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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

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

SACRAMENTO COUNTY DEPARTMENT OF HEALTH  
AND HUMAN SERVICES,

Plaintiff and Respondent,

v.

A.R. et al.,

Appellants.

C068803

(Super. Ct. Nos.  
JD231346, JD231347,  
JD231348, JD231349)

A.R. and E.R., maternal grandparents and legal guardians of the minors, appeal from orders of the juvenile court terminating the guardianship. (Welf. & Inst. Code, §§ 728, 395; Prob. Code, 1601; undesignated section references are to the Welfare and Institutions Code.) For clarity, appellants will be referred to as grandmother and grandfather or collectively as appellants.

Grandmother contends the court erred in terminating the probate guardianship because the dependency statutory scheme and due process require services be provided to her as a guardian. Grandmother further contends that, even if the court could terminate the guardianship, the court applied an incorrect standard by treating the case as if the issue was a bypass of services. Grandfather asserts that insufficient evidence supported the finding that termination of the probate guardianship was in the minors' best interests. We affirm the trial court's orders.

## FACTS AND PROCEEDINGS

Appellants were appointed legal guardians of the minors in 2010 due to ongoing parental drug use and domestic violence. In February 2011, the minors, M.D., age 14, C.D., age 12, R.F., age 8, and S.F., age 9, were detained from appellants' custody following disclosure that C.D. was being sexually abused by her uncle, Andrew R., who was living in the home. Appellants allowed Andrew R. to provide care for the minors despite concerns about his mental stability and his behavior toward C.D. A second uncle, David R., had also molested C.D.

Investigation disclosed that C.D. was repeatedly molested over a period of several years. Grandmother told a sheriff's deputy that she had suspected something inappropriate was going on between C.D. and Andrew R. and took C.D. and S.F. to a family friend's home and left them there. Grandmother intended to contact law enforcement. However, the next morning, Andrew R.

arrived at the friend's home wanting to speak to the minors and the friend called law enforcement. C.D. disclosed multiple incidents of molestation by Andrew R. S.F. stated she witnessed the molestation but was not molested herself. When questioned, Andrew R. admitted molesting C.D.

The social worker interviewed grandmother the next day. Grandmother gave a different version of the events prior to leaving the girls with the family friend. The grandmother said she did not call police or tell anyone, but Andrew R. went to pick up the girls at the friend's home the next morning. The social worker noted discrepancies between the current account and grandmother's report to law enforcement and asked grandmother how Andrew R. knew where the girls were. The grandmother denied telling her son anything about the girls, said he had figured out where they were and said she could not stop him from going there. The social worker asked why she took the children for a sexual abuse examination in 2006. The grandmother said the children were living with her and she heard C.D. and S.F. talking about sexualized behavior. She believed they were being molested by the father of the younger minors.

The social worker interviewed the minors. M.D. said he did not witness any molest and had not been molested himself. C.D. said she disclosed the molestation to her grandmother "a long time ago" and the grandmother said "she would take care of it" but the abuse continued. C.D.'s version of the events at the family friend's home which led to the removal corroborated the grandmother's first story as told to the sheriff's deputy. She

further stated the sexual abuse began shortly after the children went to live with appellants in 2006. S.F. told the social worker she had witnessed Andrew R. molesting C.D. and had twice told her grandmother about it, once in January 2011 and again in February 2011. She saw Andrew R. molest C.D. a week before they were removed from appellants' custody.

The social worker confronted the grandmother with the information the minors provided. The grandmother admitted she was told of the sexual abuse as early as October 2011 and that Andrew R. promised to stop touching C.D. When asked why she did nothing to prevent the abuse, the grandmother said she did not want to send her son to prison and was afraid if she called police he would shoot the family. She did not tell the rest of the family about the abuse. The social worker later spoke to R.F. who understood he was removed from appellants' custody because Andrew R. molested C.D. R.F. said he witnessed Andrew R. touching his sister while she did homework and late at night and that he told his grandmother about it in February 2011, two days before the family friend called law enforcement.

After the petition was filed, the social worker interviewed the minors' mother who said the grandmother told her she had known about the sexual abuse since June 2010 and that appellants did not want Andrew R. to go to jail. The social worker also interviewed the grandmother about the allegations of the petition. Grandmother told the social worker she had "no idea" the molestation began in 2006 and continued until the minors were removed. She said that Andrew R. had spent time alone with

the minors and she never had concerns about his behavior. The grandmother acknowledged that S.F. had disclosed that the abuse was occurring in October 2010 but she thought S.F. just meant Andrew R. was hugging C.D. The grandmother said she did tell Andrew R. to stop being so affectionate toward C.D. but saw no change in his behavior. She did not intervene further because she did not want Andrew R. to go to jail and was also afraid he would hurt someone with his guns if the police came. The grandmother acknowledged that David R. had also confessed to molesting C.D. in 2006.

The social worker also interviewed the grandfather who said he had no knowledge of the abuse but, since Andrew R. admitted it, he agreed that it had happened. He said he was present when S.F. told appellants in October 2010 that Andrew R. was sexually abusing C.D. He too thought she just meant excessive hugging and also told Andrew R. not to hug C.D. so much. The grandfather also told Andrew R. to stop but did not see a change in his behavior.

The social worker had additional interviews with the minors, during which S.F. said appellants were upset when she told them about the abuse. C.D., S.F. and R.F. participated in Sexual Assault Forensic Evaluations (SAFE) and talked about Andrew R.'s ongoing sexual abuse of C.D. R.F. stated "my grandma knew but she didn't do nothing about it." He also said "my grandma said not to tell" about the abuse.

In the jurisdiction/disposition report, the social worker reviewed the minors' disclosures of Andrew R.'s ongoing sexual

abuse of C.D. and the evidence that appellants, particularly the grandmother, were aware of it long before the family friend called law enforcement. The social worker concluded that appellants' failure to protect C.D. placed all the minors at risk and recommended termination of the guardianship.

In April 2011, the Sacramento County Department of Health and Human Services (the Department) filed a motion to terminate guardianship. The Department also filed a first amended petition adding, *inter alia*, allegations that C.D. was molested by both Andrew R. and David R. and that her siblings witnessed some of the incidents.

An addendum report stated appellants were in counseling and had weekly supervised visits with the minors. However, the grandmother had asked the mother to "change her story" about the allegations in the petition, fearing that the two uncles would go to jail. The grandmother wanted the minors to return to her care, but the mother was afraid that the grandmother would allow the uncles back in the home.

The court sustained the amended petition in May 2011. The contested hearing on disposition and termination of the probate guardianship was held over several days during which grandfather, mother and the social worker testified. Grandfather testified he visited Andrew R. in jail weekly and would continue to have contact with both Andrew R. and David R. even if they were convicted of sexual abuse. He did not think C.D. would mind because she loves them. He believed she had been hurt by losing her uncles and her home. The mother

testified grandmother did not ask her to change her story about the allegations of the petition.

The court issued its ruling June 17, 2011, adjudging the minors dependents, terminating the probate guardianship and offering services to the parents. In ruling on the motion to terminate guardianship, the court, citing section 728, stated that the probate guardianship could be terminated at any stage of the dependency proceedings. The court explained that it was necessary to show termination of the probate guardianship was in the minors' best interests and, if the probate guardianship was terminated before a ruling on services, no services needed to be provided to appellants.

In assessing best interests, the court was guided by several cases which discussed the concept of best interests in other contexts, including *In re Kimberly F.* (1997) 56 Cal.App.4th 519, 530-532 [petition for modification]; *In re Ethan N.* (2004) 122 Cal.App.4th 55, 66 [denial of services under section 361.5, subdivision (b) and best interests analysis to overcome denial under section 361.5, subdivision (c)]; *In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1006 [broad discretion to determine what would serve child's interest at disposition].

Drawing factors from these cases, the court looked at the efforts of appellants; their lack of understanding of the dynamics of the abuse; their continued support of the perpetrators; their recognition of the need to do better and make some effort to participate in services; their history,

which was free of criminal activity and referrals for neglect or abuse except the current case; the severity of the problem which led to removal; appellants', particularly the grandmother's, failure to act to protect the minor; the bond between minors and appellants and the minors' desire to return to appellants' home; and the stability of appellants' home versus the length of time it would take appellants to develop the capacity to choose the interests of the grandchildren over those of the sons. The facts in favor of the guardianship were the stability of the home, allowing the minors to remain together if reunification was successful and honoring the minors' wishes. The facts in favor of terminating the guardianship centered around the molest of C.D. by two uncles over several years while living in the guardians' home with the siblings witnesses to the molest, the egregious failure to protect, the relationship between appellants and their sons taking precedence over that with the minors, the family dynamics, and the length of time necessary to resolve the issues. The court also considered the length of the guardianship and the likelihood of successful reunification. Based on the totality of the circumstances, the court found clear and convincing evidence that it was in the minors' best interests to terminate the guardianship.

## DISCUSSION

### I

#### *Services*

Grandmother argues the court erred in terminating guardianship because the dependency statutes and due process required she be provided services.

#### A. Statutes

Grandmother's statutory argument arises from the several statutes which authorize the juvenile court to provide services to legal guardians. (See, e.g., §§ 361.5, subd. (a), 366.21, subds. (e) & (f); *In re Merrick V.* (2004) 122 Cal.App.4th 235, 250.) These statutes, however, are part of an overall dependency scheme and must be read in conjunction with section 728, also a part of the statutory scheme, which states that "The juvenile court may terminate or modify a guardianship of the person of a minor previously established under the Probate Code . . . ." (See *People v. Comingore* (1977) 20 Cal.3d 142, 147 [statute should be interpreted with reference to the system of law of which it is a part].) The procedure for terminating a probate guardianship in a dependency proceeding is set forth in California Rules of Court, rule 5.620(e). A probate guardianship may be terminated on a showing that termination is in the best interests of the child. (Prob. Code, § 1601; *In re Angel S.* (2007) 156 Cal.App.4th 1202, 1208.)

The statutory scheme has been interpreted to allow the juvenile court to grant a petition to terminate the probate

guardianship at any time during the dependency on a showing that termination is in the minor's best interest and, if granted prior to the disposition of the dependency petition, no services need be provided to the guardians. (*In re Merrick V.*, *supra*, 122 Cal.App.4th at p. 250-254.) Grandmother argues that *Merrick V.* was wrongly decided and principles of preserving family relationships and the welfare of the child mandate provision of services to her. We disagree and adopt the reasoning and conclusions of *Merrick V.* on this point.

#### B. Due Process

Grandmother's due process claim arises from various sources, all of which recognize and, to some extent, protect the relationship between an adult who provides a safe and stable environment and the minor who has been nurtured in that family setting. (*In re B.G.* (1974) 11 Cal.3d 679, 692-693 [discussing standing of defacto parents]; former Civ. Code, § 4600, now Fam. Code, § 3040 [custody preference is first to a parent and next to the person where the child has been living in a *wholesome and stable environment*]; Prob. Code, § 1602 [guardians frequently assume a parental role]; *Adoption of Kelsey S.* (1992) 1 Cal.4th 816 [protecting the rights of an absent father who comes forth at the first opportunity and acts to assert his parental rights and responsibilities].) All of these authorities have in common both a focus on the best interest of the minor and recognition that an adult, acting in a parental capacity, who has provided or attempted to provide a safe, stable, wholesome family

environment, has earned a place at the table in determining placement and other issues relating to the minor's welfare.

Appellants have, to some degree, provided a stable environment for the minors. However, any special status or consideration for reunification was relinquished by appellants when they repeatedly ignored, and thus allowed, ongoing sexual abuse of a minor in their care by two adults living in the home. The minors told appellants of the abuse, appellants themselves recognized that the relationship between the abuser and the target minor was unhealthy but did little to monitor or discourage it, and did not report the abuse. Any due process right to services arises from behaving in a responsible parental fashion and providing a safe, wholesome home. Appellants did neither. No due process right to services exists here.

## II

### *Standards for Termination*

Grandmother argues the juvenile court applied an incorrect standard for termination of the probate guardianship. She contends the court relied on the best interests test in *In re Ethan N.*, *supra*, 122 Cal.App.4th 55, a case involving bypass of services and determination of whether services were nonetheless in the minor's best interest under section 361.5, subdivisions (b) and (c). Grandmother argues that the formulation in *Ethan N.* is unsuited to the analysis of best interest when assessing whether to terminate a probate guardianship.

As we have seen, a probate guardianship may be terminated if doing so is in the best interests of the minor. Although

frequently enunciated in statutes and cases as a standard when making orders related to children, the term "best interests" is not specifically defined, primarily because it is a fluid concept depending upon the factual setting of the case. (See *In re Kimberly F.*, *supra*, 56 Cal.App.4th at pp. 530-532.)

The juvenile court recognized that, in the absence of a statutory definition, some cases, specifically *Ethan N.* and *Kimberly F.*, have attempted to list relevant factors which were useful in assessing best interest in the context of their facts. In making its ruling, the juvenile court used some of those factors in analyzing best interests in the case at hand. A careful reading of the court's extensive ruling makes it clear the court was not applying a bypass provision and then deciding whether it was in the minors' best interests to provide services. The court was analyzing whether the minors' best interests were served by terminating the probate guardianship.

In its analysis, the court selected and discussed factors from both *Kimberly F.* and *Ethan N.* as they applied to the facts of this case. The court found some factors in favor of maintaining the guardianship and some factors in favor of termination and then weighed the factors to determine the minors' best interests. The court was plainly making an effort to view the total circumstances of the case in assessing the best interests of the minors. Contrary to grandmother's characterization, the court was not assessing appellants' amenability for services, but assessing their attitudes, beliefs, and willingness to act as protectors for the minors

instead of their sons. These characteristics were, to some extent, shown by appellants' statements and behaviors both before the petition was filed and after when they were referred to services pending the disposition hearing. The court's analysis was not of appellants' ability to benefit from, or their potential for success in, services but rather of how the circumstances of pending criminal proceedings for both uncles and appellants' understandable ongoing involvement with, and connection to, them as well as appellants' reluctance to fully grasp the impact of the molest on all the minors affected the minors' best interests and thus the calculus of whether the guardianship should be maintained.

Grandmother further contends the court set the burden of proof for the Department at clear and convincing rather than preponderance of the evidence.

We need not address this argument other than to say that, even assuming the juvenile court was incorrect in making its findings by clear and convincing evidence, grandmother can demonstrate no prejudice since it was the *Department's* burden to establish that termination of the guardianship was in the minors' best interests.

### III

#### *The Minors' Best Interest*

Grandfather argues insufficient evidence supports the finding that termination of the guardianship was in the minors' best interests because appellants had met the minors' needs for an extended period of time, there was insufficient evidence

appellants knew of the ongoing molest of C.D., and there was insufficient evidence the minors would be at risk of harm if the guardianship continued.

When the sufficiency of the evidence to support a finding or order is challenged on appeal, even where the standard of proof in the trial court is clear and convincing, the reviewing court must determine if there is any substantial evidence--that is, evidence which is reasonable, credible and of solid value--to support the conclusion of the trier of fact. (*In re Angelia P.* (1981) 28 Cal.3d 908, 924; *In re Jason L.* (1990) 222 Cal.App.3d 1206, 1214.) In making this determination, we recognize that all conflicts are to be resolved in favor of the prevailing party and that issues of fact and credibility are questions for the trier of fact. (*Jason L.*, at p. 1214; *In re Steve W.* (1990) 217 Cal.App.3d 10, 16.) The reviewing court may not reweigh the evidence when assessing the sufficiency of the evidence. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.)

Appellants had provided a home free from the effects of domestic violence and substance abuse and met many of the minors' needs. However, that was not enough. The evidence showed appellants permitted ongoing sexual abuse of C.D. after they learned it was occurring.

The mother stated that grandmother told her she knew of the abuse as early as June of 2010. C.D. said she told grandmother "a long time ago." Both appellants admitted that they were informed in October 2010 by S.F. that C.D. was being molested by Andrew R. S.F. said both appellants were upset when she told

them and R.F. said that "grandma said not to tell." The court could infer from these facts that appellants' statements that they understood S.F. to be referring to hugging was no more than an ongoing attempt to disclaim any blame and protect their own sons. Appellants did tell Andrew R. to stop but did nothing when his behavior toward C.D. was unchanged. The grandmother was more concerned about keeping Andrew R. out of jail than reporting the abuse. The mother did not want the minors returned to appellants because she believed the grandmother would allow the uncles back in the home. Both appellants minimized the incidents and grandmother rationalized and gave several versions of events when questioned. Grandmother also tried to get the mother to change her story. There was ample evidence that appellants ignored or disbelieved reports of ongoing abuse, failed to act to protect the minors, and did not appear to understand and accept the harm done to all of the minors by this egregious failure of trust and protection. Substantial evidence supported the juvenile court's finding that continuing the probate guardianship was not in the minors' best interests.

DISPOSITION

The orders terminating the probate guardianship are affirmed.

\_\_\_\_\_ HULL \_\_\_\_\_, J.

We concur:

\_\_\_\_\_ RAYE \_\_\_\_\_, P. J.

\_\_\_\_\_ ROBIE \_\_\_\_\_, J.