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25-P-1124

Appeals Court

CARE AND PROTECTION OF PRINCE.¹

No. 25-P-1124.

Essex. May 7, 2026. – September 11, 2026.

Present: Shin, Ditkoff, & Tan, JJ.

Minor, Care and protection, Custody. Parent and Child, Care and protection of minor, Custody of minor. Juvenile Court. Department of Children & Families. Jurisdiction, Care and protection of minor. Practice, Civil, Care and protection proceeding, Motion to dismiss.

Petition filed in the Essex County Division of the Juvenile Court Department on July 2, 2025.

A motion to dismiss was heard by Karen E. Hennessy, J.

Jennifer M. Lamanna for the father.

Cara M. Cheyette for the mother.

Jeremy Bayless for Department of Children and Families.

Robert J. McCarthy, Jr. for the child.

TAN, J. The father of the child, Prince, filed a petition in the Juvenile Court, pursuant to G. L. c. 119, § 24, alleging

¹ A pseudonym.

that the child was in need of care and protection. After hearing argument by the parties, a Juvenile Court judge allowed the oral motion to dismiss made by the Department of Children and Families (department). As a basis for the dismissal, the judge ruled that the substance of the father's petition had already been addressed in a separate pending action in the Probate and Family Court, and that the Probate and Family Court judge was in a better position to make the custody decision. The father appeals from the dismissal of the petition. Concluding that G. L. c. 119, § 24, creates a distinct action that involves different considerations and provides remedies different from those available in the Probate and Family Court, we vacate the order of dismissal and remand to the Juvenile Court for further proceedings.

Background. At the time the father filed the petition in the Juvenile Court, he and the child's mother had an ongoing case pending in the Probate and Family Court, initiated by a parentage complaint filed by the father in October 2021. Pursuant to orders in that case, the mother had custody of the child, and the father had supervised visits with the child. The parties had filed numerous motions in the parentage case.

On May 6, 2025, the department initiated an emergency response based on an incident that occurred on the evening of May 5, 2025, involving the mother's physical abuse of her

fourteen year old daughter² (sister) and the mother's stepfather, while the child was in the home. On May 6, 2025, the father told the department social worker that he had concerns about the child's being with the mother and that he had received a call the previous night from the sister's stepmother asking him to pick up the child. The social worker then spoke to the sister, who stated that the mother "had her hands around [the sister's] neck . . . and pushed [the sister] to the floor." The mother pulled the sister down by her hair and dragged her across the floor. The sister told the social worker that the mother attacked the mother's stepfather, who was covered in blood and had bite marks on his body and face. The sister described the mother as slurring her words and appearing intoxicated, and she stated that she could smell the odor of alcohol on the mother. The child woke up during the incident and began crying. Police arrested the mother in connection with the incident.³

That same day, the father filed a motion in the parentage case seeking emergency legal and physical custody of the child. In his affidavit accompanying the motion, the father described the allegations from the May 5, 2025 incident. The Probate and

² The sister and the child have different fathers.

³ Several reports under G. L. c. 119, § 51A, were filed the same day alleging neglect of the child and physical abuse of the sister. After an investigation, the department supported the allegations.

Family Court judge held a hearing on the father's emergency motion on May 7, 2025, but no order had issued at the time the father filed the petition in the Juvenile Court.

On July 2, 2025, the father filed the petition in the Juvenile Court, requesting that the court act to protect the child. In his affidavit accompanying the petition, the father set forth the same allegations and attached the filings that accompanied his Probate and Family Court motion for emergency custody. The father stated in his affidavit that he had filed "multiple motions for emergency custody" in the parentage case but that they had not been heard. At an emergency custody hearing in the Juvenile Court on July 2, 2025, a judge reviewed the petition, did not remove the child from the mother's custody, appointed counsel for the parents and for the child, and continued the case to July 9, 2025, for a preliminary hearing.

At the July 9, 2025 hearing, presided over by a different judge, the department orally moved to dismiss the father's petition, telling the judge that it had not found "any credible evidence that the child [was] suffering from physical abuse," as the father had alleged in his affidavit. The department informed the judge that the parties were involved in a "very heavily litigated matter" in the Probate and Family Court, and that a trial in that court had already commenced. In fact, the

judge had already presided over two days of trial and had scheduled a third day in August 2025 to "determine custody." The department explained that the father filed the petition in the Juvenile Court after the Probate and Family Court judge had issued a "gatekeeping" order;⁴ the department argued that the father was engaging in "forum shopping" and using the Juvenile Court "to circumvent the Probate Court action." The department maintained that the Probate and Family Court judge had heard the case "for over . . . four years" and was "in the best position given that it [was] mid-trial to determine custody and if there[] [were] any safety concerns." The department noted that the Probate and Family Court judge had not ordered, sua sponte, custody to be given to the department despite hearing extensive testimony. The mother and the child supported the department's motion to dismiss.

The father's counsel opposed the motion to dismiss and argued that the Juvenile Court judge should proceed with an evidentiary hearing on the father's petition. Ruling from the bench, the judge stated, "I do think that the Probate Court judge who has been hearing the case for three years is in a

⁴ In response to the mother's motion that the father seek court permission for future filings, the judge in the parentage case issued an order dated June 27, 2025, stating that neither party was permitted to make any further filings without obtaining her prior written permission.

better position to make determinations, and . . . the substance of . . . this petition was addressed in the . . . [r]equest for [e]mergency [o]rders, and I'm going to dismiss the petition."

Discussion. The father contends that the judge's allowance of the department's motion to dismiss the petition was error. Upon de novo review, Thaddeus v. Secretary of the Executive Office of Health & Human Servs., 101 Mass. App. Ct. 413, 420 (2022), we agree.

1. Statutory framework. We start with a review of the statutory frameworks governing care and protection proceedings, G. L. c. 119, §§ 24-26, in the Juvenile Court and custody proceedings involving nonmarital children, G. L. c. 209C, in the Probate and Family Court.

a. Care and protection proceedings pursuant to G. L. c. 119, § 24. A care and protection petition may be initiated in the Juvenile Court when any person alleges that a child: "(a) is without necessary and proper physical or educational care and discipline; (b) is growing up under conditions or circumstances damaging to the child's sound character development; (c) lacks proper attention of the parent, guardian with care and custody or custodian; or (d) has a parent, guardian or custodian who is unwilling, incompetent or unavailable to provide any such care, discipline or attention." G. L. c. 119, § 24.

"Care and protection petitions must be initiated in the Juvenile Court" Matter of an Impounded Case (No. 3), 497 Mass. 530, 533 (2026). Once a child has been adjudicated in need of care and protection and placed in the department's custody, the Juvenile Court has exclusive jurisdiction over any decision concerning placement of that child. Id. at 530, 533. See G. L. c. 119, §§ 24, 26.

If the allegations in the petition are proven and a child is adjudicated in need of care and protection, a Juvenile Court judge has several dispositional options pursuant to G. L. c. 119, § 26 (b). A Juvenile Court judge "may commit the child to the custody of the department until [the child] becomes an adult or until, in the opinion of the department, the object of [the child's] commitment has been accomplished, whichever occurs first." Id. A judge may also "make any other appropriate order, including conditions and limitations, about the care and custody of the child as may be in the child's best interest including, but not limited to, any 1 or more of the following:

"(1) . . . permit[ting] the child to remain with a parent, guardian or other custodian, and . . . requir[ing] supervision as directed by the court for the care and protection of the child.

"(2) . . . transfer[ring] temporary or permanent legal custody to:

(i) any person, including the child's parent, who, after study by a probation officer or other person or

agency designated by the court, is found by the court to be qualified to give care to the child;

(ii) any agency or other private organization licensed or otherwise authorized by law to receive and provide care for the child; or

(iii) the department of children and families.

"(3) . . . order[ing] appropriate physical care including medical or dental care.

"(4) . . . dispens[ing] with the need for consent of any person named in [G. L. c. 210, § 2] to the adoption, custody, guardianship or other disposition of the child named therein."

G. L. c. 119, § 26 (b) (1)-(4).

b. Nonmarital children proceedings pursuant to G. L.

c. 209C. "The comprehensive statutory scheme regarding nonmarital children governs three essential functions: paternity determinations, provision of child support, and custody and visitation matters." Care & Protection of Jaylen, 493 Mass. 798, 803 (2024), citing G. L. c. 209C, § 1.

"Regarding the first two functions . . . G. L. c. 209C provides for concurrent jurisdiction by the District Court, the Boston Municipal Court (BMC), and the Probate and Family Court," and provides for concurrent jurisdiction by the Juvenile Court only where care and protection proceedings under G. L. c. 119, § 24 (§ 24), are "commenced prior to the G. L. c. 209C proceeding, and . . . the two proceedings are joined or consolidated." Care & Protection of Jaylen, supra at 804, citing G. L. c. 209C,

§ 3 (a), (c). With regard to custody, permanent custody "shall" remain with the parent who gave birth to the child unless and until a Probate and Family Court judge issues an order to the contrary. Care & Protection of Jaylen, supra at 806-807, citing G. L. c. 209C, § 10 (b). The Juvenile Court, however, retains the authority to make appropriate orders as may be in the child's best interests and to keep the care and protection proceeding open when the birth parent is adjudicated to be unfit and until the other parent can have the permanent custody issue adjudicated by a Probate and Family Court judge. See Care & Protection of Jaylen, supra (harmonizing Probate and Family Court's authority under G. L. c. 209C, § 10 [b], with Juvenile Court's authority under G. L. c. 119, § 26 [b)).

In determining custody, a Probate and Family Court judge "may award custody of a nonmarital child to either parent or to them jointly," guided by "the best interests of the child." G. L. c. 209C, § 10 (a). "Determining custody arrangements between two separated parents, although always challenging, is a core function and strength of the Probate and Family Court, and a judge in this context 'is afforded considerable freedom to identify pertinent factors in assessing the welfare of the child and weigh them as she sees fit.'" Ryan v. Lovendale, 105 Mass. App. Ct. 564, 569 (2025), quoting Smith v. McDonald, 458 Mass. 540, 547 (2010).

Where, as here, there are allegations of abusive conduct by one of the parents, G. L. c. 209C, § 10 (e), addresses how to consider that conduct when making a custody order. Specifically, a judge "shall consider evidence of past or present abuse toward a . . . child as a factor contrary to the best interest of the child." G. L. c. 209C, § 10 (e).⁵ The statute also establishes a rebuttable presumption that placement with an "abusive parent" is against the best interests of the child. Id.

2. Analysis. A Juvenile Court judge acting on a § 24 petition considers different factors from those considered by a Probate and Family Court judge under G. L. c. 209C, § 10, and has access to remedies unavailable to a Probate and Family Court judge.⁶ The two statutory schemes have different and separate

⁵ For purposes of the statute, an "abusive parent" is defined as "a parent who has committed a pattern of abuse or a serious incident of abuse." G. L. c. 209C, § 10 (e). "Abuse" is defined to include one or more acts between a parent and child involving an attempt to cause or that causes bodily injury or that places "another in reasonable fear of imminent bodily injury." Id.

⁶ It bears mention that, although the department may intervene in a Probate and Family Court case, a litigant in Probate and Family Court has no method for seeking placement with the department in the Probate and Family Court litigation. "If a child is without proper guardianship due to death, unavailability, incapacity or unfitness of a parent or guardian . . . the department may seek, and shall accept, an order of the probate court granting responsibility for the child to the department" (emphasis added). G. L. c. 119, § 23 (a) (3), as amended through St. 2025, c. 9, § 49. See Custody of Lori, 444

functions. A § 24 petition may be filed in the Juvenile Court "[w]here a child is not receiving adequate care and protection" (quotation and citation omitted), Care & Protection of Jaylen, 493 Mass. at 802, and is aimed at determining whether (and to what extent) government intervention is necessary for the protection of the child. In contrast, G. L. c. 209C, § 10, addresses issues of parentage, child support, and custody of nonmarital children, between the parents. Although a Probate and Family Court judge in a G. L. c. 209C proceeding may grant custody of a child to the department, G. L. c. 119, § 23 (a) (3), or to a third person, G. L. c. 209C, § 10 (a), (d), in extreme circumstances, it is a rare occurrence. See Ryan, 105 Mass. App. Ct. at 569. Nothing requires a Probate and Family Court judge in a c. 209C proceeding even to consider such options, whereas determination of whether to grant custody to the department is usually the central focus of a Juvenile Court judge in a care and protection proceeding.

Mass. 316, 322 (2005); Balboni v. Balboni, 39 Mass. App. Ct. 210, 210-211 (1995). Unlike G. L. c. 119, § 24, which permits any "person" to file a care and protection petition in the Juvenile Court, G. L. c. 119, § 23 (a) (3), does not permit a parent to initiate such an action in the Probate and Family Court; the language refers only to the department's ability to file for or seek custody, or to accept custody when ordered to do so sua sponte by a judge.

Moreover, as discussed above, G. L. c. 119, § 26, provides a Juvenile Court judge a number of dispositional options after adjudicating a child in need of care and protection that are not available to the Probate and Family Court judge pursuant to G. L. c. 209C, § 10. A Probate and Family Court judge acting pursuant to G. L. c. 119, § 23 (a) (3), or G. L. c. 209C, § 10 (d), is limited to placing a child with the department or a third person where the parties are unfit. Unlike a Juvenile Court judge, a Probate and Family Court judge does not have the authority to "permit the child to remain with a parent" under "supervision as directed by the court" or to "order appropriate physical care including medical or dental care." G. L. c. 119, § 26 (b) (1), (3). On a more practical level, a Probate and Family Court judge does not have the ready ability to obtain departmental services to help a family address parental deficits that may be remedied without removal.

Given that the father filed the petition in the Juvenile Court shortly after the Probate and Family Court judge issued the gatekeeping order and that the allegations mirrored those in the parentage case, it is understandable that the Juvenile Court judge thought it prudent to leave the determination of custody to the Probate and Family Court judge. However, because a care and protection proceeding under G. L. c. 119, §§ 24-26, is distinct in nature and provides remedies different from those

available to a parent who has a pending G. L. c. 209C, § 10, action in the Probate and Family Court, the father's petition was properly before the Juvenile Court.⁷ Cf. Thaddeus, 101 Mass. App. Ct. at 419 (Superior Court action was "different in nature, raise[d] distinct claims, and [sought] distinct remedies from those involved in" ongoing, individual care and protection proceedings). As the Supreme Judicial Court has stated, "[We have] often recognized the unique character of the Juvenile Courts as forums in which, to the extent possible, the best interests of the child serve to guide disposition" Matter of an Impounded Case (No. 3), 497 Mass. at 533, quoting Custody of a Minor (No. 1), 391 Mass. 572, 575-576 (1984).

Had the judge here held an evidentiary hearing, she might have come to the same conclusion as the Probate and Family Court

⁷ We are sympathetic to the busy dockets of both the Juvenile and the Probate and Family Courts and recognize the desire to discourage litigants from "forum shopping" and filing meritless petitions. It is worth noting that a parent's filing of a care and protection petition invites State intervention into the family's life when there may otherwise have been none.

We also remind judges that they may request the interdepartmental transfer of a case if the cases involve the same parties or the same issues, and consolidating the cases to be heard in one court will promote judicial economy. See G. L. c. 211B, § 9 (x). See also Massachusetts Trial Court Rule XII(1) (2005) (governing requests for interdepartmental judicial assignments). This is not a merely technical issue. If, for example, the Juvenile Court action were transferred to the Probate and Family Court judge, that judge would then have the statutory authority (and thus options) normally available only to a Juvenile Court judge.

judge that temporarily removing custody of the child from the mother was unwarranted. See Care & Protection of Lillian, 445 Mass. 333, 337 (2005) (loss of custody is not "a predetermined outcome" under G. L. c. 119, §§ 24-26). She could also have concluded, however, that the evidence met one of the four enumerated factors in G. L. c. 119, § 24 (set forth above), warranting the Juvenile Court's continued oversight of the case pending a hearing on the merits, and appointed a court investigator qualified under G. L. c. 119, § 21A, to examine "the conditions affecting the child" and produce a report for the judge, see § 24, something not available to a Probate and Family Court judge in a G. L. c. 209C, § 10, proceeding. The department's motion to dismiss should not have been allowed.⁸

Conclusion. Based on the foregoing, we vacate the dismissal of the petition and remand the case to the Juvenile Court for further proceedings consistent with this opinion.⁹

So ordered.

⁸ Because we conclude that the father's petition should not have been dismissed, we need not and do not reach the father's argument that the judge erred in permitting the department to argue its oral motion to dismiss without giving prior notice to the father. See Rule 7(C) of the Juvenile Court Rules for the Care and Protection of Children (2018) ("All motions to dismiss shall be in writing . . .").

⁹ We express no opinion on the merits of the petition.