this appeal essentially the same challenge presented to the trial court at the dispositional hearing in July 7, 2015, which was decided against W.C., and from which no appeal was sought. There is no answer presented in the current briefing by appellant of the April 1, 2016 order why this court should reach a contrary determination in light of this omission, and we can see none. Since there was no initial declaration of dependency before the minor turned 18, the court correctly declined to entertain a petition under section 388, subdivision (e) “to resume the dependency jurisdiction over a former dependent.”

DISPOSITION

We affirm the judgment of the juvenile court dated April 1, 2016, for the reasons stated in this opinion.

DONDERO, J.

We concur:

HUMES, P. J.

BANKE, J.