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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re T.J., A Person Coming Under the
Juvenile Court Law.

B234714

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

(Los Angeles County
Super. Ct. No. CK87835)

Plaintiff and Respondent,

v.

R.J.,

Defendant and Appellant,

A.J.,

Defendant and Respondent.

Appeal from an order of the Superior Court of Los Angeles County. Valerie Lynn Skeba, Juvenile Court Referee. Reversed and remanded.

Linda J. Vogel, under appointment by the Court of Appeal, for Appellant Father.

Amy Z. Tobin, under appointment by the Court of Appeal, for Respondent Mother.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, and Aileen Wong, Deputy County Counsel, for Respondent Los Angeles County Department of Children and Family Services.

R.J. (father) appeals the jurisdiction and dispositional orders of the juvenile court regarding his son T.J. Father contends the court lacked subject matter jurisdiction to issue the orders because the court did not comply with the Uniform Child Custody Jurisdiction and Enforcement Act (Act) (Family Code section 3400 et seq.)¹ Father further argues that even assuming the court had jurisdiction to act, the orders lack statutory and factual support. We conclude that since a Texas court issued an initial custody order regarding T.J. in the dissolution of his parents' marriage, and Texas never relinquished its exclusive, continuing jurisdiction over T.J., the juvenile court lacked jurisdiction to declare T.J. a dependent and to issue a custody disposition. We reverse and vacate the orders as void for lack of subject matter jurisdiction.

FACTUAL AND PROCEDURAL HISTORY

Father and A.J. (mother) married in Texas in 2001. T.J. was born in 2003 and is the only child of the marriage. Father and mother separated in early 2004, with mother returning to New Jersey where she had grown up.

A final divorce decree was issued by a Texas court in Dallas in June 2007. The divorce decree contains specific orders regarding permanent custody of T.J., as well as visitation. Pursuant to the parties' agreement reached through mediation, the divorce decree grants mother status as the "Sole Managing Conservator" of T.J., with the right to designate the primary residence of the child. The parties agreed not to limit the residency of T.J. to the State of Texas, and the decree identifies New Jersey as mother and T.J.'s state of residency. Father was granted status as a "Possessory Conservator" with rights of

¹ All further undesignated section references are to the Family Code.

visitation. Father continues to reside in Texas. The divorce decree contains a detailed visitation schedule.

Mother and T.J. lived in New Jersey for several years, during which time mother also had the responsibility of caring for an ailing parent. Despite having to change her residence several times, mother was able to successfully advocate on behalf of T.J. and obtain beneficial services for T.J., who has mild autism, in the New Jersey school system.

In March 2011, mother moved with T.J. to California. Since 2007, mother has experienced bouts of depression, but she had enjoyed a previous visit to California and believed the change in location, along with the pleasant weather, would have a positive impact on her mood. She also hoped to have some familial support for T.J. because his paternal grandmother lived in Long Beach.

While mother and T.J. lived in New Jersey, father maintained telephonic communication, as well as visitation with T.J. in accordance with the divorce decree, including lengthy periods of visitation by T.J. with father in Texas during the summertime. Father also travelled to New Jersey to participate in educational planning and services for T.J. In January 2011, father and mother discussed father taking custody of T.J. in Texas for a period of time, but mother then changed her mind and made the decision to move to California.

Upon arriving in California, mother obtained a full-time job and also secured housing and enrolled T.J. in school. On May 10, 2011, mother was feeling depressed and had thoughts of suicide. After picking up T.J. from school, she drove to a Kaiser Permanente hospital near their home and voluntarily admitted herself for treatment. A hospital social worker immediately referred T.J. to the Los Angeles County Department of Children and Family Services (Department) because mother was unable to make alternative arrangements for his care while she obtained in-patient treatment.

T.J. was detained by the Department and placed into foster care. During mother's initial interview with a Department social worker, mother explained that she loved T.J., that being a mother was "her greatest joy in life," and that she would be able to resume taking care of T.J. in a couple of days after she received some help. Mother also advised

the social worker that T.J. had a mild form of autism but was very “high functioning” and intelligent. Mother reported financial pressures as a significant source of her depression.

On May 16, 2011, the Department filed a petition pursuant to Welfare and Institutions Code section 300. The primary allegation was against mother only, based on her voluntary hospital admission for evaluation and treatment of her depression. Additional allegations were stated, including failure to protect and failure to provide support against father. At the detention hearing, the juvenile court recognized the Act applied and ordered the Department to provide a detailed report regarding the Texas family law order. The court also granted the Department discretion to release T.J. back to mother or the paternal grandmother.

In the jurisdiction and disposition report, the Department reported that T.J. appeared well-adjusted and wanted to live with his mother. The report indicated no prior child welfare history for the family and neither parent had any criminal history or record of drug or alcohol abuse. The Department further reported that, upon arriving in California, mother became stressed because her new job, despite her graduate degree, was not providing the pay she believed she had been promised and that she had hoped for better family support. Because father had been temporarily unemployed due to a layoff from his job during this period, father had been sending mother reduced support payments which contributed to mother’s stress. Father, an engineer, was reported as having recently obtained a new full-time position and was desirous of obtaining custody of T.J. The Department described father as a “viable alternative” for placement of T.J.

As of the date of the adjudication hearing, mother had obtained psychiatric services with the Department’s assistance, and her parents had arrived from out of state to provide support. Father made another request for custody of T.J. Without discussing or making any finding on the record regarding jurisdiction under the Act, the juvenile court proceeded to adjudicate the petition and issue dispositional orders. The court sustained the petition against mother only, finding T.J. to be a dependent under Welfare and Institutions Code section 300, subdivision (b). The court ordered T.J. placed in the home of his mother under the supervision of the Department with the provision of continued

services. The court found by clear and convincing evidence that there was a risk of substantial danger to T.J. if he were to be placed with father. The court ordered that visitation by father with T.J. should continue in accordance with the Texas court order. This timely appeal followed.

The Department moved for an order augmenting the record with a transcript from the Welfare & Institutions Code section 364 hearing held November 23, 2011, during the pendency of this appeal. We granted the motion. The transcript contains the court's statement regarding its efforts to contact the Texas court before the adjudication and dispositional hearing, as well as counsel's representations that mother and T.J. had relocated to Orange County and were not receiving any services from the Department.

DISCUSSION

Father contends the juvenile court lacked subject matter jurisdiction under section 3424 and that its jurisdiction and dispositional orders must be reversed as void. Father argues the juvenile court failed to follow the required statutory procedure for determining whether an assertion of temporary jurisdiction under section 3424 was appropriate, and also that the record showed, as a matter of law, there were insufficient grounds for the court to exercise temporary emergency jurisdiction. Father further contends that even if there was jurisdiction for the court to proceed, the orders against him lack statutory authority and factual support. We agree the juvenile court lacked subject matter jurisdiction and therefore reverse.

On the question of subject matter jurisdiction, our review is de novo. (*In re Angel L.* (2008) 159 Cal.App.4th 1127, 1136.) California adopted the Act in 2000. The Act is the exclusive method for determining the proper forum in custody cases involving other jurisdictions and governs juvenile dependency proceedings. (*In re Jorge G.* (2008) 164 Cal.App.4th 125, 131; see also *In re Stephanie M.* (1994) 7 Cal.4th 295, 310 [concluding same as to the Uniform Child Custody Jurisdiction Act, the predecessor statutory scheme].) Texas adopted the Act effective September 1, 1999. (See Tex. Fam. Code Ann., § 152.001 et seq.)

Under mother and father's 2007 Texas divorce decree, the Texas court made the initial custody determination with respect to T.J. By virtue of making that initial determination regarding custody and visitation, the Texas court obtained exclusive, continuing jurisdiction under the Act to resolve further issues related to the custody of T.J. (See § 3422; Tex. Fam. Code Ann., § 152.202; see also *In re Marriage of Nurie* (2009) 176 Cal.App.4th 478, 491 (*Marriage of Nurie*).) One of the main purposes of the Act was to establish the principle of exclusive, continuing jurisdiction for the issuing court as a cornerstone of the amended statutory scheme. (*Marriage of Nurie*, at p. 491; see also 10 Witkin, Summary of Cal. Law (10th ed. 2005) Parent & Child, §§ 158, 173, pp. 230, 244-245 & *Marriage of Nurie*, at p. 497 [Act was intended "to encourage states to respect and enforce the prior custody determinations of other states, as well as to avoid competing jurisdiction and conflicting decisions"].)

The juvenile court was therefore bound to recognize and enforce the priority of the Texas court's jurisdiction and avoid an assertion of concurrent jurisdiction on the issue of custody. (See § 3443 [court of this state "shall recognize and enforce" a custody order from another state]; § 3453 [court of this state shall "accord full faith and credit" to custody order from another state]; § 3461 [in construing the Act, courts shall give consideration to need "to promote uniformity of the law" amongst those states that have enacted the Act].) "Indeed, concurrent assertion of jurisdiction by more than one court was one of the chief problems that led to the enactment of the [Act]. The absence of a specific provision for continuing jurisdiction [under the prior statutory scheme] had 'caused considerable confusion,' with conflicting judicial interpretations and 'a loss of uniformity among the States.' [Citation.]" (*Marriage of Nurie, supra*, 176 Cal.App.4th at p. 497.)

Under the Act, the court making the initial custody determination maintains exclusive, continuing jurisdiction until a court of that state determines either of the following: "(1) . . . neither the child, nor the child and one parent, nor the child and a person acting as a parent have a significant connection with [the] state and that substantial evidence is no longer available in [the] state concerning the child's care,

protection, training, and personal relationships. [¶] (2) . . . the child, the child’s parents, and any person acting as a parent do not presently reside in [the] state.” (See § 3422; Tex. Fam. Code, § 152.202.) There is nothing in the record that any Texas court ever made such an order.

The juvenile court could properly assert temporary emergency jurisdiction over T.J. under section 3424 if it found that the statutory prerequisites for emergency jurisdiction existed, notwithstanding the existence of the prior Texas order, but the court did not do so in this case. Section 3424 provides, in relevant part:

(a) A court of this state has *temporary* emergency jurisdiction if the *child is present in this state and* the child 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. [¶] . . . [¶] (c) *If there is a previous child custody determination that is entitled to be enforced under this part, or a child custody proceeding has been commenced in a court of a state having jurisdiction under Sections 3421 to 3423, inclusive, any order issued by a court of this state under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under Sections 3421 to 3423, inclusive. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the period expires.”* (Italics added.)

Under both the original statutory scheme and the Act, emergency jurisdiction was never “contemplated to be a vehicle for a state to attain modification jurisdiction on an ongoing basis or for an indefinite period of time.” (*In re Joseph D.* (1993) 19 Cal.App.4th 678, 691; accord, *In re C. T.* (2002) 100 Cal.App.4th 101, 112.) Rather, section 3424 was enacted as a means of providing an additional basis for a court to assume *temporary* jurisdiction to protect a child from imminent “mistreatment or abuse.” (§ 3424, subd. (a); *In re C.T.*, at p. 108 [“emergency jurisdiction may be exercised to protect the child only on a temporary basis”].)

To determine whether a basis for temporary jurisdiction exists, the court must hear evidence on the question of whether a child, present in the state, has been abandoned within the meaning of the Act (§ 3402, subd. (a)) or whether the child, or sibling or

parent of the child, is subject to, or threatened with, mistreatment or abuse. “ ‘The finding of an emergency is to be made *only after an evidentiary hearing*, although the juvenile court can detain the child before that hearing.’ [Citation.]” (*In re Jorge G.*, *supra*, 164 Cal.App.4th at p. 132, italics added; accord, *In re Marriage of Fernandez-Abin & Sanchez* (2011) 191 Cal.App.4th 1015, 1042; *In re C. T.*, *supra*, 100 Cal.App.4th at p. 107 [finding of emergency “ ‘should not be made “in a rush to judgment” ’ ” but after “ ‘ “full and fair evidentiary hearing” ’ ”].)

The court must determine whether facts exist to confer jurisdiction as of the filing date of the emergency petition. “Subject matter jurisdiction either exists or does not exist at the time an action is commenced. [Citation.] There is no provision in the [Act] for jurisdiction by reason of the presence of the parties or by stipulation, consent, waiver, or estoppel.” (*Marriage of Nurie*, *supra*, 176 Cal.App.4th at p. 491.) Sufficient predicate facts must be affirmatively established on the question of emergency and the Department bears the burden of proof on this issue. (*In re Baby Boy M.* (2006) 141 Cal.App.4th 588, 599.)

Where, as here, a court is faced with an initial custody order from another jurisdiction, the court must communicate immediately with that other court (§ 3424, subd. (c)) and cannot defer such communication until after the finding of emergency. (*In re C. T.*, *supra*, 100 Cal.App.4th at p. 111.) Moreover, the court is required to document those communications: “(a) A court of this state may communicate with a court in another state concerning a proceeding arising under this part. [¶] (b) The court may allow the parties to participate in the communication. *If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.* [¶] (c) Communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of the communication. [¶] (d) Except as otherwise provided in subdivision (c), *a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.* [¶] (e) For the purposes of this

section, ‘record’ means information that is *inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.*” (§ 3410, italics added.)

And, an order finding a basis for emergency jurisdiction over a child *must specify a limited period of duration* for the detention. (§ 3424, subd. (c).) “One reason for consultation with the sister state court is to determine from the sister state court a date by which it could realistically resume consideration of the custody dispute and make further custody orders within its jurisdiction.” (*In re C. T.*, *supra*, 100 Cal.App.4th at p. 109.) A specified end date for the temporary detention order therefore serves the purpose of protecting the child under exigent circumstances while allowing the issuing court the opportunity to address any necessary modifications to its prior custody order or otherwise make a decision under the Act that its exclusive, continuing jurisdiction is properly relinquished.

The juvenile court had the authority to order the temporary detention of T.J. on an interim basis, in light of mother’s hospitalization, while it sought to confer with the Texas court and up through the time it held an evidentiary hearing to determine the existence of a basis for emergency jurisdiction. (*In re C. T.*, *supra*, 100 Cal.App.4th at p. 108, fn. 3 [petition containing emergency allegations provides court with authority to issue interim order to protect child pending full hearing].) But thereafter, the juvenile court failed to conduct any hearing on the existence of an emergency within the meaning of section 3424, failed to specify a limited period of duration for the emergency detention of T.J., and failed to meaningfully comply with the requirements of section 3410 regarding documentation of its attempt to contact the Texas court. The only information in the record reflecting a discussion of the Act subsequent to the court’s initial comments at the detention hearing is in the transcript of proceedings of November 23, 2011, six months *after* issuance of the dispositional orders. The court stated its belief that it had attempted to call the Texas court once, perhaps twice, and left a message but did not receive a return phone call. This does not comply with the letter or spirit of section 3410, subdivisions (b) and (d).

The adjudication hearing did not substitute for the evidentiary hearing required under the Act. The holding of a hearing under Welfare and Institutions Code section 300 cannot replace a full and fair evidentiary hearing to determine emergency jurisdiction under section 3424. “[T]he hearing to determine whether an emergency exists under the Act is a procedure separate and distinct from a [Welfare and Institutions Code] section 300 jurisdictional hearing.” (*In re C. T.*, *supra*, 100 Cal.App.4th at p. 109; accord, *In re A. C.* (2005) 130 Cal.App.4th 854, 864.) While making a Welfare and Institutions Code section 300 true finding and a section 3424 emergency jurisdiction finding may often involve the resolution of similar factual issues, the juvenile court nonetheless is *not* statutorily authorized to conflate the two procedures.

The juvenile court erred by not making any jurisdictional finding on the record but instead proceeding directly to an adjudication of the petition as if it had full authority to issue substantive orders in the dependency proceeding. Even assuming sufficient facts establishing an emergency had been shown in a proper evidentiary hearing, the court would not have obtained jurisdiction to issue custody orders at that time. “Assumption of emergency jurisdiction does not confer upon the state exercising emergency jurisdiction the authority to make a permanent custody disposition.” (*In re C. T.*, *supra*, 100 Cal.App.4th at p. 108.)

“ ‘The principle of “subject matter jurisdiction” relates to the inherent authority of the court involved to deal with the case or matter before it.’ [Citation.] Thus, in the absence of subject matter jurisdiction, a trial court has no power ‘to hear or determine [the] case.’ [Citation.] And any judgment or order rendered by a court lacking subject matter jurisdiction is ‘void on its face’ [Citation.]” (*Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 196.) Because there was no proper determination by the juvenile court in accordance with the required statutory procedures as to whether subject matter jurisdiction existed to proceed with the dependency case in light of the existing Texas custody order, the juvenile court’s jurisdictional and dispositional orders, and all subsequent orders, are void and must be reversed. If current circumstances would justify

a new finding of emergency jurisdiction over T.J. in conformance with the Act, the Department will have to file a new petition alleging such facts.

DISPOSITION

The jurisdiction and dispositional orders are reversed and vacated. The court is ordered to dismiss the petition forthwith.

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GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

FLIER, J.