

Recd

FILED
ALAMEDA COUNTY



NOV 22 2010

CLERK OF THE SUPERIOR COURT

By Vicki Daybell ✓

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

SHIRLEY BRAZWELL, on behalf of

[REDACTED]

Petitioner,

v.

JOHN WAGNER, Director, California
Department of Social Services;
CALIFORNIA DEPARTMENT OF
SOCIAL SERVICES

Respondents.

No. RG10505601

ORDER GRANTING WRIT OF
MANDATE PURSUANT TO C.C.P.
1094.5 and 1085

The motion of Petitioner Shirley Brazwell, on behalf of [REDACTED]

("Petitioner") for Writ of Mandate pursuant to Cal. Code Civil Procedure

("C.C.P.") sections 1094.5 and 1085 came on regularly for hearing on November

22, 2010, in Department 31 of this court, Judge Frank Roesch, presiding.

Petitioner appeared by counsel Fiza Quraishi, Esq., and by Bryn Martyna, Esq.

Respondents John Wagner, Director, California Department of Social Services and

California Department of Social Services appeared by counsel Jennifer Addams,

Esq., Deputy Attorney General.

The court has considered the moving papers and the opposition thereto, as well as the arguments presented at the hearing and, good cause appearing, HEREBY GRANTS Petitioners' Request for Writ of Mandate pursuant to both C.C.P. sections 1094.5 and C.C.P. 1085. The reasons follow:

I. BACKGROUND:

The Court finds it helpful to briefly outline the division within the Juvenile Court relating to dependency versus delinquency. The Juvenile Court in California governs both delinquency and dependency. The dependency system is administered under Cal. Code of Welfare and Institutions ("WIC") section 300, et. seq. and takes jurisdiction of a child who has been abandoned or subjected to abuse and neglect. As an incentive to encourage relative caregivers to consider permanent legal guardianship of a dependent child, as opposed to simply providing foster care, the Legislature enacted WIC 11363, known as the Kinship Guardianship Assistance Program ("Kin-GAP") in 1999. At the time of its inception, Kin-GAP was available only for children whose legal guardianships had been established through dependency proceedings and not to those whose guardianships had been established through delinquency proceedings. To establish Kin-GAP eligibility, a child under age 18 was required to meet four criteria: 1) the child must have been adjudged a dependent child of the juvenile court pursuant to section 300; 2) the child must have been living with the relative for at least 12 consecutive months; 3) the child must have had a kinship guardianship with that

relative established as the result of the implementation of a permanent plan pursuant to section 366.26; and 4) the child must have had his or her dependency dismissed after January 1, 2000 pursuant to section 366.3, concurrently or subsequently to the establishment of the kinship guardianship.

The juvenile delinquency system is administered by the Juvenile Court under section 601, et. seq. and is concerned with children charged with juvenile status criminal offenses. Children brought under the jurisdiction of the delinquency court are considered “wards of the court.” Like the dependency court, the delinquency court may place children in foster care where a finding of abuse or neglect is made in the course of the proceeding. The delinquency court then supervises both the dependency and delinquency proceedings. Under WIC section 728 subdivisions (c) and (d), the delinquency court may create a legal guardianship and pursuant to 728 subdivision (e), upon appointment of a guardian, may continue its wardship over the child by establishing conditions of probation, or may terminate the wardship. Under 728 subdivision (a), the Court may also elect to terminate or modify a prior established legal guardianship.

In 2006, Kin-GAP was amended to expand benefit eligibility to children whose legal guardianships were created through the delinquency court mechanism of WIC 728. WIC 11363 was modified to read, in its entirety, as follows, with emphasis added by the Court to highlight the revisions:

- a) Aid in the form of Kin-GAP shall be provided under this article on behalf of any child under 18 years of age who meets

all of the following conditions:

- (1) Has been adjudged a dependent child of the juvenile court pursuant to Section 300, **or, effective October 1, 2006, a ward of the juvenile court pursuant to Section 601 or 602.**
- (2) Has been living with a relative for at least 12 consecutive months.
- (3) Has had a kinship guardianship with that relative established as the result of the implementation of a permanent plan pursuant to Section 366.26.
- (4) Has had his or her dependency dismissed after January 1, 2000, pursuant to Section 366.3, **or his or her wardship terminated pursuant to subdivision (e) of Section 728, concurrently or subsequently to the establishment of the kinship guardianship.**

(b) Kin-GAP payments shall continue after the child's 18th birthday if the conditions specified in Section 11403 are met.

(c) Termination of the guardianship with a kinship guardian shall terminate eligibility for Kin-GAP; provided, however, that if an alternate guardian or coguardian is appointed pursuant to Section 366.3 who is also a kinship guardian, the alternate or coguardian shall be entitled to receive Kin-GAP on behalf of the child pursuant to this article. A new period of 12 months of placement with the alternate guardian or coguardian shall not be required if that alternate guardian or coguardian has been assessed pursuant to Section 361.3 and the court terminates dependency jurisdiction.

Thus, as of October 1, 2006, Kin-GAP was made available for two categories of children: 1) foster care children with kinship guardianships created by the dependency court under WIC 300, whose dependency had been dismissed by the dependency court pursuant to WIC 366.26 and 2) foster care children with kinship guardianships created by the delinquency court under WIC 728, whose wardships had been dismissed by the juvenile court under WIC 728.

II. FACTS

██████████ now 16-years-old, was placed with Petitioner, his paternal grandmother, as a foster child while still a baby. In 2000, Petitioner became ██████████'s legal guardian pursuant to WIC 366.26 and in 2006, the Fresno County Juvenile Court dismissed ██████████ dependency pursuant to WIC section 366.3. Following the dismissal of the dependency proceeding, ██████████ and Petitioner became eligible for and began receiving benefits under Kin-GAP.

In June 2008, ██████████ was arrested on a criminal charge in Santa Clara County. On August 6, 2009, he was adjudged a ward of the Santa Clara County juvenile delinquency court and was placed in juvenile hall beginning September 11, 2008. ██████████ remained in juvenile hall until November 24, 2008, at which point he was released on probation by the Santa Clara juvenile delinquency court. He remained under wardship with the Santa Clara juvenile delinquency court, but Petitioner's legal guardianship created by the Fresno County juvenile dependency court remained intact.

Prior to his release from juvenile hall, Respondent learned that ██████████ was incarcerated and therefore not residing with Petitioner. Respondent terminated Kin-GAP benefits to Petitioner on this basis. Thereafter, following ██████████ release some two months later, Petitioner sought to have Kin-GAP benefits reinstated. Respondent advised Petitioner that due to the 2006 revision of WIC 11363, Ernest was now ineligible for benefits, as he remained under the wardship

of the Santa Clara Juvenile Court and his wardship had not been terminated pursuant to WIC 728(e).

III. STANDARD OF REVIEW:

Petitioner seeks mandamus relief under both C.C.P. sections 1094.5 and 1085. The Court finds that she is entitled to both.

Administrative adjudications are reviewable by administrative mandamus under C.C.P. section 1094.5. Per C.C.P. 1094.5(b), the Court's inquiry is limited to whether Respondent has proceeded without, or in excess of jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Where a proceeding substantially deprives a party of a fundamental vested right, section 1094.5 provides that the Court exercise its independent judgment, examine the record for errors of law, and weigh the evidence to determine whether the weight of the evidence supports the administrative decision. (See *Bixby v. Pierno* (1971) 4 Cal.3d 130, 145; *Robbins v. Davi* (2009) 175 Cal.App.4th 118, 124.)

A writ of mandate pursuant to C.C.P. 1085 will lie to compel the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station. A 1085 writ will issue when there is a clear, present, ministerial duty on the part of the respondents and a clear, present, beneficial right in the petitioner to performance of that duty. (See *Baldwin-Lima-Hamilton Corp. v. Sup. Ct.* (1962) 208 Cal.App.2d 803, 813-14.) While mandamus will not lie to

control an exercise of discretion, mandamus will issue to compel a government entity to exercise that discretion “under a proper interpretation of the applicable law.” (*Covarrubias v. Sup. Court* (1998) 60 Cal.App.4th 1168, 1182.) Where an exercise of discretion can reasonably lead to only one choice, a court may compel the governmental entity to make that choice. (See *Oakland Police Officers Ass’n v. City of Oakland* (1973) 30 Cal.App.3d 96, 104.)

IV. DISCUSSION

The Court finds that WIC 11363 is clear and unambiguous as written. “If the language is clear and unambiguous, the plain meaning of the statute governs, and that meaning must be applied according to its terms.” (*Sneed v. Saenz* (2004) 120 Cal.App.4th 1220, 1235; see also *People v. Powell* (2010) 181 Cal.App.4th 304, 316.) As such, WIC 11363 is subject to only one reasonable interpretation. The issue before the Court is one of statutory construction and given the clear language establishing alternate routes of Kin-GAP eligibility, the Court can reach no conclusion other than that Respondent erred in denying Petitioner the Kin-GAP benefits for which ██████ qualified.

The Court rejects Respondent’s contention that Petitioner was ineligible to receive benefits on behalf of ██████ because he was adjudged a ward of the Santa Clara juvenile delinquency court and released on probation without termination of the wardship. One requirement for Kin-GAP is eligibility that a child under 18 must have been adjudged a dependent child of the juvenile court pursuant to

Section 300, *or*, effective October 1, 2006, a ward of the juvenile court pursuant to Section 601 or 602. The facts are clear that ██████ was adjudged a dependent child pursuant to Section 300 at the time he was placed in foster care as a baby. Another criterion for Kin-GAP eligibility is that ██████ must have had his dependency dismissed after January 1, 2000, pursuant to Section 366.3, *or* his wardship terminated pursuant to subdivision (e) of section 728, concurrently or subsequently to the establishment of the kinship guardianship. ██████ dependency was dismissed in 2006 when Petitioner was appointed his permanent legal kinship guardian.

The statute makes it clear that there are two routes to Kin-GAP eligibility. One is through a kinship guardianship created through the dependency system, with jurisdiction of the court being terminated through the dependency system. The other is through a kinship guardianship created through the delinquency system, with jurisdiction of the court being terminated through the delinquency system. The Court finds the “or” in WIC 11363 commands that the statute be read in the alternative, thereby creating two alternate routes to Kin-GAP eligibility. The statute does not require both for eligibility.

Because ██████ guardianship was not created or modified by the Santa Clara County juvenile delinquency court under WIC 728, his wardship could not be dismissed pursuant to WIC 728. There is nothing in the plain meaning of WIC 11363 that disqualifies a child who is benefit-eligible through a guardianship

created in the dependency court when or if he or she becomes involved with the delinquency system. Rather, the only termination mechanism in the statute is when the guardianship ceases, as set out in 11363 subdivision (c), or when the child reaches the age of majority.

The Court rejects Respondent's argument that its own interpretation of Kin-GAP, as set forth in its All County Letter ("ACL") opinion letters, results in any different determination. Following the amendment of 11363, Respondent issued ACL 07-13 on March 13, 2007 and errata to ACL 07-13 on August 8, 2007, explaining that WIC 11363 had been amended to expand Kin-GAP availability to probation youth in foster care. The letter explicitly stated that the amendments "DID NOT CHANGE the basic eligibility requirements for the remaining Kin-GAP population." The Court notes that while it has considered the ACLs in issuing this Order, it does not rely on them as an independent basis for the instant decision, which is grounded on the statute's plain meaning.

V. CONCLUSION

Based on the foregoing construction of WIC 11363, the Court finds that Respondent, in the Decision of March 23, 2009, erred in refusing benefits to Petitioner. For the above-stated reasons, the petition for writ of mandate pursuant to C.C.P. section 1094.5 is GRANTED. Respondent is ordered to vacate the denial of Petitioner's benefit claim, and consistent with this decision, to pay Petitioner Kin-GAP benefits owed for the time period following [REDACTED] return to

the home after his release from juvenile hall through the time that he again left the residence.

The petition for writ of mandate pursuant to C.C.P. section 1085 is also GRANTED. Respondent is ordered to comply with its mandatory duty to apply the above determined interpretation of WIC 11363.

Petitioner shall prepare a form of Judgment for execution by the Court and a form of Writ for approval as to form by the Court and execution by the Clerk of Court.

Date: 11/22/10



Frank Roesch
Judge of the Superior Court

CLERK'S DECLARATION OF MAILING

I certify that I am not a party to this cause and that on the date stated below I caused a true copy of the foregoing ORDER GRANTING WRIT OF MANDATE PURSUANT TO CCP 1094.5 and 1085 to be mailed first class, postage pre paid, in a sealed envelope to the persons hereto, addressed as follows:

Fiza Quraishi, Esq.
National Center for Youth Law
405 14th Street, 15th Floor
Oakland, CA 94612

Susan V astano Vaughan, Esq.
Morris & Foerster, LLP
755 Page Mill Road
Palo Alto, CA 94304-1018

Jennifer C. Addams, Deputy Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102

I declare under penalty of perjury that the same is true and correct.
Executed on November 23, 2010

By: *Vicki Daybell*
Vicki Daybell, Deputy Clerk
Department 31

RECEIVED
NOV 26 2010
NATIONAL CENTER
FOR YOUTH LAW