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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re ZOEY L.,

a Person Coming Under the Juvenile
Court Law.

B260686

(Los Angeles County
Super. Ct. No. DK06899)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

L.L. et al.,

Defendants;

ZOEY L.,

Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Robert S.
Draper, Judge. Affirmed.

Aida Aslanian, under appointment by the Court of Appeal, for Appellant.

Mark J. Saladino, County Counsel, Mary C. Wickham, Interim County Counsel, Dawyn R. Harrison, Assistant County Counsel, and Kim Nemoy, Deputy County Counsel, for Plaintiff and Respondent.

No appearance for Defendants.

INTRODUCTION

Three-year-old Zoey L. appeals the juvenile court's order dismissing the Welfare and Institutions Code¹ section 300 petition filed on her behalf. Zoey contends the juvenile court abused its discretion when it set aside its jurisdictional findings and dismissed the petition at the disposition hearing. We agree the trial court erred. Based on the unique circumstances of this case, however, we find the error does not require reversal and affirm the juvenile court's order.

FACTUAL AND PROCEDURAL BACKGROUND

A. The Investigation

Zoey came to the attention of the Los Angeles County Department of Children and Family Services (Department) when it received a telephone call about her on its Child Protection Hotline. The caller reported Zoey's mother, L.L. (Mother), and presumed father, Steven L. (Father), were neglecting Zoey and emotionally abusing her. The caller stated Zoey's parents exposed her to domestic violence and "smoke[d] marijuana all the time." The caller told the Department Mother recently obtained a restraining order protecting her and Zoey from Father, but Mother and Zoey had nonetheless returned to

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

the family home to live with Father. Finally, the caller expressed concern the family was moving out of state in a day or two and Department intervention was necessary to assess Zoey's safety and welfare.

In response to the call, the Department immediately dispatched a children's social worker (CSW) to investigate the allegations. The CSW initially contacted law enforcement to determine whether the caller's allegations concerning the restraining order were true. The CSW learned from law enforcement that two weeks earlier, the superior court issued a restraining order after a hearing protecting both Mother and Zoey from Father.

The CSW also determined the superior court had made a number of orders related to Zoey in connection with the restraining order. The court provided Zoey's parents with joint legal custody, but awarded Mother sole physical custody. It also ordered Father to enroll in a drug and alcohol program and both Mother and Father to enroll in a parent education class.

The CSW proceeded to the family home and met with Mother, Father and Zoey. The family lived in a furnished one-bedroom apartment with working utilities and no observable safety hazards. The CSW noted the apartment was "mostly packed up." Father explained the family was moving to Mississippi with Mother and Zoey leaving the following day by plane, and Father following shortly thereafter by bus.

During the CSW's private interview with Mother, Mother revealed when Father drinks alcohol "he becomes volatile," and Mother related there had been three instances in the last year when "arguments ha[d] become physical." Mother disclosed Zoey was present during one of those physical altercations. On that occasion, Mother explained Father "was drunk, trying to go out," and Mother would not let him go and "Zoey was crying." Mother reported Father restrained her, "put [her] down by [her] head and back to the floor." She told the CSW that in the past she has "had bruises but never reported it."

Mother disclosed to the CSW that she too had been physical with Father. She admitted she had "hurt him" and had "slapped him when he was drunk to shut him up."

Mother explained she obtained the restraining order after an altercation where Father “shoved her” after she told him that she wanted a divorce. Mother confided to the CSW she intended “to drop the restraining order.” She thought it would be best for Zoey “to work things out” with Father.

Mother denied she abused drugs or alcohol. She admitted that she had recently worked in a medical marijuana dispensary for six months and had, along with Father, smoked marijuana during that time. Mother stated she and Father did not smoke marijuana in front of Zoey, but she acknowledged they had provided care for Zoey when they were smoking it. After Mother left her dispensary job, she decided to quit smoking and tore up her medical marijuana card.

During the CSW’s private interview with Father, Father explained that things had been different with Mother during the last couple of months after Mother went out with some friends and did not return until the following morning. Father suspected Mother’s friends had “drugged [Mother] with LSD.”

Father acknowledged he had an alcohol problem, and he “binge drink[s] approximately twice per week.” He also admitted a prior arrest and conviction for driving under the influence, but he informed the CSW he satisfied court orders to attend drug and alcohol testing as well as Alcoholics Anonymous meetings.

With regard to domestic violence, Father told the CSW he had “never gotten crazy and hit on [Mother] or anything.” Father did reveal he had “pushed her outside when she hit” him and had yelled, but he denied he had ever hit Mother.

Zoey appeared healthy and developmentally appropriate to the CSW. Zoey had no marks or bruises indicating abuse or neglect, and she sought comfort from her parents when she was feeling shy around the CSW.

Based on her investigation, the CSW believed Zoey was at substantial risk of emotional abuse and general neglect by her parents. The CSW’s assessment was based on Father’s “admitted binge-drinking and subsequent volatile behavior,” Zoey’s exposure to at least one episode of domestic violence, and Mother’s failure to protect Zoey by returning to the family home after obtaining the restraining order.

The CSW also had concerns Mother and Father were planning to relocate to Mississippi with Zoey “with no regard for the current court orders regarding custody and visitation.” Based on her investigation and evaluation, the CSW took Zoey into protective custody.

B. The Petition and Detention Hearing

The Department filed a section 300 petition on August 15, 2014, alleging Zoey was a person described by section 300, subdivisions (a) and (b). The Department contended Zoey’s parents’ conduct “endanger[ed] [Zoey’s] physical health and safety and place[d] [Zoey] at risk of physical harm, damage, [and] danger” The counts in the petition were based on the facts related to domestic violence and substance abuse.

As to domestic violence, the Department alleged in the petition Mother and Father had “a history of . . . violent altercations in [Zoey’s] presence,” Father had restrained Mother on one prior occasion resulting in marks and bruises on Mother’s arms, and Mother had slapped Father in the past. The Department further alleged Mother failed to protect Zoey by allowing Father “unlimited access to [Zoey] in violation of a restraining order.”

As to substance abuse, the Department alleged in the petition both Mother and Father had a history of using drugs “including marijuana” which rendered them both incapable of providing regular care for Zoey, and both Mother and Father had provided care for Zoey while they were under the influence of drugs. The Department also alleged Father was an abuser of alcohol and had endangered Zoey by driving her while he was intoxicated.

The juvenile court conducted a detention hearing on August 15, 2014. The juvenile court read and considered the Department’s detention report for the hearing. The detention report described the Child Protection Hotline call and the resulting investigation by the CSW. The report also provided information gathered by the CSW from interviews with Zoey’s maternal grandmother, paternal great-grandfather and paternal great-grandmother. The paternal relatives verified that they had purchased plane

tickets for Mother and Zoey to come to Mississippi where Zoey's paternal relatives reside. The Department recommended Zoey be detained in shelter care and Mother and Father be given monitored visitation with Zoey.

The juvenile court detained Zoey and ordered her placed in shelter care. It ordered Mother and Father to have monitored telephone calls with Zoey including Facetime and Skype.²

C. Jurisdiction and Disposition

The petition was before the court for a jurisdiction hearing on September 5, 2014. By that date, Mother and Father were residing in Mississippi. At Mother's request, the juvenile court set the matter for a contested hearing, and it ordered the Department to contact Mississippi child protective services for a courtesy evaluation of the paternal grandmother's home and to determine what services were available in Mississippi for Zoey's parents. The juvenile court also requested a report from the Department concerning Zoey's potential placement in Mississippi through the Interstate Compact on Placement of Children (ICPC).³

² At the time of the detention hearing, it appears Mother and Father did not have anywhere to live in Los Angeles since they had given up their apartment to move to Mississippi. It is not clear from the record when Mother and Father moved to Mississippi. The Department sent hearing notices to Mother and Father at the paternal grandmother's address in Mississippi on August 22, 2014.

³ The ICPC is set forth in Family Code section 7901. "The purpose of the ICPC is to facilitate the cooperation between states in the placement and monitoring of dependent children." (*Tara S. v. Superior Court* (1993) 13 Cal.App.4th 1834, 1837.) Here, the ICPC would allow the Department and child welfare authorities in Mississippi to enter into an agreement whereby Mississippi social workers would provide services on the Department's behalf to Zoey and her family. (See *In re John M.* (2006) 141 Cal.App.4th 1564, 1572.) The order to initiate placement through the ICPC is not clearly reflected in the court's minute order.

The court conducted the jurisdiction and disposition hearing on the petition on October 28, 2014. At the hearing, the juvenile court received into evidence the Department's jurisdiction/disposition report and a last minute information for the court.

1. The Jurisdiction/disposition Report

The Department's jurisdiction/disposition report reflected Mother denied having domestic violence issues with Father. Mother admitted there had been an incident of domestic violence "a year and a half ago" when Father grabbed her when she was trying to leave. Mother said, however, the incident was nothing serious. Mother did not address the allegations she made in the recent court proceeding for the restraining order. She revealed she intended to "drop" the restraining order and returned to the family home only after about a month. Mother explained that before she obtained the restraining order, she and Father had discussed moving to Mississippi "to start over, [and] get a new life because California was too much for" them.

Mother reported she and Father had not been to counseling since she obtained the restraining order. Mother stated she and Father intended to "get all the help" they needed in Mississippi. Mother had not yet located any counseling services in Mississippi but intended to do so. She explained they "just needed the money first," and Father had only recently gotten a "side job."

The jurisdiction/disposition report also reflected Mother did not believe Father's alcohol or marijuana use was problematic. Mother believed when Father consumed alcohol "[h]e would just want to go out and that's about it." She explained Father's marijuana use was pursuant to a prescription and related to his insomnia. Mother stated Father smoked outside before going to sleep when Zoey was in her bedroom.

Mother admitted she smoked marijuana, but she did not believe it interfered with her ability to parent Zoey. Mother explained she had a prescription for marijuana to treat her anxiety. Mother said she took care of Zoey before smoking and "make[s] sure [Zoey] is okay and . . . is [a]sleep before [she] smoke[s]." According to Mother, she last smoked marijuana in June before she obtained the restraining order.

The jurisdiction/disposition report reflected Father denied ever causing marks or bruises on Mother or physically harming her. Father stated on one occasion he may have used “a loud tone of voice,” but he denied there was any “punching or fighting.” Father did admit he grabbed Mother’s arm one time and told her not to leave. Father revealed “that his family does not believe in domestic violence and it was not the way he was raised.”

Father contended Zoey’s maternal grandmother had a grudge against him. Father blamed her for the restraining order. He “felt that [Mother] was being forced to say those things.”

Father denied he had a drug problem. Father stated it was hard for him to go to sleep because of his work schedule, and he did not want to take pills. Father denied abusing marijuana, and he explained he would smoke marijuana in the car and when he first got home from work.

Father explained he consumed alcohol on his days off and when he went out with friends. He believed he was not an alcoholic as he “did not have shakes or side effects or need alcohol to function daily.” Father admitted he might drink a little more than he should during a celebration, but on those occasions, Father would not drive and would rely on a taxi for transportation.

Father denied Mother’s use of marijuana impacted her ability to care for Zoey. Father reported Mother was “an excellent mother” and only used marijuana for the problems for which it was prescribed.

The jurisdiction/disposition report noted Zoey’s paternal grandmother, who resides in Mississippi, believed the petition allegations were untrue. She believed some of the allegations were “made up stuff,” and the domestic violence allegations were “false.” She stated if Zoey’s parents came to Mississippi, Father would not be using marijuana, because it was not legal in Mississippi and it “won’t happen in [her] home.”

The report reflected Zoey’s maternal grandmother had been aware of domestic violence between Mother and Father since early 2013. Zoey’s maternal grandmother believed Mother would try “to cover up things,” and Mother “would have bruises, but . . .

didn't say anything." She saw Father "torturing her, pushing her, giving her profanity language and throw[ing] out allegations." She believed Mother "was not in good shape" and needed to see a doctor.

Zoey's maternal grandmother disclosed that she had seen both Mother and Father using marijuana in front of Zoey in the family home. She believed Zoey's parents neglected Zoey while using marijuana.

The Department recommended Zoey be declared a dependent child and suitably placed. The Department requested the juvenile court to order the initiation of an ICPC with Mississippi child welfare authorities to facilitate Zoey's placement with the paternal grandmother in Mississippi. The Department also asked the juvenile court to order family reunification services for Zoey's parents with Zoey's parents to participate in domestic violence classes, individual counseling, couples counseling, parenting classes and Narcotics Anonymous/Alcoholics Anonymous.

2. The Restraining Order Pleadings

The Department attached to its jurisdiction/disposition report the pleadings filed less than four months earlier in the superior court in connection with the restraining order. The juvenile court received into evidence Mother's request for domestic violence restraining order (Application),⁴ Mother's request for child custody and visitation orders, Father's response to request for domestic violence restraining order (Response) and the restraining order.

Mother's sworn statement alleged "continuing acts of [domestic] violence against" her by Father. Mother reported she told Father she wanted a divorce, and he became "enraged," "grabbed" her by her shoulders and "shoved" her against a wall. Mother disclosed during the incident Father told her he was going to kill her and would not let Mother leave the family home. Eventually, Mother was able to leave with Zoey.

⁴ Mother signed the Application under penalty of perjury. She also attached a declaration to it describing the domestic violence.

The domestic violence did not conclude after Mother left the family home. According to the Application, about one week later, Father came to the maternal grandmother's home where Mother was staying. Mother related Father "was drunk" and told Mother he was going to burn all of her things. He also "grabbed" Zoey and told Mother to "[k]iss [Zoey] goodbye because [she was] never going to see [Zoey] again." Father then drove away with Zoey in the car. Mother was fearful but was afraid to stop Father because he was "much bigger" and "very violent."

Mother's Application reflected in the past Father has "hit [Mother] with his fist, pushed [her] and shoved [her], and physically thrown [her] out of [their] home." Mother reported Father "gets very, very angry and threatens to hurt and kill [her]." Mother swore in the Application that she was "very afraid that [Zoey] will be hurt if the Court does not order that [Father] give [Zoey] to [her]." Mother was "very afraid that unless the Court issues a restraining order, [Father] will carry out his threats to hurt or kill [her]."

Father's Response denied he had ever "committed any type of violence" or threatened Mother in front of Zoey. Father alleged Mother had become paranoid after going out with a friend and believed Father had installed cameras in the family home to watch her. He believed Mother had mental health issues that would "come and go daily."

3. Last Minute Information for the Court

The Department's last minute information for the court reported that a courtesy evaluation by a social worker in Mississippi found Zoey's paternal grandmother's home to be "nice" with working utilities and no safety issues. The evaluation was not, however, "a recommendation about [the] appropriateness" of the home for Zoey's placement as the Department had made no request for supervision of any placement for Zoey through the ICPC.

The Mississippi social worker communicating with the Department about Zoey's paternal grandmother's home expressed concern that the juvenile court was considering

sending Zoey into Mississippi “without an approved ICPC.”⁵ She believed there would be “no way to ensure that the parents” were complying with their case plan or what state had jurisdiction over Zoey without “proper procedure.” The Mississippi social worker “questioned if the parents were just trying to get the child with the relative so that they could leave with the child.” She believed “the family is being set up to fail . . . which [was] not fair to the child.”

The Department also reported Zoey had a separate in-person visit with each of her parents. While the foster care social worker labeled Mother’s visit “amazing,” she expressed concern about Father’s visit. Zoey appeared uncomfortable with Father, and she wiggled and tried to get away from him. Zoey was “clearly distressed,” “would flinch and appear[ed] afraid” of Father.

Other than the one in-person visit, Mother and Father had been visiting with Zoey by Skype on a weekly basis. Those visits, according to Zoey’s foster mother, lasted four to eight minutes and occurred once per week.

The Department reported Father said he and Mother were enrolled in parent education classes, and he would bring proof of enrollment to court.⁶ Father stated he had attended 20 Alcoholics Anonymous meetings, and he and Mother were participating in marital counseling. He also disclosed he and Mother went to court “to drop the restraining order” when they had been in California in September.⁷

⁵ Article 3, subdivision (d) of Family Code section 7901 provides: “The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.”

⁶ It does not appear from the clerk’s or reporter’s transcript that Father or Mother provided any evidence of participation in any programs at the time of the hearing.

⁷ On September 4, 2014, the superior court vacated the restraining order. On our own motion, we take judicial notice of that order. (Evid. Code, §§ 452, subd. (d), 459, subd. (a); *In re Sabrina H.* (2007) 149 Cal.App.4th 1403, 1417; *In re Karen G.* (2004) 121 Cal.App.4th 1384, 1390.)

4. *The Hearing*

On October 28, 2014, at the jurisdiction hearing, counsel for the parties advised the juvenile court they had reached a resolution of the jurisdiction and disposition issues for the court's approval. Mother and Father both agreed to plead no contest to an amended petition alleging (1) Father "is a current abuser of alcohol which renders [him] incapable of providing the child with regular care periodically and supervision" thereby endangering Zoey's "physical health and safety" and placing her at "risk of physical harm" and (2) Mother and Father have an unresolved history of engaging in physical altercations in Zoey's presence placing Zoey "at risk of physical harm."

The court sustained the petition allegations based on the no contest pleas of Mother and Father. The court found Zoey was a person described by section 300, subdivision (b).⁸

After sustaining the amended petition allegations, the juvenile court proceeded to disposition. Counsel for the Department explained to the court the parties had agreed on a suitable placement order for Zoey. Zoey's parents had signed a case plan consistent with the Department's recommendations. The case plan included a request that the Department initiate placement approval through the ICPC with Zoey's paternal grandmother in Mississippi.

⁸ Section 300, subdivision (b)(1), provides in pertinent part:

"Any child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court: [¶] . . . [¶] . . . The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse. . . ."

The Department's counsel then explained after agreeing to a suitable placement order for Zoey, Mother and Father requested Zoey be sent to Mississippi for an extended visit in the paternal grandmother's home pending an approved placement through the ICPC. The Department's counsel objected to Zoey being sent to Mississippi without having obtained approval through the ICPC. Before the court or other counsel had an opportunity to speak on the issue, the Department's counsel requested "the case be dismissed or terminated, so the Department is not responsible for a child the Department can't supervise."

Zoey's counsel objected to the Department's request to dismiss Zoey's case. Zoey's counsel argued the Department had safety concerns for Zoey in the care of her parents, and the court had just sustained allegations of substance abuse and "serious domestic violence" involving Zoey's parents. Zoey's counsel requested the court "put the matter over, if it needs additional information, and the Department can make appropriate contacts with the state of Mississippi." Zoey's counsel asked that Zoey be permitted "to go on a 30-day visit with the paternal grandmother."

The juvenile court stated: "I have felt from the beginning of this case that we needed to get the child to Mississippi. Parents are in Mississippi, the paternal grandparents are in Mississippi. . . . I do believe that the appropriate step at this stage of the proceeding would be to institute an ICPC in Mississippi and send the child to Mississippi for an extended visit for 29 days. . . . I actually agree with . . . the Department's point that there is no possible way the Department in that situation can monitor the child or monitor the parents' progress in programs, so, based upon that, I am dismissing the petition."

The juvenile court then addressed Zoey's parents: "Mr. and Mrs. [L.], you need to address these problems for your child. I think you know that both. The domestic violence between yourselves, you need to figure out whether you are going to be together or not, and, if so, how are you going to cure that, and, also, the alcohol problem."

The juvenile court thereafter vacated its findings on the petition and dismissed it. The juvenile court denied Zoey's request for a stay of the court's order.

Zoey filed a petition for extraordinary relief and a request for an immediate stay with this court on October 31, 2014. We issued a stay and asked for responses from the Department, Mother and Father. On November 21, 2014, we lifted the stay finding Zoey's proper remedy for any juvenile court error was by appeal.⁹

D. Postjudgment Evidence

After oral argument, we requested additional briefing to address an appropriate remedy if this court were to remand the matter to the juvenile court for further proceedings. We also inquired about Zoey's current circumstances and whether there was evidence appropriate for our consideration. (Code Civ. Proc., § 909.)

In response to our request, the Department filed its motion to take additional evidence on appeal. The motion included two exhibits concerning Zoey: a declaration from the Department's counsel and a memorandum authored by a social worker from the Mississippi Department of Human Services, Family & Children's Services. Zoey's counsel expressed no objection to this court considering the postjudgment evidence. Accordingly, we grant the Department's motion.

The postjudgment evidence reveals that social workers with Mississippi Family & Children's Services are aware of Zoey and her family and have had contact with them. At the Department's request, a social worker conducted a welfare check on Zoey on October 6, 2015. The social worker interviewed Zoey and Mother in the family home. Zoey appeared to be doing well. She told the social worker that she feels safe at home and is not afraid of anyone there. Zoey had no marks or bruises on her body. The social worker did not see any evidence of substance abuse or domestic violence in the home and noted no safety concerns.

⁹ On our own motion, we take judicial notice of the order in the writ proceeding in this case. (Evid. Code, § 452, subd. (d); *Kurtin v. Elieff* (2013) 215 Cal.App.4th 455, 459.)

DISCUSSION

On appeal, Zoey contends that the juvenile court erred at the disposition hearing by vacating its jurisdictional findings and dismissing the petition. She asserts the juvenile court's orders failed to ensure her safety given the admissions of Mother and Father to the amended petition allegations and the juvenile court's findings that she was at risk of physical harm based on her parents' domestic violence and Father's alcohol abuse.

In response, the Department argues this court cannot provide Zoey with any relief because she lives in Mississippi, and the appeal should be dismissed as moot. Alternatively, the Department asserts the juvenile court's orders were appropriate given that there was no approved placement for Zoey in Mississippi through the ICPC and based upon the juvenile court's authority at a disposition hearing.

A. The Appeal Is Not Moot

The Department asserts this court cannot provide Zoey with any relief because by the time this appeal is concluded, the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA; Fam. Code, § 3400 et seq.) would mandate that Mississippi courts make any orders affecting Zoey's custody. The Department argues that Mississippi "will be Zoey's home state" and "the more convenient forum to make future child custody determinations."

Under the UCCJEA, when the dependency petition was filed, California had jurisdiction to make child custody decisions as Zoey's "home state." (Fam. Code §§ 3402, subd. (g), 3421, subd. (a)(1).) A reversal of the juvenile court's order dismissing the petition would restore the parties to their previous positions as if the petition had never been dismissed, and the juvenile court would have jurisdiction to make disposition orders. (*Weisenburg v. Cragholm* (1971) 5 Cal.3d 892, 896 ["[w]hen that judgment was unqualifiedly reversed, . . . the effect was the same as if it had never been entered"].)

We recognize that circumstances may have changed and California may not be the most convenient forum to determine Zoey’s custody. An inconvenient forum analysis, however, requires an examination of relevant facts which are not before us.

Moreover, the analysis necessarily assumes there is a forum where the matter is actually pending or might be brought. We have no evidence that a custody matter concerning Zoey is pending in Mississippi. In fact, the postjudgment evidence is to the contrary. Zoey also has no ability to compel Mississippi authorities to file a petition on her behalf. To dismiss her appeal as moot, on the basis that some other forum is more appropriate, is to deny Zoey an opportunity to be heard on the issue of her safety. This we cannot do.

B. The Juvenile Court Erred in Dismissing the Petition

“The juvenile court has an equitable duty to protect the welfare of the children within its jurisdiction. [Citation.] By enacting section 300, the Legislature intended to protect children who are currently being abused or neglected, ‘and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of harm.’ (§ 300.2.)” (*In re I.G.* (2014) 226 Cal.App.4th 380, 386.)

After a juvenile court finds a child before it is described by section 300, the juvenile court “shall hear evidence on the question of the proper disposition to be made of the child.” (§ 358, subd. (a).) The juvenile court has a number of disposition options available to it. (§ 360; Cal. Rules of Court, rule 5.695.) It may elect not to declare the child a dependent of the juvenile court and dismiss the petition, order informal supervision for the family under section 301 or appoint a legal guardian. (§§ 360, subds. (a) & (b), 390.) Alternatively, the juvenile court may determine that the child should be adjudged a dependent child of the juvenile court and make placement orders for the child. (§§ 360, subd. (d), 361, subd. (c); Cal. Rules of Court, rule 5.695.)

“The juvenile court has broad discretion to determine what would best serve and protect the child’s interest and to fashion a dispositional order in accordance with this discretion. [Citations.] The court’s determination in this regard will not be reversed

absent a clear abuse of discretion. [Citation.]’” (*In re Neil D.* (2007) 155 Cal.App.4th 219, 225, quoting *In re Jose M.* (1988) 206 Cal.App.3d 1098, 1103-1104.) The test for an abuse of discretion is whether the juvenile court’s order exceeded the bounds of reason. (*In re Alexandria M.* (2007) 156 Cal.App.4th 1088, 1095-1096.)

Section 390 authorizes the juvenile court to set aside its findings and dismiss a petition at the disposition hearing. Section 390 provides “[a] judge of the juvenile court . . . , at any time before the minor reaches the age of 21 years, may dismiss the petition or may set aside the findings and dismiss the petition if the court finds [1] that the interests of justice and the welfare of the minor require dismissal, and [2] that the parent . . . is not in need of treatment or rehabilitation.” A juvenile court order dismissing the petition at the disposition hearing requires “specific reasons stated in the minutes.” (Cal. Rules of Court, rule 5.695(a)(1).)

“Before a juvenile court may invoke [section 390], it must make certain factual findings.” (*Los Angeles County Dept. of Children & Family Services v. Superior Court* (2008) 162 Cal.App.4th 1408, 1418.) “In making these findings, it is incumbent on the juvenile court to take into account the child’s physical, emotional, and psychological needs; the circumstances of the child’s parents; and any other factor that may affect the child’s welfare, both current and prospective.” (*In re Y.M.* (2012) 207 Cal.App.4th 892, 912.)

Immediately prior to dismissing the petition, the juvenile court found that Zoey was a person described by section 300, subdivision (b), based on Zoey’s parents’ no contest pleas. The juvenile court sustained allegations Father was “a current abuser of alcohol” and Mother and Father had a “history of engaging in physical altercations in [Zoey’s] presence.” The juvenile court also found that the alcohol abuse and domestic violence placed Zoey at “risk of physical harm.” The record was replete with evidence to support such findings.

The juvenile court’s minute order does not set forth its reasons for dismissing the petition. (Cal. Rules of Court, rule 5.695(a)(1).) It did provide its reasoning to the parties, however, during the hearing. The juvenile court stated it “felt from the beginning

of this case that [it] needed to get the child to Mississippi” because Mother and Father had relocated to Mississippi and Zoey’s paternal grandparents were in Mississippi. The juvenile court acknowledged “the appropriate step at this stage of the proceeding” would be to initiate approval for Zoey’s placement in Mississippi through the ICPC. As there was no approved placement through the ICPC, the juvenile court found neither Zoey nor her parents could be monitored by the Department and “based upon that” decided to dismiss the petition.

The juvenile court did not make either of the findings required by section 390 when it vacated its findings on the section 300 petition and dismissed it. The juvenile court did not find the interests of justice and Zoey’s welfare required dismissal of the petition or Zoey’s parents were not in need of treatment or rehabilitation. Moreover, on this record, the juvenile court could not have made either of the statutorily-required findings.

The juvenile court found Zoey was at risk of physical harm in her parents’ care because of their domestic violence and Father’s alcohol abuse. The comments made by the juvenile court just before it dismissed the petition reflected its belief that Zoey’s welfare required her to be removed from her parents’ care. The juvenile court noted it would be “appropriate . . . at this stage of the proceeding . . . to institute an ICPC in Mississippi.” As an out-of-state placement in the home of a parent does not require compliance with the ICPC (*In re John M.*, *supra*, 141 Cal.App.4th at p. 1573), the juvenile court’s statement had to have been referencing placement for Zoey in her paternal grandmother’s home and not with her parents.

The juvenile court’s reference to an “extended visit for 29 days” also evidences the juvenile court’s belief Zoey’s welfare required suitable placement. If the juvenile court believed that Zoey was safe in her parents’ care, there would have been no need for the ICPC approval or an extended 29-day visit.¹⁰

¹⁰ Under the ICPC, “[a]n order causing a child to be sent or brought to a person, other than a parent, in a compact jurisdiction with a return date more than 30 days from

Additionally, all of the parties had reached an agreement about the case with an understanding Zoey would be declared a dependent child and suitably placed. Zoey's parents signed case plans reflecting suitable placement for Zoey, and Mother's case plan specifically requested placement in the paternal grandmother's home through the ICPC.¹¹

Moreover, the evidence before the court could not support a finding that the interests of justice and Zoey's welfare required the petition be dismissed. As Zoey's parents pled no contest to the amended petition allegations, the juvenile court was not required to resolve the conflicting evidence before it concerning domestic violence allegations. Nonetheless, Mother's sworn statement in the Application—the only sworn statement before the court—strongly supported the juvenile court's findings Zoey was at risk of physical harm in her parents' care. Mother testified in her Application Father threatened to kill her and told her to kiss Zoey goodbye because she would never see Zoey again. Mother swore she feared Father would hurt Zoey. She admitted that she could not protect Zoey from Father, because Father was much bigger than she and very violent. The juvenile court had no evidence Zoey's parents' ongoing domestic violence issues had been resolved.

The juvenile court's statements to Zoey's parents immediately after it dismissed the petition demonstrate it believed Zoey's parents were actually in need of treatment and rehabilitation. The juvenile court told Zoey's parents they "need[ed] to address these problems for [their] child." The juvenile court referenced both "domestic violence" and "the alcohol problem."¹²

the start of the visit," is not a "placement" for purposes of the ICPC. (Cal. Rules of Court, rule 5.616(b)(1)(B)(ii).)

¹¹ During the hearing, Father's counsel requested placement through the ICPC if the court elected not to dismiss the petition.

¹² As noted earlier, the last minute information for the court indicated Father said he and Mother had attended certain programs. It does not appear from the report that the social worker verified any of the information provided by Father. Father also did not

The evidence before the court could not support a finding that Zoey's parents were not in need of treatment and rehabilitation. With the exception of Father's statements to the Department, all of the evidence before the court strongly suggested both Mother and Father were in need of treatment. The Department recommended an extensive case plan for Mother and Father that included domestic violence classes, individual counseling, marital counseling, Alcoholics Anonymous support groups and parent education classes to address the issues that brought the family before the juvenile court.

Even Father's statements do not support a finding Mother and Father were not in need of treatment and rehabilitation. There was no evidence Father or Mother had enrolled in or attended any kind of domestic violence classes or individual counseling.¹³ While Father told the Department he had been attending Alcoholics Anonymous meetings and he and Mother had started a parent education program and marital counseling, they had only just started their participation.

The juvenile court's comments during the disposition hearing suggest it dismissed the petition without regard to the findings it was required to make under section 390 to dismiss Zoey's petition. The juvenile court dismissed the petition not because doing so was in the interests of justice and Zoey's welfare required it or because Zoey's parents were not in need of rehabilitation and treatment, but because approval through the ICPC for Zoey's placement had not been obtained by the time of the disposition hearing.

The juvenile court properly recognized the Department could not actively supervise Zoey in Mississippi, and placement through the ICPC would be required for courtesy supervision from social workers in Mississippi. While the juvenile court may have desired Zoey to go immediately to Mississippi with her paternal grandmother so she

bring any documentation to court to show proof of enrollment or attendance as he indicated he would.

¹³ The case plan signed by Father in anticipation of the juvenile court adjudging Zoey a dependent child required a 52-week domestic violence program and individual counseling. Mother's case plan required a "Support Group/Victims" domestic violence program as well as individual counseling.

could be in close proximity to her parents, the court could have continued the disposition hearing for the results of an expedited placement request through the ICPC.¹⁴ Nothing required the court to grant the request to send Zoey out of state for an extended 29-day visit pending approval of the ICPC. The juvenile court's concerns about supervision, as well as its statutory obligation to protect Zoey's safety and welfare, could have been addressed by leaving Zoey in her placement pending resolution of the placement issue through the ICPC. On these facts, dismissing Zoey's petition "was inconsistent with the juvenile court's duty to protect [Zoey's] welfare and act in the interests of justice" (*Taylor M. v. Superior Court* (2003) 106 Cal.App.4th 97, 107), was not authorized under section 390, and was an abuse of discretion (*id.* at p. 108).

C. The Error Was Not Prejudicial Considering Zoey's Current Circumstances

That the juvenile court abused its discretion in setting aside its jurisdictional findings and dismissing the petition at the disposition hearing does not end our inquiry. "A fundamental rule of appellate review is that the appellant must affirmatively show *prejudicial* error. [Citation.]" (*Scheenstra v. California Dairies, Inc.* (2013) 213 Cal.App.4th 370, 403; accord, *Ballard v. Uribe* (1986) 41 Cal.3d 564, 574; *Carolina Casualty Ins. Co. v. L.M. Ross Law Group, LLP* (2012) 212 Cal.App.4th 1181, 1196-1197.) Based on our receipt and consideration of the postjudgment evidence in this matter addressing Zoey's current circumstances, we find the juvenile court's error was not prejudicial and does not require reversal.

Zoey seeks to reinstate juvenile court jurisdiction to ensure proper monitoring of her safety in Mississippi. Zoey contends the juvenile court's order dismissing the petition left her with "no assurance" that she and her parents "would receive the very services

¹⁴ California Rules of Court rule 5.616(h) allows the juvenile court to "designate a proposed placement [through the ICPC] as an expedited placement" As Zoey is under four years of age, a placement with her grandmother through the ICPC could have been expedited. (*Id.*, rule 5.616(h)(2)(B).) An expedited placement approval from the receiving state would have been required within 20 days. (*Id.*, rule 5.616(h)(5).)

which the professionals assessed would ensure [her] safety and well-being to be returned to her parents.”

The postjudgment evidence corroborates Mother and Father’s representation to the Department and juvenile court that they had relocated to Mississippi on a permanent basis while the dependency proceedings were pending. It also establishes Mississippi’s Department of Family & Children’s Services has been aware of Zoey since at least April 2015 after the Department made a child welfare referral concerning her, has had face-to-face contact with Zoey, and has not initiated a dependency case on her behalf. A very recent courtesy welfare check by a social worker revealed no “safety concerns” at the home. The social worker “specifically investigated for signs of drug use or domestic violence” and did not see any. The social worker learned that Father had full-time employment while Mother held two part-time positions in restaurants. Zoey did not have any marks or bruises on her body. Zoey told the social worker that she feels safe and is not afraid of anyone in her home. She appeared to have a strong bond with Mother.

Under these particular circumstances, despite the juvenile court’s error, we cannot find that reversal of the order dismissing the petition is in the best interests of Zoey. It appears likely that Zoey and her family have not had contact with Los Angeles since the juvenile court dismissed the petition, and there is little, if any, current information here concerning her. Requiring the family to return to Los Angeles to conduct another disposition hearing would no doubt result in substantial disruption and uncertainty for Zoey, Mother and Father.

Zoey’s appeal centered on her need for assurances for her safety in her parent’s care. Given that Mississippi’s Department of Family & Children’s Services is aware of Zoey and the concerns that brought her before the juvenile court, we can discern no prejudice under these unique facts requiring reversal of the juvenile court’s disposition order.

DISPOSITION

The order vacating the section 300 petition findings and dismissing the petition is affirmed.

BECKLOFF, J.*

We concur:

ZELON, Acting P. J.

SEGAL, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.