

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

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

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

AMY B. et al.,

Defendants and Appellants.

B277663

(Los Angeles County  
Super. Ct. No. DK14800)

APPEAL from orders of the Superior Court of Los Angeles County. Robin R. Kesler, Juvenile Referee. Affirmed and remanded.

Linda J. Vogel, under appointment by the Court of Appeal, for Defendant and Appellant Jeremy B.

Marsha F. Levine, under appointment by the Court of Appeal, for Defendant and Appellant Amy B.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel and Peter Ferrera, Deputy County Counsel for Plaintiff and Respondent.

---

Amy B. (mother) and Jeremy B. (father) appeal a judgment declaring their 13-year-old daughter and 12-year-old son dependents of the court, and removing them from their parents' care. Mother and father contend that the state of Washington was the children's home state when this case began, and the juvenile court did not properly exercise emergency or continuing jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA; Fam. Code, § 3400 et seq.).<sup>1</sup> We conclude the court properly exercised emergency jurisdiction over the children under the act, but remand the matter to the juvenile court to allow it to contact and provide notice to Washington authorities. If a Washington court declines to exercise jurisdiction, the jurisdictional and dispositional orders will remain in effect. If a Washington court initiates proceedings, the juvenile court is directed to void its jurisdictional and dispositional orders, and proceed in compliance with the UCCJEA.

### ***FACTUAL AND PROCEDURAL BACKGROUND***

On February 29, 2016, the children were living with mother in the state of Washington when the daughter called maternal grandmother for help. The daughter said mother was always crying in her bedroom, and had told the children, "I have had enough of you." Several years earlier, mother and father had divorced in North Carolina and the parents and children then moved to Washington.

On March 5, 2016, maternal grandmother brought the children to stay with her in California with mother's permission.

---

<sup>1</sup> All further statutory references are to the Family Code unless otherwise stated.

Mother gave maternal grandmother a bottle of Adderall prescribed for the son due to an ADHD diagnosis.

On March 9, 2016, the son held a knife to his neck and threatened to cut himself. Maternal grandmother took the knife from him. She then called mother and said the son needed a psychiatric assessment. Mother blamed maternal grandmother for the son's outburst and refused to help obtain treatment for him.

The son started at a new school the next day. He threatened to stab and kill eight classmates with a pocket knife. He also told the principal he was going to commit suicide by jumping off of maternal grandmother's roof. He was taken to a psychiatric hospital and held temporarily for treatment. Staff at his prior school said that he had also made violent comments to students there, and had demonstrated "self-injurious behaviors."

When maternal grandmother told mother about the son's behavior at his new school, mother blamed her and the daughter for causing him stress, and said the school was "making a big deal out of nothing." Mother did not want her son to receive any treatment or follow-up for the incident.

According to the daughter, her brother was "always" threatening to hurt himself, and mother was "always sad and yelling at them." In addition, about five years prior, father had pointed a gun at mother's head while mother screamed at him to stop. Father also lived in Washington, but the children had not seen him in over a year.

On March 25, 2016, the Department of Children and Family Services (Department) filed a petition alleging that mother's medical neglect of her son, and the parents' earlier domestic violence endangered the children. On the same day, the

court called the case and detained the children, apparently under the temporary emergency jurisdiction powers of the UCCJEA. The court noted that because the children had only been in California for two weeks “we have to look into” the UCCJEA. Father, whose whereabouts were unknown at the time, was not given notice of the hearing. Mother received notice of the hearing but was not present. At the end of the hearing, the court found a prima facie case for detention, concluded that returning the children to their mother would place them at risk, and issued various other orders.

The court next called the case on June 28, 2016, at which time the Department filed an amended petition adding allegations that mother’s use of inappropriate discipline endangered the children, father knew or should have known about the abuse and failed to protect the children, and mother’s mental health issues placed the children at risk of harm.

The jurisdiction and disposition hearing was held on August 25, 2016. Each parent and child was represented by separate counsel. The Department presented evidence that mother threw objects at her daughter, hit her with brooms and brushes so hard they broke, and would slap the children in the face. Mother was “always angry . . . always sad,” and spent most of her time in her room. Mother told her daughter, “I want to kill you. I wish you were dead.” The daughter did most of the cooking and cleaning, and took care of her brother.

The court found sustained allegations and took jurisdiction under subdivision (b) of Welfare and Institutions Code section 300, finding that mother’s medical neglect of her son, her use of inappropriate discipline, and her mental issues placed the children at risk of harm. The court also found that father knew

of or should have known about mother's use of inappropriate discipline, and that father's failure to protect the children placed them at risk of harm. The court struck the domestic violence allegations as too remote in time.

The court removed the children from their parents' custody. Both parents were ordered to participate in counseling. Mother was also ordered to submit to a psychiatric assessment and participate in a parenting program. Mother and father timely appealed.

### ***DISCUSSION***

#### **1. *The UCCJEA***

This appeal deals almost exclusively with the proper application of the UCCJEA. That statute places limitations on a state court's power to assume dependency jurisdiction over a child whose "home state" is not the forum state (here California). In general, the uniform act authorizes a state to assume temporary emergency jurisdiction over a child who is present in the forum state and "has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to, or threatened with, mistreatment or abuse." (§ 3424, subd. (a).) In contrast, the forum state cannot assume continuing jurisdiction over the child unless one of several statutory criteria are met. (§ 3421, subd. (a).) The two situations, both of which are present here, are aptly compared in two Court of Appeal decisions, *In re Gino C.* (2014) 224 Cal.App.4th 959, 965, and *In re Cristian I.* (2014) 224 Cal.App.4th 1088, 1097.

"Section 3421, subdivision (a), part of the UCCJEA, provides 'the exclusive jurisdictional basis for making a child custody determination by a court of this state.' (§ 3421,

subd. (b).) Under section 3421, subdivision (a), a court has jurisdiction to make an initial child custody determination only if (1) this state is the child's 'home state,' meaning the state in which the child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the child custody proceeding was commenced (§§ 3421, subd. (a)(1), 3402, subd. (g)); (2) the child's home state has declined to exercise jurisdiction (§ 3421, subd. (a)(2) & (3)); or (3) the child does not have a home state (§ 3421, subd. (a)(4))." (*In re Gino C.*, *supra*, 224 Cal.App.4th at p. 965.)

Section 3424 "provides an exception to the exclusive jurisdictional bases for making an initial child custody determination or modifying a sister-state custody order. (§§ 3421, subds. (a), (b), 3423.) A California court may exercise 'temporary emergency jurisdiction' when a 'child is present in this state and . . . it is necessary in an emergency to protect the child because the child . . . is subjected to, or threatened with, mistreatment or abuse.' (§ 3424, subd. (a).) An 'emergency' exists when there is an immediate risk of danger to the child if he or she is returned to a parent. [Citations.]" (*In re Cristian I.*, *supra*, 224 Cal.App.4th at p. 1097.)

"The finding of an emergency 'should not be made "in a rush to judgment" but rather "after a full and fair evidentiary hearing." [Citation.]' [Citations.]" (*In re C. T.* (2002) 100 Cal.App.4th 101, 107.) "The fact the court must hold an evidentiary hearing does not deprive it pre-hearing of jurisdiction to detain the child. 'When a petition contains allegations of an emergency situation, it is proper for the California court to issue an interim custody order to protect the child pending a full evidentiary hearing. [Citations.]" (*Id.* at p. 108, fn. 3.)

2. *The Court Properly Exercised Temporary Emergency Jurisdiction, but it Was Not Authorized to Exercise Continuing Jurisdiction*

All parties agree that Washington was the children's home state when these proceedings began, and the UCCJEA governed the dependency proceedings. The parents challenge both the court's assertion of emergency jurisdiction and continuing jurisdiction. Father contends the court improperly assumed emergency jurisdiction because there was no "full and fair evidentiary hearing" on the issue. Both parents argue the court did not have authority to make jurisdictional findings. The Department contends the court properly exercised emergency jurisdiction but concedes the jurisdictional findings must be conditionally affirmed to allow a Washington court the opportunity to assert jurisdiction over this case.<sup>2</sup>

a. *The Juvenile Court Had Emergency Jurisdiction Over the Children*

Although section 3421 granted exclusive jurisdiction to Washington, the children's home state, to make a custody determination, section 3424 authorized California to exercise "temporary emergency jurisdiction." (§ 3424, subd. (a).) The record is not entirely clear when the dependency court found temporary jurisdiction. For example at the detention hearing, on March 25, 2016, the court said it would "set a non-appearance progress report on the jurisdiction issue." At the start of the

---

<sup>2</sup> Respondent argues both we should conditionally reverse and conditionally affirm citing to *In re A.M.* (2014) 224 Cal.App.4th 593. Because the court in *A.M.* conditionally affirmed, we interpret respondent's brief to suggest that remedy.

initial adjudication hearing on June 30, 2016 (before it was continued), the court stated, “the court has emergency jurisdiction” and it “would keep the case here for jurisdictional dispositional purposes. It doesn’t mean the kids may not and eventually be sent back to Washington, if that’s what the desire is.” Although the court never expressly made a finding of emergency, we conclude that the juvenile court impliedly made such a finding.

We next turn to whether the court’s emergency finding was made after “a full and fair evidentiary hearing.” (*C. T.*, *supra*, 100 Cal.App.4th at p. 107.) Here, at the March 25, 2016 detention hearing, the court did not receive any evidence, mother was not present, and father was not given notice of the hearing. This was not an evidentiary hearing, and therefore did not trigger emergency jurisdiction. (*Ibid.* “[u]nsubstantiated allegations are insufficient to invoke emergency jurisdiction[.]”)

The only evidentiary hearing held was the jurisdictional and dispositional hearing on August 25, 2016. The parties were properly noticed, and testimonial and documentary evidence was considered. Much of the evidence presented at the hearing duplicated the evidence the court would have received when determining whether an emergency exists under the UCCJEA. The court found neglect under Welfare and Institution Code section 300, subdivision (b) due in part to mother’s refusal to assist in obtaining medical assistance for her son when he exhibited suicidal behavior, and her breaking of brooms and brushes on her daughter. This finding necessarily included a finding under the UCCJEA that an emergency existed such that the children were in danger. (See *C. T.*, *supra*, 100 Cal.App.4th at p. 109 [the court’s jurisdictional finding encompassed a finding



that an emergency existed under the UCCJEA].) Accordingly, the court properly asserted emergency jurisdiction over the children.

***b. Substantial Evidence Supports the Jurisdictional and Dispositional Findings***

Both parents argue that the court's jurisdictional findings are not supported by substantial evidence. Mother contends the evidence did not show that her "mental issues" or use of inappropriate discipline placed the children at risk of harm. Father argues there was no evidence he should have known his daughter was the victim of mother's inappropriate discipline. We conclude substantial evidence supports the court's findings. (See *In re I.J.* (2013) 56 Cal.4th 766, 773 [we review jurisdictional and dispositional findings for substantial evidence].)

Only one jurisdictional finding is required for the juvenile court to assert dependency jurisdiction over a child. (*In re Ashley B.* (2011) 202 Cal.App.4th 968, 979.) Here, the evidence showed that mother regularly slapped the children and had broken brooms and brushes on her daughter while hitting her. This evidence of physical abuse was sufficient to show there was a substantial risk the children would suffer "serious physical harm." (Welf. & Inst. Code, § 300, subd. (b).) The children both testified they had not seen father for over a year. It was reasonable for the court to infer that had father been involved in his children's lives, he would have discovered mother's physical abuse of them.

Father also argues the court erred in removing the children from his custody under Welfare and Institutions Code section 361, subdivision (c) because the children were residing solely with mother. Although father is correct, we conclude the

error was harmless. (See *In re V.F.* (2007) 157 Cal.App.4th 962, 969 [section 361, subdivision (c) does not apply to noncustodial parents].) Although the court should have considered whether placement with father would be detrimental to the children under Welfare and Institutions Code section 361.2 (*ibid.*), father does not now argue that he at any time sought custody of the children.

***c. Reversal and Remand is Required to Allow the Juvenile Court to Comply with the UCCJEA***

As we have already observed, continuing UCCJEA jurisdiction requires one of three findings: (1) the forum state is the child's "home state"; (2) the home state has declined jurisdiction; or (3) there is no home state. We need address only the second criterion.

Mother and father argue that, even if substantial evidence supports the jurisdictional and dispositional findings, the juvenile court erred in asserting continuing jurisdiction without first communicating with a Washington court. Respondent concedes the juvenile court erred in failing to communicate with a Washington court about these proceedings, and that judgment must be conditionally affirmed to allow the Washington court an opportunity to assume jurisdiction.

"A court of this state can properly exercise emergency jurisdiction under section 3424, but it is required to contact, and provide notice to, a court of the other state to determine whether the other state wishes to assert jurisdiction under section 3421 and commence proceedings to protect the child. [Citation.]" (*In re R.L.* (2016) 4 Cal.App.5th 125, 143.)

Here, the court's failure to contact Washington authorities was error, but because the court had properly asserted emergency

jurisdiction over the children, the error did not invalidate the assertion of emergency jurisdiction. (*In re A.M., supra*, 224 Cal.App.4th at p. 598.) “A court’s custody determination remains in effect under the court’s emergency jurisdiction until a child custody proceeding has begun in the state with subject matter jurisdiction (§ 3424, subd. (b)) or until the state of emergency no longer exists [citation].” (*Ibid.*) If Washington does not assume jurisdiction, the jurisdictional and dispositional orders will become the final determination and California will become the children’s home state.<sup>3</sup> (§ 3424, subd. (b).)

### ***DISPOSITION***

The jurisdictional and dispositional orders are affirmed. The case is remanded for the limited purpose of directing the trial court to communicate with the Washington authorities to determine if Washington wishes to assume jurisdiction and commence proceedings to protect the children. If a Washington court does not take action after contact and notice, the jurisdictional and dispositional orders shall remain in effect. If a Washington court assumes jurisdiction and commences

---

<sup>3</sup> We decline to address mother’s argument that “the court, on its own motion, could have transferred the case to Washington” under section 3427 because California was an inconvenient forum. Mother’s general contentions that Washington was “a viable option” and “it is certainly arguable that section 3427” applied, are insufficient to establish trial court error. (See *Denham v. Superior Court of Los Angeles County* (1970) 2 Cal.3d 557, 564 [it is appellant’s burden to demonstrate error].)

proceedings, the juvenile court is ordered to proceed in conformity with the UCCJEA and to void its jurisdictional and dispositional orders.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

FLIER, J.