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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re E.G., et al., Persons Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

M.Q. et al.,
Objectors and Appellants.

B285921

(Los Angeles County
Super. Ct. No. DK16540)

APPEAL from an order of the Superior Court of Los Angeles County. Joshua D. Wayser, Judge. Affirmed.

Amy Z. Tobin, under appointment by the Court of Appeal, for Objector and Appellant M.Q.

Suzanne Davidson, under appointment by the Court of Appeal, for Objector and Appellant R.A.

Linda J. Vogel, under appointment by the Court of Appeal, for Appellant Minors E.G., K.G. and A.G.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel and Stephen D. Watson, Deputy County Counsel, for Defendant and Respondent.

M.Q., the mother of three children, and R.A., the father of one of them, appeal from the trial court's order terminating their parental rights. The sole issue they raise on appeal is the dependency court's failure to conduct a hearing under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) to determine whether it could properly exercise subject matter jurisdiction over the children. We conclude that any failure to hold a hearing was harmless as there is no reasonable probability of a different result if the court had held such a hearing. We therefore affirm.

FACTUAL AND PROCEDURAL BACKGROUND

We are concerned with mother's three youngest children: K., a girl born in 2007; E., a boy born in 2016; and M., a girl born in 2017.¹ R.A. is the father of K.; as he is the only father on appeal, we refer to him as "father." Another man, F.G., is the father of the two infants. He is not a party to this appeal. We refer to him as "boyfriend."

As the only issue on appeal relates to whether any state other than California had subject matter jurisdiction, the reasons for the children's dependency and the ultimate termination of parental rights are not before us. Briefly, mother was a homeless methamphetamine addict, living on the streets with boyfriend, who also used drugs. When the court detained the children, mother and boyfriend did not participate in reunification services, did not visit the children, and virtually disappeared. Father, who had previously been deported, could not be located by the Department of Children and Family Services (Department), and when he independently learned of the

¹ Mother apparently has at least one child older than K., who is not involved in this appeal.

dependency proceedings over his daughter, did not immediately come forward as he was concerned with his own legal problems.

Also relevant to his case are three of mother's relatives: the children's maternal grandmother, maternal aunt, and adult maternal cousin. Together, we refer to them as "mother's family."

We now turn to the facts of the case as they related to UCCJEA jurisdiction. Specifically, we are concerned with where mother and the children lived, and where evidence regarding the children's care, protection, training and personal relationships could be found.

Although the proceedings in this case commenced with E.'s birth in 2016, we begin the history earlier, at K.'s birth.

1. *K. is Born and Lives in California for Years*

K.'s birth certificate indicates she was born in Torrance, California in October 2007. Late in this case, father filed a declaration explaining that, after K.'s birth, he, mother and K. lived together in an apartment in Wilmington, California, for several years. In August 2013, father was incarcerated; in February 2014, he was deported to Mexico. He remained in contact with K. and mother by telephone for a few months after he was deported, until they became estranged.

2. *Mother and K. Remain in Wilmington*

In March 2014, DCFS received a referral indicating that mother and her children had been living in a motel for three months. The children appeared normal and fed, and the investigation was "Evaluated out." This referral establishes that mother remained with K. in Wilmington, at least through March 2014.

3. *Mother and K. Move in with Her Boyfriend, Still in Wilmington*

Sometime in 2014, mother began a relationship with boyfriend. Boyfriend worked in a factory and the owner let him stay in a back room. Boyfriend then brought mother and K. to live with him in the room behind the shop. In September 2014, the Department received a referral for neglect of K. Although the referral was closed as inconclusive, it establishes mother and K. were still living in Wilmington at this time.

In September 2015, there was another referral for neglect of K. We need not describe the circumstances of the referral; what is important is that the referral was again in California, and that it was closed as inconclusive because the family had fled and their whereabouts became unknown.

4. *The Family's Home is Unknown Until E. is Born in California*

The Department would have no further contact with mother or K. until April 2016, when E. was born, in California. The entirety of mother and father's appeal is based on the suggestion that, between September 2015, the date of the last dependency referral, and April 2016, mother and/or K. were not living in California. The evidence to support this suggestion is a series of conflicting statements mother made in April 2016, at E.'s birth. We note that, when E. was born, mother tested positive for amphetamine, so her statements were likely made under the influence.

Mother and boyfriend could not seem to get their stories straight as to where they lived. Mother said that she and boyfriend lived in Laughlin, Nevada for the past 5 or 6 months and had just returned to California. Boyfriend denied ever living

in Laughlin; he stated that he and mother had been living in Wilmington for some time.² He said mother comes and goes to Laughlin, but the couple lives in the shop in Wilmington.

Mother made the following statements regarding K.: (1) she lived with father, near San Ysidro or Tijuana; and (2) she lived with maternal grandmother in Bullhead, Arizona. However, mother also said that (3) all of her family lives in Nevada. Mother had no contact information for K. or any of the people she stated provided a home for K. Boyfriend, for his part, said that (4) K. lived in Laughlin with her maternal grandparents.

None of these four statements has factual foundation. K. did not live with father; he had no contact other than telephone calls with K. after he was deported. Nor did K. live with any of her maternal relatives, in either Arizona or Nevada. Mother's family, when eventually located in this case, would claim that mother had been estranged from the family. Mother's relatives believed her to be homeless and living in the Wilmington area. Moreover, even when mother's family sought custody of the children, no member of mother's family would ever represent to the court that K. had previously lived with them. Additionally, while the record does not indicate with clarity where mother's family actually lived, mother's claim that they lived out of state is not supported by anything else in the record.

E., the middle child, was detained at birth in the hospital and dependency proceedings were commenced.

² Boyfriend had been deported to Nicaragua the previous September and had just returned in February.

When K., the eldest child, was eventually located, approximately one month after E.'s birth and detention, she was still in Wilmington, living with mother and boyfriend.

5. *K. is Found, Neglected, in Wilmington*

On May 21, 2016, in Wilmington, mother called an ambulance because she had overdosed on methamphetamine. Authorities found K. alone in a "dirty garage with rats and roaches lying down on an old filthy sofa." Boyfriend was in a nearby trailer, under the influence. The family appeared to be squatting in the garage and trailer.

Mother gave authorities two different addresses in Wilmington where she claimed to be living. She now said that when E. was detained the previous month, K. had actually been living with her paternal grandparents in Wilmington; however, she then said that the paternal grandmother had left Wilmington two months earlier. K. herself told authorities that she lived with maternal aunt; but mother identified that same aunt (in Gardena) as someone with whom K. could possibly be placed – not that the aunt was then caring for her.

Mother claimed that K. attended Gardena Elementary school. But she also said that K. had been attending Gulf Elementary, in Wilmington. K. told police that she attended La Torres Elementary. She could not remember the last time she went to school. She said the school was in Mexico, but said she had never lived in Mexico. It would ultimately come to light that K. had never attended school at all.

K. was detained. When interviewed regarding abuse and neglect, K. said that she witnessed boyfriend hitting mother, "Like every day." This is further evidence that K. had been living with mother and boyfriend locally.

6. *The Case Proceeded*

On July 14, 2016, K. and E. were adjudicated dependent under Welfare and Institutions Code section 300, subdivision (b), due to mother and boyfriend's domestic violence and drug use. K. and E. were placed together in the same foster home. It was here that K. revealed that she had never attended school. Mother and boyfriend disappeared, and would not be located until the following February, when M. was born.

7. *Mother and Boyfriend Resurface When M. is Born*

In February 2017, mother gave birth to M. in California. Boyfriend was present at the hospital. Both mother and M. tested positive for methamphetamine. Mother could not engage in rational conversation, either due to drug use or mental health issues. Mother and boyfriend confirmed that they were homeless.

Maternal aunt explained to the social worker that mother had been homeless for a few years, in the Wilmington area, while abusing drugs. She reported that mother had been estranged from the family for two years, and only reconnected with the family to inform them of the children's detention. Mother's family had not known mother was pregnant or had given birth to E. Maternal aunt reported that mother had abused "drugs for years and has not raised any of her children."

8. *Due Diligence on Mother Reveals She was Always in California*

In attempting to give mother notice of the adjudication hearing on M., the Department conducted a due diligence search on her. The search revealed that mother was associated with numerous addresses, all in California, over a number of years. As for the months immediately prior to E.'s birth in April 2016, when mother claimed that (among other things) she had lived in

Laughlin, the report does not support that. Instead, a “Utility Listing” placed mother at a Wilmington address from May 2014 through May 2016.

9. *The Case Proceeds to Termination of Parental Rights*

On May 11, 2017, M. was declared dependent due to parental neglect, based on her parents’ drug use. Her parents, who did not attend the hearing, were denied reunification. She was placed in the same foster home as K. and E.

On September 27, 2017, the court terminated parental rights for all three children. Mother filed a timely notice of appeal, challenging not the termination, but the placement of the children for adoption with their foster parents rather than with her family.³ Father appealed the termination of his parental rights to K., as well as the denial of a prior motion for custody of K.

DISCUSSION

On appeal, mother and father argue that the trial court fatally erred by failing to conduct a hearing to determine its subject matter jurisdiction under the UCCJEA.⁴ Because of that error, parents argue, “all findings and orders from the initial adjudicatory findings and disposition order through the order terminating parental rights must be reversed and the matter

³ This does not appear to be appealable (Welf. & Inst. Code, § 366.28, subd. (b)), but we treat the appeal as from the termination of parental rights.

⁴ Mother makes the argument; father joins it, making no independent arguments of his own. Both the Department and the children argue that father has no standing, as he was only an alleged father. As father’s appellate argument is the same as mother’s, we address it on the merits.

remanded for UCCJEA compliance.” We emphasize that parents do not argue that the California courts actually lack subject matter jurisdiction over the case; they simply argue that the trial court erred in not conducting a hearing on its own motion to find out.

1. *Standard of Review*

As with any statute, interpretation of the UCCJEA is a question of law which we review de novo. (*Schneer v. Llaurado* (2015) 242 Cal.App.4th 1276, 1287.) We review factual determinations for substantial evidence. (*Id.* at p. 1283.)

2. *UCCJEA*

“‘The UCCJEA is designed to avoid jurisdictional conflicts between states and relitigation of custody decisions, promote cooperation between states, and facilitate enforcement of another state’s custody decrees.’ [Citation.] [¶] Subject matter jurisdiction over a dependency action under the UCCJEA either exists or does not exist at the time the petition is filed. [Citations.] Jurisdiction may not be conferred by mere presence of the parties or by stipulation, consent, waiver or estoppel. [Citations.]” (*In re Aiden L.* (2017) 16 Cal.App.5th 508, 516.)

A court has subject matter jurisdiction under the UCCJEA under a test set forth in Family Code section 3421. The statute provides a progressive test. If the court cannot exercise jurisdiction under the first step, it can only take jurisdiction under the second step if no other court has jurisdiction under the first step. The same is true of the remaining steps. They are as follows:

(1) A court first has jurisdiction if it is “the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the

commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state.” (Fam. Code, § 3421, subd. (a)(1).)

(2) If no other court has jurisdiction under that test, or a court of the child’s home state yields jurisdiction to this state, this state may exercise jurisdiction if both (a) the child and the child’s parents, or the child and at least one parent or a person acting as a parent, “have a significant connection with this state other than mere physical presence,” and (b) substantial evidence is available in this state “concerning the child’s care, protection, training, and personal relationships.” (Fam. Code, § 3421, subd. (a)(2).)

(3) If all courts having jurisdiction under the first and second tests have declined to exercise jurisdiction in favor of this state, this state may exercise jurisdiction. (Fam. Code, § 3421, subd. (a)(3).)

(4) A court may exercise jurisdiction if no other court would have jurisdiction under the first three tests. (Fam. Code, § 3421, subd. (a)(4).)

The UCCJEA contains numerous procedural requirements with which a court must comply. For example, when a court is aware that child custody proceedings have been commenced in another state having jurisdiction, the court shall stay its proceeding and “communicate with the court of the other state.” (Fam. Code, § 3426, subd. (b).) However, the failure to “comply with the procedural requirements of the UCCJEA is subject to harmless error analysis. [Citations.] Before any judgment can be reversed for ordinary error, it must appear that the error complained of ‘has resulted in a miscarriage of justice.’ (Cal. Const., art. VI, § 13.) Reversal is justified ‘only when the court,

“after an examination of the entire cause, including the evidence,” is of the “opinion” that it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error.’ [Citations.]” (*In re Cristian I.* (2014) 224 Cal.App.4th 1088, 1098-1099.) This harmless error analysis has even been applied to the failure to contact another jurisdiction’s courts. (See *In re R.L.* (2016) 4 Cal.App.5th 125, 131-132.) Such an error can be harmless if, for example, the California court nonetheless would have had jurisdiction. (*Id.* at p. 145.)

3. *Any Error in Not Holding a Hearing was Harmless*

Mother and father argue the trial court erred by failing to hold a hearing to determine its jurisdiction after mother had made contradictory statements at E.’s birth, some of which suggested that mother and/or K. had been living outside of California. We have doubts that mother’s statements, which were contradicted by mother’s other statements as well as boyfriend, were sufficient to give rise to any duty of further inquiry by the court. More importantly, even if the court should have conducted a formal UCCJEA hearing, any failure was demonstrably harmless, as the parents have not shown – and cannot show – that the juvenile court would have refrained from exercising jurisdiction. No other state had jurisdiction over any of these children.

We consider the court’s jurisdiction over each of the three children separately.

A. *California Had UCCJEA Jurisdiction Over K.*

Proceedings were commenced regarding the eldest child, K., on May 25, 2016, when she was detained, living in squalor in a garage in Wilmington. We must first determine K’s home state

at that time. The UCCJEA defines “home state” to mean “the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than six months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.” (Fam. Code, § 3402, subd. (g).) In turn, the phrase “person acting as a parent” “means a person, other than a parent, who: (1) has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child custody proceeding; and (2) has been awarded legal custody by a court or claims a right to legal custody under the law of this state.” (Fam. Code, § 3402, subd. (m).)

K. was living with mother, in the garage, for at least one month – ever since E.’s birth. Mother suggests there is a dispute as to where K. had lived for the five months before that time, as mother had reported, variously, that K. had lived with father near Tijuana or San Ysidro; or that K. lived with one of her relatives in Arizona or Nevada. The former is simply untrue; K. did not live with father, who had no idea where she was. There is also a great deal of evidence that claims of residence with relatives were untrue as well; nonetheless, even if K. had lived with mother’s family out of state, that state was not K’s home state. To be a home state, the child must live there with a parent or a person acting as a parent. To qualify as a person acting as a parent, the person must have been awarded legal custody by a court or claim a right to legal custody. None of mother’s relatives

were awarded legal custody of K. or claimed a right to custody. Thus, even if K. had lived with mother's family in Nevada or Arizona, Nevada or Arizona would not have been her UCCJEA home state.

In short, either California was K.'s home state, or she had none. If California was her home state, the court's exercise of jurisdiction was proper under the first part of the statutory test. If she had no home state, the second part of the test allows California to exercise jurisdiction if both (a) the child and the child's parents, or the child and at least one parent have a significant connection with this state other than mere physical presence, and (b) substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships.

K. and both of her parents have a significant connection with California. K. spent her entire life here, with the possible exception of the few months in doubt. She lived with both parents in California, until father was deported to Mexico. Father subsequently returned to California. The substantial evidence requirement is also satisfied. Three prior dependency referrals were made in this state. Father indicated K. had medical records in California, visited relatives in California, and regularly attended church in California. The California court could have exercised jurisdiction over K. under the second part of the test, even if K. had no home state.

B. *California Had UCCJEA Jurisdiction Over E.*

We next consider E., the middle child, who was born in California in April 2016. As he was an infant when proceedings were commenced, his home state is defined as the state where he "lived" from birth with a parent or a person acting as a parent.

The term “lived” in this context requires the child’s physical presence. (*Ocegueda v. Perreira* (2015) 232 Cal.App.4th 1079, 1086.) Here, E. was born in California and never spent any time out of it. Thus, either California is his home state or he has none. (*Id.* at pp. 1085-1086.)

Whether California was E.’s home state turns on if he lived with a parent or person acting as a parent. He was detained in the hospital when born; he did not live with mother. His temporary hospital stay incident to birth does not satisfy the “lived . . . with” requirement. (*In re R.L.*, *supra*, 4 Cal.App.5th at pp. 138-139.) Nor can the Department’s detention of E. prior to filing the petition render the Department a person acting as his parent under the statute. (*Id.* at pp. 139-140.) As E. had never lived with a parent or a person acting as a parent at the time the petition was filed, he had no home state.

We next turn to the second part of the test: did E. and at least one parent have a significant connection with this state other than mere physical presence, and is substantial evidence available in this state concerning the child’s care, protection, training, and personal relationships? Both of E’s parents had significant connections with the state. We need not consider whether this evidence is sufficient to justify jurisdiction under this test, however, because if California could not meet this test, no other state could either. E. has had no significant connection with any state other than California; he has no connection with any other state at all. Certainly there is no evidence regarding his care, protection, training and relationships in any state in which he has never been present.

If that is true, we move to the third part of the test. A state can exert jurisdiction if all courts having jurisdiction under the

first two parts declined to exercise it in favor of that state. But there are no courts (other than possibly California) having jurisdiction under the first two parts. Thus the third part does not apply, and we reach the fourth part of the test: California may exercise jurisdiction if no court of any other state would have jurisdiction under the first three parts. This is indisputably so.

Parents argue on appeal that the court should have held a hearing on jurisdiction because mother may have lived for six months in Nevada before giving birth to E. in California, but they make no argument that even if she had lived there, California would not have had jurisdiction over the infant born in California.⁵

C. *California had UCCJEA Jurisdiction Over M.*

As with E., M. was detained at birth. She had no home state. The entire analysis for M. is the same as it was for E., except that (1) there is no evidence in the record that suggests mother and boyfriend lived anywhere other than California in the months leading up to M.'s birth; and (2) the ongoing dependency proceedings in California regarding her brother E., and her half-sister, K., would provide even further ground for California to exercise jurisdiction under the second part of the test.

D. *Conclusion*

In summary, the evidence establishes that California would have had jurisdiction over the proceedings for all three children under the UCCJEA. As such, the failure to hold a UCCJEA hearing, if one were even required, was harmless.

⁵ In her brief on appeal, mother argues the court should have made a determination of whether Nevada was E.'s home state. She apparently overlooks the fact that, as E. was never physically present in Nevada, it could not possibly be his home state.

DISPOSITION

The order terminating parental rights is affirmed.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.