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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

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

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

M.H.,

Defendant and Appellant.

E064217

(Super.Ct.No. J259805)

OPINION

APPEAL from the Superior Court of San Bernardino County. Lynn M. Poncin,
Judge. Dismissed.

Dennis Moore for Defendant and Appellant.

Jean-Rene Basle, County Counsel, Dawn M. Messer, Deputy County Counsel, for
Plaintiff and Respondent.

Defendant and appellant M.A.H. (Legal Guardian [LG]) appeals after a disposition hearing on a Welfare and Institutions Code¹ section 300 petition. Four days after M.LG.H. (Minor; a boy, born Oct. 2004) was born, his biological mother, M.M. (Mother) left him with M.H. (Father). Father immediately began a relationship with LG, who raised Minor and eventually was appointed his legal guardian by the probate court pursuant to the Probate Code. On April 10, 2015, Minor was detained from Father, Mother and M.A.H. due to all three of them having a history of substance abuse, and as a result of Father and LG engaging in domestic violence. At the jurisdiction/disposition hearing, LG requested that she be named the presumed mother. The request was denied but she was granted reunification services pursuant to section 361.5.

LG argues in her opening brief that the denial of her request to be named the presumed mother at the disposition hearing was erroneous. We asked the parties to address in supplemental briefing whether as a legal guardian LG was aggrieved by the juvenile court's order denying her presumed mother status. We conclude that LG has failed to show on appeal how she was aggrieved by the denial of her request to be named the presumed mother at the disposition hearing. At this stage of the proceedings, LG, as the legal guardian of Minor, has the same rights as a presumed mother, and any claim that there will be future consequences is purely speculative.

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

FACTUAL AND PROCEDURAL HISTORY

A. DETENTION

On April 10, 2015, 10-year-old Minor was detained by plaintiff and respondent San Bernardino County Children and Family Services (the Department) based on reports of child abuse. It was reported to the Department that Father and LG had taken Minor on a trip to Indiana. While in Indiana, Father made a drug deal and shot someone. Minor returned to California but LG and Father were on the run and could not be located. It was also reported that LG and Father may have engaged in domestic violence.

Minor told a social worker that the road trip to Indiana was not fun. They all slept in the car, they never showered or rested. Minor also reported that he felt Father did not like him. Minor had no concerns regarding LG. Minor believed Father was his father. LG became Minor's legal guardian while Father was incarcerated on another matter. The Department had attempted to locate Mother but had been unsuccessful. Father had an extensive criminal history. LG's mother, C.M., was approved for emergency placement of Minor on April 11, 2015.

On April 14, 2015, the Department filed a section 300 petition against Father, Mother and LG. It was alleged under section 300, subdivision (b), as to all three, that they had a history of substance abuse, which impacted their ability to parent Minor; and against Father and LG, that they had participated in acts of violence and domestic violence in the presence of Minor. It was further alleged under section 300, subdivision (g), as to all three named adults, their ability to parent was unknown.

The detention hearing was conducted on April 15, 2015. LG was present in court. The juvenile court found a prima facie case to detain Minor outside the home with C.M.

B. JURISDICTION/DISPOSITION REPORTS AND JURISDICTION HEARING

A jurisdiction/disposition report was filed on May 4, 2015. It was recommended that LG and Father receive reunification services. Minor remained in C.M.'s custody. An absent parent search was initiated for Mother on April 15, 2015.

In 2004, when Minor was born, Mother and Minor tested positive for methamphetamines. Mother admitted to using illegal substances but refused to enroll in a substance abuse program. In 2012, Mother lost custody of another child because of her substance abuse. Mother's whereabouts were unknown. According to C.M., Mother had no contact with Minor since he was about two years old.

Minor had witnessed LG smoke marijuana from a bong in their home in front of him. C.M. confirmed that LG used illegal substances in the home. LG was tested after the detention hearing and tested positive for marijuana. Minor also reported Father used "crystallized rocks," every day.

Minor also stated that LG and Father would engage in domestic violence frequently. He had observed Father hit, kick and choke LG. Minor elaborated on their trip to Indiana. At one point, Father shot a gun from the window of their car. They abandoned their car and walked around the city, sleeping in parks. C.M. paid for a plane ticket so Minor could return to California. Minor thought Father was a member of a gang.

C.M. reported that her family had been involved with Minor since he was born, because LG was in a relationship with Father at the time of his birth. In 2010, Father was sent to prison for five years. On July 13, 2010, LG was able to obtain legal guardianship to take care of Minor. LG and Minor had lived with C.M. for seven years. Once Father was released from prison, which had been about one year prior, LG and Minor went back to living with Father. C.M. considered Minor to be her grandson.

Minor was afraid of Father and did not want to have unsupervised contact with him. Minor loved C.M. and felt safe in her house. He wanted to stay with her forever. C.M. was willing to care for Minor either as a guardian or through adoption.

It was recommended that Father be named the presumed father of Minor. It was also recommended that reunification services for Mother be denied both because her whereabouts were unknown, and she had previously failed to reunify with Minor's sibling.

The Department filed Declarations of Due Diligence as to their attempts to contact Mother and Father. The Department tried numerous phone numbers and sent letters to several addresses for both Mother and Father, but no contact had been made. Moreover, they had been unable to contact LG to discuss the allegations in the petition.

Additional information was provided to the juvenile court by the Department on June 17, 2015. Minor's therapist advised a social worker that Minor was suffering from Post Traumatic Stress Disorder based on the violence he witnessed while in the care of Father. Minor was afraid of Father. Father failed to appear at a drug test. LG continued to have a relationship with Father, which would cause distress to Minor. It was

recommended that Father and LG not receive reunification services. It was further recommended that the court terminate the legal guardianship of LG.

The jurisdiction/disposition hearing was bifurcated. The jurisdiction hearing was conducted on June 17, 2015. LG signed a waiver of rights agreeing to the petition on the basis of the Department's reports. The trial court found all of the allegations in the petition under section 300, subdivision (b) true against Father, Mother and LG. The allegations under section 300, subdivision (g) were dismissed. The matter was set for a contested disposition hearing.

C. DISPOSITION REPORTS AND HEARING

The disposition hearing commenced on June 30, 2015. Father was not present; LG was present. LG testified at the disposition hearing. LG began a relationship with Father when Minor was four days old. Father was convicted of robbery in 2007 and was sent to prison for five years. LG took care of Minor. LG was appointed Minor's legal guardian by the probate court on July 13, 2010. Father was released in August 2013. LG and Minor moved back in with Father in the summer of 2014. Father had completed his parole and bought a house. He seemed to be doing well.

The domestic violence had only started in the prior seven months. Father had broken her elbow. She was always bruised. He had given her two black eyes. The police had been called but did not investigate because Father prevented her from talking to them. She never reported the incidents because she was afraid. When she moved back in with Father, she started using medical marijuana to help with seizures and also to help with stress that she was having because she and Father were fighting.

Father, LG and Minor drove to Indiana because they were thinking of moving there. During the trip, Father punched LG in the face in Minor's presence. Police responded but LG declined to press charges. Minor was sent home on a plane. LG did not return with Minor because she had no money. All of them had to sleep in their car during this trip because they had no money. After Minor left, LG stayed and Father hit her every day.

LG had stopped seeing Father after he broke her elbow. She moved in with her sister in Temecula. LG did not tell Father where she was living. LG had previously been too scared to leave Father. If she could not have custody of Minor, she wanted C.M. to have custody. LG was willing to go to counseling and attend domestic violence programs.

LG had done all of the overnight feedings for Minor when he was a newborn. She had potty trained him. Minor called her "mom." The matter was continued in order for Minor to appear.

The Department submitted additional information prior to the next hearing. Minor's therapist reported that Minor felt angry and scared of Father. Minor was fearful because Father continued to be abusive to LG. Minor had checked LG for bruises and broken bones during a recent visit. LG appeared sad and Minor told her, "We don't need him." The Department attached a note written by Minor where he stated, "Raa!! Can't he have his own life and not take away mine."

C.M. had reported to a social worker that Minor wanted to change his name and did not want any part of his name to reflect a connection to Father. Minor was not afraid of LG but reported she had made bad choices when with Father. Minor had positive feelings for LG but was strongly bonded to C.M. C.M. believed she could provide a safe and stable home to Minor. Minor was doing well in therapy but was concerned Father would find him and harm him. Minor had reported he did not want to live with LG because of her bad choices she made when she was with Father. Minor did not know until the dependency case began that LG was not his mother. He thought C.M. was his grandmother. C.M. was doing an excellent job meeting Minor's needs. C.M. was willing to adopt Minor.

LG filed a document seeking to be appointed Minor's presumed mother. Relying upon the Uniform Parentage Act (UPA), specifically Family Code section 7611, LG insisted she was entitled to obtain presumed mother status. LG argued she had resided with Minor since he was four days old and held Minor out as her own. Minor actually believed that LG was his mother. LG should be named the presumed mother of Minor.

At the July 8, 2015, disposition hearing, Father was not present. LG and Minor were present. The juvenile court noted it had read LG's points and authorities regarding presumed mother status.

LG provided additional testimony. LG took care of Minor at C.M.'s house in the first year of his life. All of Minor's coaches and friends' parents thought LG was Minor's mother. LG only filed for guardianship of Minor, not adoption. Mother was listed as the biological mother on the birth certificate. LG was asked if she knew what

happened to Mother. LG responded, “From what I was told, she—her rights were taken away and she—she was out of the picture by the time I had [Minor].” Father had told LG that Mother’s right to Minor had been taken away.

The parties stipulated that if Minor was called to testify, he would testify he was happy staying with C.M. He did not want to be returned to LG at the moment. Minor would want to be returned to her if she got help and stayed away from Father.

The juvenile court then ruled on the presumed mother petition filed by LG. The juvenile court was concerned that there was still a birth mother in the case. There were allegations in the Petition against mother and due diligence was exercised to try to locate her. The juvenile court distinguished the case from the cases submitted by LG with her points and authorities, in which presumed mother status was granted, on the basis that a legal guardian was trying to assert presumed mother status.

The juvenile court found, “While there is no doubt that [LG] has taken [Minor] into her home after he was four days old, that she has held the child out as her own, and has introduced him as her child for the past ten years, the fact that there is still a birth mother somewhere precludes this Court from granting your request to grant [LG] presumed mother status, and I am finding it’s not in the best interest of the child that [LG] be found the presumed mother in this matter.” The juvenile court also concluded that it was not in the best interests of Minor to name LG the presumed mother even if Minor could have both a mother and presumed mother under Family Code section 7612.

The Department requested that LG’s legal guardianship be terminated pursuant to section 728 because it was in Minor’s best interest. The juvenile court denied the request finding, “I think it’s in [Minor]’s best interest that you be allowed to try to reunify with him while he stays in a placement with [C.M.]” LG was granted 18 months of reunification services; reunification services were denied to Mother and Father.

DISCUSSION

A. APPEALABILITY

Section 395 expressly provides that any order subsequent to the judgment under section 300 declaring a child to be a dependent “may be appealed as an order after judgment.” (See *In re Aaron R.* (2005) 130 Cal.App.4th 697, 702-703.) “Not every party has standing to appeal every appealable order. Although standing to appeal is construed liberally, and doubts are resolved in its favor, only a person aggrieved by a decision may appeal. [Citations.] An aggrieved person, for this purpose, is one whose rights or interests are injuriously affected by the decision in an immediate and substantial way, and not as a nominal or remote consequence of the decision. [Citations.] These rules apply with full force to appeals from dependency proceedings.” (*In re K.C.* (2011) 52 Cal.4th 231, 235-236 (*K.C.*).

Although standing to appeal is construed liberally and any doubts are resolved in favor of appeal, this general principle does not “displace the fundamental rule that only a person aggrieved by a decision may appeal.” (*K.C.*, *supra*, 52 Cal.4th at pp. 238-239.) ““For purposes of appellate standing in dependency cases, a parent is aggrieved by a

juvenile court order that injuriously affects the parent-child relationship.” (*In re T.G.* (2010) 188 Cal.App.4th 687, 692.)

In *Melinda K. v. Superior Court* (2004) 116 Cal.App.4th 1147, a mother appealed from an order entered after a six-month review hearing at which the court found the Department of Children and Family Services had provided her with reasonable reunification services. (*Id.* at p. 1152.) The *Melinda K.* court concluded that the mother was not aggrieved by the trial court’s finding because the court had ordered a continuation of reunification services, and no other adverse consequences resulted from the court’s finding. The court reasoned: “When the juvenile court makes a finding that reasonable services were provided, a parent or legal guardian may not be immediately impacted by that finding. Here, for example, mother was not aggrieved by the finding that reasonable reunification services were provided, given that services were continued for at least another six months and no negative consequence flowed from the reasonable services finding. We do not believe that section 395 permits a party to appeal a finding in the absence of an adverse order resulting from that finding. Accordingly, we conclude that there is no right to appeal a finding that reasonable reunification services were provided to the parent or legal guardian unless the court takes adverse action based on that finding, because, in the absence of such action, there is no appealable order resulting from that finding.” (*Id.* at pp. 1153-1154.)

A guardian appointed by the probate court has greater rights than a guardian appointed under the Welfare and Institutions Code and is essentially treated as a parent in a dependency proceeding. (See *In re Carrie W.* (2003) 110 Cal.App.4th 746, 758.) “For

example, a guardian appointed under the Probate Code will be entitled to (1) receive social study reports before hearings (§ 302, subd. (b)), (2) have counsel appointed if financially unable to afford to hire one (§ 317, subd. (a)), (3) object to evidence at the jurisdictional hearing (§ 355, subd. (a)), and (4) receive reunification services (§ 361.5, subd. (a)).” (*In re Merrick V.* (2004) 122 Cal.App.4th 235, 251) The phrase “parents or legal guardians” is used repeatedly in the relevant portions of the Welfare and Institutions Code. This language reflects a determination on the part of the Legislature that for the purpose of dependency proceedings, predependency guardians are generally treated as equivalent to the dependent child’s parents. (*Carrie W., supra*, 110 Cal.App.4th at pp. 758-759.)

We simply cannot discern how LG is aggrieved by the trial court’s refusal to name her the presumed mother. This is an appeal from a disposition hearing in a dependency proceeding brought pursuant to section 300. LG possesses all those rights that a parent would have in these proceedings. At this stage in the proceedings, we cannot find that LG was aggrieved as she continues to be Minor’s legal guardian and has received reunification services. The juvenile court denied the Department’s request to terminate the legal guardianship. LG has every right to reunify with Minor and regain custody.

LG contends that as the legal guardian, her rights could be terminated at any time with only a finding that it is in the best interests of Minor.² As a parent, a finding of unfitness and the best interests of Minor would have to be considered in order to terminate the relationship. However, the trial court had just denied the Department's request to terminate the legal guardianship. While in the future the Department may again seek to terminate the legal guardianship, it is only pure speculation that such action would occur. This holds true for a presumed mother; a section 300 petition could be filed at any time to terminate parental rights. Moreover, LG could seek to adopt Minor, thereby eliminating such possibility that her rights would be eliminated at any time.

LG complains that at a section 366.26 hearing she would not be able to raise certain defenses—such as a beneficial relationship exception—which she could raise if she was the presumed mother. Initially, it is only pure speculation that a section 366.26 hearing will be set. Moreover, if LG was still the legal guardian at the time of the section 366.26 hearing, it would mean that the juvenile court had terminated reunification services, which requires a finding of detriment. This detriment finding certainly would be similar to an unfitness finding. (See § 366.21, subd. (c) [a status review report that recommends termination of reunification services must specify why the return of the child would be detrimental].)

² Section 728 allows for the juvenile court to terminate a probate guardianship at any time during the juvenile dependency proceedings if it is in the minor's best interest. (*In re Angel S.* (2007) 156 Cal.App.4th 1202, 1206-1208.)

As stated, an aggrieved person is one whose rights or interests are injuriously affected by the decision in an *immediate* and *substantial* way, and not as a *nominal* or *remote* consequence of the decision. (*K.C., supra*, 52 Cal.4th at pp. 235-236.) The fact that in the future LG’s guardianship may be terminated with a finding that it is in Minor’s best interests, or that she will not be able to raise certain defenses at a section 366.26 hearing, does not amount to an immediate and substantial interest affected by the juvenile court’s decision to not name her the presumed mother. LG, at this stage of the proceedings, is receiving reunification services, her legal guardianship continues and in order to terminate her legal guardianship, the juvenile court must find that it is in Minor’s best interest to terminate the guardianship.

Moreover, LG does not appear to be left without a remedy. The juvenile court noted in its ruling that LG was a legal guardian seeking to become a presumed mother. Should LG have her legal guardianship terminated, she conceivably could file a section 388 petition³ showing changed circumstances warrant her being named the presumed mother.

Here, LG has provided no direct injury to her relationship with Minor at this stage of the proceedings. She remains the legal guardian, as the juvenile court denied the Department’s request to terminate the legal guardianship, which give her every right to

³ Section 388, subdivision (a) provides in pertinent part: “Any parent or other person having an interest in a child who is a dependent child of the juvenile court . . . 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 dependent child of the juvenile court . . . for a hearing to change, modify or set aside any order of court previously made.”

reunify with Minor. Further, LG was granted reunification services. As such, LG cannot show that she is an aggrieved party and the appeal is dismissed as she raises no other cognizable issues on appeal.

DISPOSITION

The appeal is dismissed.

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MILLER
J.

We concur:

HOLLENHORST
Acting P. J.

SLOUGH
J.