

Filed 4/20/17 In re Y.C. CA2/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re Y.C., a Person Coming Under
the Juvenile Court Law.

B272018

(Los Angeles County
Super. Ct. No. DK14173)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

LUIS C.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles
County, Marguerite Downing, Judge. Affirmed with directions.

Jack A. Love, under appointment by the Court of Appeal,
for Defendant and Appellant.

Office of the County Counsel, Mary C. Wickham, County
Counsel, R. Keith Davis, Assistant County Counsel, Tracey F.
Dodds, Principal Deputy County Counsel, for Plaintiff and
Respondent.

Luis C. (Father), a resident of California, and Maria M. (Mother), a resident of Mexico, are the parents of Y.C. Y.C. was born in Mexico in 2006, and she had always lived there with her Mother. When Y.C. was nine, Mother allowed Y.C. to travel to the United States for a several-month-long visit with her paternal grandmother. During that visit, the Los Angeles County Department of Children and Family Services (DCFS) learned the grandmother allowed Father—who had a pending dependency case involving other children—to take Y.C. to his home, and that once there, Father refused to return the child to her grandmother. DCFS responded by taking custody of Y.C. and commencing dependency proceedings, which concluded with juvenile court orders awarding custody of Y.C. to Mother, directing the child’s return Mexico, and terminating jurisdiction. We consider whether the orders must be reversed because the juvenile court did not contact the court system in Mexico before making its final custody order, as the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) requires.

I. BACKGROUND

Father lived with Mother and Y.C. in Mexico until Y.C. was six years old, at which time Father moved to the United States. Y.C. continued to live in Mexico with Mother. In July 2015, Mother allowed Y.C. to travel to the United States for a several-month-long visit with her paternal grandmother (Grandmother). Grandmother promised that she would not allow Y.C. to stay with Father.

Grandmother broke that promise. She permitted Y.C. to go to Father’s home for a visit in October 2015, and Father refused to return Y.C. to Grandmother once the child was in his care. At

that time, Father was a subject of an open dependency case involving his then-girlfriend's children; the juvenile court in that case had sustained allegations that Father hit the children with a belt and had a history of domestic violence with his girlfriend.

Aided by the Rialto police, DCFS located Y.C. and took her into protective custody. Shortly thereafter, the agency filed a petition pursuant to Welfare and Institutions Code section 300, subdivisions (a), (b), and (j), alleging Y.C. was at risk of harm in Father's custody. The allegations in the petition were predicated on the abuse and neglect findings in the dependency case involving Father's girlfriend's children.

At an initial detention hearing, the juvenile court found Father's continued custody of Y.C. would be contrary to her welfare and ordered Y.C. detained. The court also ordered DCFS to attempt to locate Y.C.'s mother. DCFS later succeeded in contacting Mother, and the juvenile court appointed an attorney to represent her.

A DCFS report prepared in advance of the jurisdiction hearing on the petition informed the juvenile court that Mother had asked the Mexican Consulate for assistance in regaining custody of Y.C. According to the report, Y.C. said she also wanted to return to live with Mother in Mexico. DCFS recommended the juvenile court sustain the petition against Father and continue Y.C.'s placement in foster care until it could investigate Mother's residence, family, and home composition in Mexico with a view to returning Y.C. to Mother's care.

DCFS subsequently received, and forwarded to the juvenile court, Mother's formal request to regain custody of Y.C., made through the Secretaria De Relaciones Exteriores in Mexico. To facilitate an investigation of Mother's circumstances, DCFS

asked the juvenile court to issue an order directing DCFS to initiate an international home study request.

The juvenile court held the jurisdiction hearing on the petition in January 2016. The attorney representing Mother appeared on her behalf, as Mother remained in Mexico, and an attorney was also present for Father, who did not attend the hearing. The court sustained the counts of the petition alleged under subdivisions (a) and (b) of Welfare and Institutions Code section 300, and dismissed the count alleged under subdivision (j). Neither the parties nor the court raised any issues concerning jurisdiction under UCCJEA during the hearing.

In March 2016, the court held a disposition hearing on the petition. By that time, DCFS had received and submitted to the juvenile court the international home study it previously requested, which was prepared by the relevant Mexican agency, La Defensa De Los Menores y La Familia. The study was based on an interview with Mother, a home visit, and field investigation, and the overall conclusion of the study was “favorable toward the reunification of [Y.C.]” with Mother. The study reported Mother appeared to be stable and able to meet Y.C.’s needs, and it further indicated Father had fled Mexico “for legal problems, due to trafficking illegal substances.” Based on the results of the study, as well as the fact that Y.C. had lived her entire life with Mother, DCFS, Mother, and counsel for Y.C. all asked the court to send the child back to Mother in Mexico. Mother’s attorney specifically asked the court to close the case with a custody order. Father argued Y.C. would not be adequately cared for in Mexico and opposed the recommendation to give Mother custody of Y.C. and terminate jurisdiction.

The juvenile court declared Y.C. a dependent child. It found there was substantial danger to Y.C. if she were returned to Father. The court ordered Y.C. placed with Mother and granted Mother sole legal and physical custody of the child. The court further stated it was “going to be terminating jurisdiction because [DCFS] cannot continue to service this case, with this child residing in Mexico.” The court thereafter issued a final custody order giving effect to its dispositional ruling.

II. DISCUSSION

UCCJEA, codified at Family Code sections 3400 to 3465,¹ is the exclusive method for determining whether a California court has subject matter jurisdiction over a custody dispute that also involves a foreign jurisdiction. (*Ocegueda v. Perreira* (2015) 232 Cal.App.4th 1079, 1084.) It is undisputed that Mexico was Y.C.’s home state for UCCJEA purposes, but the juvenile court here had temporary emergency jurisdiction over Y.C. under UCCJEA. When exercising such jurisdiction, a court must contact the court in the child’s home state to ascertain whether the home state court wishes to assert jurisdiction over the child. The juvenile court did not do so, but its noncompliance is subject to review for harmlessness. Following at least one prior case that has confronted similar circumstances, *In re A.M.* (2014) 224 Cal.App.4th 593 (*A.M.*), we affirm the orders under review but remand with directions to the juvenile court to notify the Mexican courts of the custody order it entered and to thereafter proceed as specified in this opinion.

¹ Undesignated statutory references that follow are to the Family Code.

A. *We Decline to Dismiss the Appeal on Mootness Grounds*

As a general rule, an order terminating juvenile court jurisdiction renders an appeal from a previous order in the dependency proceedings moot. (*In re Michelle M.* (1992) 8 Cal.App.4th 326, 330.) However, dismissal of a dependency action does not preclude review if a juvenile court's orders continue to adversely affect an appellant after the court terminates jurisdiction. (*In re Joshua C.* (1994) 24 Cal.App.4th 1544, 1548 [father's appeal of an order awarding sole custody to mother was not moot after termination of jurisdiction because it provided a basis for subsequent orders].) Under the circumstances here, where a final custody order that may impact further proceedings concerning Father's relationship to Y.C. is implicated, we reach the merits of Father's appeal.² (*In re Christian I.* (2014) 224 Cal.App.4th 1088, 1096, fn. 6 [appeal not moot, despite termination of juvenile court jurisdiction, because disposition order continued to affect the mother and her appeal challenged the juvenile court's authority to make a child custody determination other than an initial, temporary emergency order]; see *In re J.K.* (2009) 174 Cal.App.4th 1426, 1431-1432.)

² To modify the juvenile court's final custody order, Father would have to prove not only that modification is in Y.C.'s best interest but also that there have been a "significant change of circumstances" since the juvenile court entered the order. (§ 302, subd. (d); *In re A.R.* (2009) 170 Cal.App.4th 733, 740.)

B. The Juvenile Court Did Not Contact a Mexican Court as Required by UCCJEA, But the Omission Does Not Require Reversal

UCCJEA is designed to promote interstate cooperation, ensure child custody cases are litigated where the child and the family have the closest connections, and avoid jurisdictional conflicts between states. (*In re R.L.* (2016) 4 Cal.App.5th 125, 136 (*R.L.*)). Under UCCJEA, a California court must treat a foreign country as if it were a state of the United States for the purpose of determining jurisdiction. (§ 3405, subd. (a); *In re M.M.* (2015) 240 Cal.App.4th 703, 715.)

“Under section 3421, California may assume jurisdiction to make an initial child custody determination only if any of the following apply: California 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)); a court of another state does not have jurisdiction because it is not the child’s home state (§ 3421, subd. (a)(2)); a court of the child’s home state has declined to exercise jurisdiction on the ground California is the more appropriate forum (*ibid.*); all courts having jurisdiction have declined to exercise jurisdiction on the ground California is the more appropriate forum (§ 3421, subd. (a)(3)); or no other state has jurisdiction under the foregoing tests (§ 3421, subd. (a)(4)).” (*A.M., supra*, 224 Cal.App.4th at p. 598.) The parties agree Y.C.’s home state was Mexico, which means the juvenile court did not have subject matter jurisdiction to make a custody order for Y.C. under this statutory rubric, at least absent further information about Mexico’s jurisdictional preferences.

Section 3424, however, “provides an exception to the exclusive jurisdictional bases for making a child custody determination in California. A 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. [Citation.] Although emergency jurisdiction is generally intended to be short term and limited, the juvenile court may continue to exercise its authority as long as the reasons underlying the dependency exist. [Citations.]” (*A.M.*, *supra*, 224 Cal.App.4th at p. 599; see also *In re Gino C.* (2014) 224 Cal.App.4th 959, 966 [“Where, as appears here, there was no existing child custody proceeding in the home state and no prior child custody determination entitled to enforcement, a child custody determination made by a court with temporary emergency jurisdiction remains in effect until an order is obtained from the home state”].)

The juvenile court had a proper basis to exercise temporary emergency jurisdiction over Y.C., and Father does not contend otherwise. The court’s findings that Y.C. was at substantial risk of serious physical harm, including harm inflicted nonaccidentally by Father, were enough in that regard. (§ 3424, subd. (a) [temporary emergency jurisdiction exists if a child is “subjected to, or threatened with, mistreatment or abuse”]; *R.L.*, *supra*, 4 Cal.App.5th at p. 143 [court’s findings at initial detention hearing, that there was a substantial danger to the physical health of the child and removal of the child from her mother’s care was required, provided a sufficient basis for

assumption of emergency jurisdiction].) A California court that exercises temporary emergency jurisdiction, however, must contact and provide notice of its proceedings to a child's home state court system to ascertain whether the home state courts wish to assert jurisdiction over the child. (*R.L.*, *supra*, at pp. 142-143 ["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 . . ."]; *A.M.*, *supra*, 224 Cal.App.4th at p. 598 [failure to contact Mexican authorities after assuming emergency jurisdiction, so as to determine whether Mexico would assume jurisdiction, was error]; see also § 3424, subd. (b).)

The juvenile court did not comply with this home state notice requirement. A Mexican social services agency and the Mexican Consulate were aware of Mother's desire to regain custody of Y.C., but the juvenile court did not contact its counterpart court in Mexico to inquire whether that court would decline to assume jurisdiction. Instead, the juvenile court issued a final custody order unaware of the Mexican courts' position on jurisdiction and in the absence of any evidence that California had become Y.C.'s home state. This was error. (*A.M.*, *supra*, 224 Cal.App.4th at p. 598; *In re Gino C.*, *supra*, 224 Cal.App.4th at pp. 966-967.)

The lack of the contact with a foreign jurisdiction that UCCJEA requires is nevertheless subject to review for harmlessness. (*R.L.*, *supra*, 4 Cal.App.5th at p. 143 ["Failure to comply with the procedural requirements of UCCJEA is subject to harmless error analysis" whereby an appealing parent "must show it is reasonably probable that a result more favorable to the

[parent] would have been reached in the absence of the error”]; *A.M.*, *supra*, 224 Cal.App.4th at p. 598; see also *In re Cristian I.* (2014) 224 Cal.App.4th 1088, 1098-1099.) Father asserts juvenile court contact with Mexican courts may have produced a more favorable result because “there was no reason for the California juvenile court to sustain a petition regarding [Y.C.] or take permanent jurisdiction to make custody orders, visitation orders, and to order [Father] to participate in multiple programs” because the court had emergency jurisdiction and could have just sent Y.C. back to Mother in Mexico. DCFS counters that it is “highly unlikely” the outcome of the case would have been any different if a Mexican court had been contacted or assumed jurisdiction because “Father had abandoned [Y.C.] when he left Mexico to avoid the consequences of his drug dealing.”

We doubt juvenile court contact with its counterpart court in Mexico would have produced a more favorable outcome for Father. The courts in Mexico may well have declined to assert jurisdiction, and if so, that would have given the juvenile court jurisdiction to make a custody order under section 3421, subdivision (a). Further, even if a Mexican court opted to assume jurisdiction, a more favorable custody determination is unlikely under the circumstances: Y.C. had lived with Mother in Mexico for her entire life; Father had left the family years earlier to avoid his “legal problems,” as the Mexican home study put it; Father had been found to have neglected and abused his girlfriend’s children after coming to the United States; and Y.C.’s expressed desire was to return home to her Mother in Mexico. Having said that, we acknowledge the inherent limits of prognostication when it comes to the customs and practices of a foreign court. Thus, rather than affirming outright, we believe

the better practice is to affirm the orders under review but remand the matter for the limited purpose of permitting the juvenile court to provide notice to Mexico of the proceedings in this case. (*A.M.*, *supra*, 224 Cal.App.4th at pp. 599-600.)

When the remittitur in this case issues, the juvenile court is directed to contact the appropriate Mexican court and provide notice of the proceedings to date. If the Mexican court does not thereafter assume jurisdiction and issue a custody order of its own, the final custody order made by the juvenile court will stand. (*A.M.*, *supra*, 224 Cal.App.4th at pp. 599-600; see also *In re M.M.*, *supra*, 240 Cal.App.4th at p. 717 [“[W]hen a home state declines jurisdiction in any manner that conveys its intent *not* to exercise jurisdiction over a child in connection with a child custody proceeding, including inaction *or* . . . by refusing to even discuss the issue of jurisdiction despite myriad good faith attempts to do so by the juvenile court, that such inaction or refusal is tantamount to a declination of jurisdiction by the home state”].) In the event the Mexican court does issue a custody order, the juvenile court shall enforce the order if it is issued in substantial conformity with UCCJEA requirements. (§§ 3405, subd. (b), 3443, subd. (a).)

DISPOSITION

The juvenile court's orders are affirmed. The matter is remanded for the limited purpose of permitting the juvenile court to contact the appropriate Mexican court and notify that court of the proceedings in this case, including the issuance of the April 12, 2016, final custody order. If the court in Mexico takes no action within a reasonable time after contact and notice, the juvenile court's custody order will remain the final child custody determination. If the Mexican court assumes jurisdiction and issues a custody order in substantial conformity with UCCJEA requirements, the juvenile court is to enforce that order and void its custody order.

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BAKER, J.

We concur:

KRIEGLER, Acting P.J.

KIN, J.*

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